

SENATE....No. 90.

Commonwealth of Massachusetts.

IN SENATE, March 25, 1853.

The Joint Standing Committee on Roads and Bridges, to whom were referred the petition of the proprietors of Neponset Bridge, the remonstrance of Samuel Babcock and others, and also the petitions of Gardner Penniman and 163 others, of Braintree, and of Caleb Stetson and 22 others, and who were also instructed by an order to consider the expediency of reducing the rates of toll for passing over said bridge, have considered the matters referred to them, and submit thereon the following

REPORT:

The petition of the proprietors of Neponset Bridge prays for authority to construct of solid materials four hundred feet of the length of their bridge, from the easterly end thereof. It represents "that by this improvement, the length of the present bridge will be diminished more than one-half, and the structure will be rendered more safe and permanent, and less expensive for the public to keep in repair after the charter shall have expired." It also states, as a reason for this application to the legislature, that "there is a large supply of gravel in the immediate vicinity, which can be had with great convenience and

facility, and at a very reasonable cost; which supply, if not taken advantage of at the present time, will be wholly lost, and the contemplated improvement cannot be effected from any other source without much inconvenience and greatly increased cost."

These representations were substantiated to the satisfaction of the committee. It was further proved, that, although the bridge was well and faithfully built fifty years ago, and was made suitable for the travel which was then supposed would ever come upon it, it is now subjected to a different use, in the passing over it, almost daily, of heavy loads of iron and of large masses of granite, weighing seven or eight tons, drawn by five or six horses. In many instances the teamsters, while going over the bridge with these loads under their charge, were careful to keep at a considerable distance from them, through an apprehension that the structure might not be able to sustain so great a weight.

The bridge is 751 feet long. At the westerly end, it is 28 feet from the channel. If it is made solid for the 400 feet at the easterly end, there will still be left on that side 84 feet between the solid part and the channel, which is 239 feet wide. The owners of the upland on each side of the easterly end of the bridge intend to build out solid wharves to the same distance towards the channel. It was proved that this filling up would facilitate the passage of vessels through the draw, and that it would be a benefit rather than an injury to navigation.

The proprietors claim that, as owners of the upland, they have now the legal right to fill up to the channel. But as their charter will expire in twenty years, they have no inducement to do so, unless the legislature should grant to them an indemnity for the outlay in the extension of the tolls. They ask for an interest of eight per cent. per annum on the money to be advanced by them in making this improvement—not exceeding \$5,000—and a reimbursement of this new capital. This stipulation seemed to the committee to be reasonable.

The remonstrants, after examining the plan proposed and hearing the reasons urged in its behalf, withdrew their objections.

Upon these facts, the committee are unanimously of the

opinion that the project proposed by the proprietors is an enterprise entirely for the public interest. By converting more than half of the present bridge into a permanent structure, the hazard and liability to accident in passing over it will be diminished, and the annual cost of keeping it in repair will be greatly reduced. It is unquestionably for the interest of the community in that vicinity, and of the whole travelling public who may have occasion to use this bridge, that the present opportunity for carrying out this plan should be improved.

The hearing of the several petitioners for the reduction of tolls on said bridge was held at the same time; as the proprietors asserted, that if the legislature should decide that it was competent and expedient, under the circumstances of the case, to grant a reduction, they should of course withdraw their proposition to make this improvement.

The charter of the proprietors was granted for seventy years. It fixed the rate of toll, but provided that after forty years that rate may be altered by the legislature. This period of forty years arrived in 1843, when the legislature exercised the power reserved in the charter.

It appeared in evidence before the committee, that a full investigation of the subject, including the rights of the proprietors and of the public, was gone into before the committee of 1843. On the one side, it was contended at that time, on the part of a large number of petitioners, that the proprietors had received during the forty years an aggregate of net receipts over the expenditures, amounting to more than double the original cost and interest; and they claimed that no more tolls should be allowed to the proprietors, and a bill was proposed to the committee to that effect, as appears by the papers on file in the secretary's office. The proprietors, on the other hand, then contended that, by charging 12 per cent. per annum—which they claimed would be a fair interest on such an undertaking—on the first cost of the bridge, and adding it to the principal, making annual rests, and deducting therefrom the dividends when received, the result would give them a capital of more than four times the first cost.

The legislature of 1843, after this hearing before their committee, passed the act, being ch. 27 stat. 1843, which estab-

lishes a rate of toll. It further provides that annual returns of receipts and expenditures shall be made to the secretary, "and if the net income received by said corporation, after deducting all necessary and reasonable expenses and disbursements, shall exceed six per centum per annum on the sum of thirty-five thousand dollars, the legislature may *regulate* said tolls in such manner that said net income shall not exceed six per centum on said sum." The next section provides that "the corporation shall have power at any time hereafter to *reduce the rates of toll* heretofore established, so far as they may deem expedient, and continue said toll so reduced so long as they may deem expedient." And the concluding section provides that "the legislature may at any time hereafter *regulate* the tolls on said bridge and turnpike as they may deem expedient."

Taking the whole act together, and considering the time and the circumstances under which it was passed, the committee are of the opinion that it was the intention of the legislature to secure to the proprietors for the residue of their charter a net income of six per centum on the sum of \$35,000; that this was fixed as a capital on which they were to have the legal rate of interest for the thirty years remaining to them, at the end of which time the capital would be lost to them. In 1848 an act was passed (ch. 150, stat. 1848) which regulated the rates of toll so as to give on the average an increase of toll to make up a deficiency in the stipulated interest.

If the legislature of 1843 had so reduced the tolls as to merely keep the bridge and road in repair, and to yield no income to the proprietors, as was contended for by petitioners at that time, the effect would have been to have taken off thirty years from the term of their charter. The legislature took a different view of the rights of the proprietors. And the committee are of the opinion that even if it were now competent for the legislature to open the question anew and reduce the tolls below the standard fixed by the act of 1843—which the proprietors deny—it would not be expedient or just to the proprietors to resort to such an arbitrary exercise of power. No new ground or reasons have been presented to the committee for disturbing the basis of the settlement which was supposed at the time it was made to have been final.

From the annual returns for the last ten years, it appears that the net receipts have not been equal to the six per cent. provided for in the act of 1843, but that there is a deficiency of about \$3,150. There is no pretence that any of the expenditures of the proprietors have been unreasonable or unnecessary. On the contrary, it appeared that Hon. Josiah Quincy, the president of the corporation, had performed the duties of treasurer for the last three years without compensation. No application is made to increase the rate of tolls to make up the deficiency, it being supposed that the increase of travel and of business will soon be sufficient for this purpose. If the proposed improvement be carried out, it is estimated there will be an annual saving on the cost of repairs, after paying the stipulated interest, of at least two hundred dollars. This amount, for the twenty years remaining, will pay the whole cost of the improvement.

The committee therefore unanimously report upon the several petitions for reduction of toll, and upon the order to consider the same, that it is inexpedient to legislate thereon; and upon the petition of the proprietors, they report the accompanying bill.

For the Committee,

G. WASHINGTON WARREN.

Commonwealth of Massachusetts.

In the Year One Thousand Eight Hundred and Fifty-
Three.

AN ACT

Authorizing the "Proprietors of Neponset Bridge" to
construct a portion of their bridge of solid materials.

*Be it enacted by the Senate and House of Representatives
in General Court assembled, and by the authority of the
same, as follows :*

1 SECT. 1. The proprietors of Neponset Bridge are
2 hereby authorized to construct their bridge over Ne-
3 ponset River, of solid earth and stone, commencing
4 at the point where the easterly end of their present
5 bridge now begins, and extending thence westwardly
6 over the flats in said river, to a point at or near the
7 channel thereof; the same to be, when finished, not
8 less than thirty feet in width, and to cost not exceed-
9 ing five thousand dollars.

1 SECT. 2. The said corporation are hereby author-
2 ized to receive, and take, the rates of toll as now

3 established by law on said bridge, for such further
4 time, in addition to that now fixed by law, as shall
5 reimburse the cost and expenses of such solid struc-
6 ture, with interest thereon, not exceeding the rate of
7 eight per cent. per annum, and also until they shall
8 have received a sum sufficient to make up any defi-
9 ciency which may exist in the six per cent. on the
10 original capital stock of said corporation, secured to
11 them by the act passed on the twenty-second day of
12 March, in the year eighteen hundred and forty-three

1 SECT. 3. This act shall take effect from and after
2 its passage.

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the West Indies, America, and
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