

## HOUSE.....No. 72.

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### Commonwealth of Massachusetts.

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HOUSE OF REPRESENTATIVES, March 10, 1848.

The Joint Standing Committee on Railways and Canals, to whom were referred the petitions of Joseph S. Cabot and others, and Horace P. Wakefield and others, each praying for authority to construct a railroad from Salem to Lowell, have heard the parties in interest, and submit the following

### R E P O R T :

The object of the petitioners, for both the routes prayed for in the foregoing petitions, being, in a great degree, to accommodate the same business and travel, the committee deemed it advisable to hear both sets of petitioners before deciding upon either.

The route prayed for by Joseph S. Cabot and others, commences at a point on the Essex Railroad, eight hundred and thirty-six feet north-westerly of the depot at South Danvers; thence up the valley of the Proctor Brook, to a point a few rods southerly of Martin's Paper Mill, in Middleton; thence through North Reading and Wilmington, to connect with the Lowell and Lawrence Railroad, in Tewksbury; thence to Lowell, either over the Lowell and Lawrence Road, or by a

separate track, to be constructed for their especial accommodation.

From Martin's Paper Mill, in Middleton, to Salem, a second line is also proposed, commencing at a point on the above described line, near the paper mill; thence through Tapleyville and North Danvers, to unite with the Essex Road, at New Mills; thence over said Essex Road to Salem, or by leaving said Essex Road, about one fourth of a mile below New Mills, reach Salem by a separate line. The last-mentioned line is understood to be preferred by the petitioners. The whole distance from Salem to Lowell, by the last-named route, is twenty-four forty-three hundredths miles.

The whole distance from Salem to Lowell, by the Proctor Brook route, is twenty-four one one-hundredth miles.

The grades upon the North Danvers route, from where it leaves the Essex Road, at New Mills, to Tewksbury, are easy, the highest being only twenty-five feet per mile.

The grades on a large portion of the route will not exceed sixteen feet. The curves are not objectionable upon any part of this route.

The route prayed for by Horace P. Wakefield and others, commences at a point on the Essex Railroad near the South Danvers station, passing near Newhall's Pond and Lynnfield Hotel; thence near the margin of Humphrey's Pond, through West Reading, crossing the Boston and Maine Railroad, and uniting with the Boston and Lowell Railroad, near the Wilmington station. Distance from the North Bridge, in Salem, to Lowell, by this route, is twenty-four ninety-one hundredths miles.

The cost of constructing the Proctor Brook route, as estimated by Mr. Latham, the engineer, is \$188,688 12, or \$11,611 47 per mile.

The cost of constructing the North Danvers route, by the joint estimate of Messrs. Latham and Cushing, engineers, amounts to \$208,236 98, or \$12,046 00 per mile. This estimate does not include land-damages, station-houses, or fixtures, nor has any allowance been made for rock-cutting, which was deemed necessary by other persons acquainted with the route.

The committee did not feel that the estimate of the cost of this road could be fully relied upon; and in this they were confirmed, not only by the estimate made by other engineers, but by the cost of every road which has heretofore been constructed in Massachusetts.

The friends of the Cabot route based their claim for a charter upon the following grounds:—

*First.*—It is an independent route.

*Second.*—It is the shortest and cheapest route.

*Third.*—It will furnish the greatest facilities for way business.

*Fourth.*—It did not infringe upon the rights of existing corporations.

The correctness of these positions is to be determined by a comparison of the two routes.

*1st.* “It is an independent line.”

The Cabot line is connected with the Essex road at Danvers, with the Lowell and Lawrence, from Tewksbury to Lowell, and will be dependent on the Boston and Lowell Road, for the use of its branches, by which to distribute its freight in the city of Lowell.

The Wakefield route is connected with the Essex at Danvers, unites with the Boston and Lowell Road, at Wilmington, and, by that road, reaches the city of Lowell.

*2d.* “It is the shortest and cheapest road.”

The length of the Cabot line via North Danvers, from North Bridge, in Salem, to Lowell, is twenty-four forty-three hundredths miles.

The length of the Wakefield line is twenty-four ninety-six hundredths miles, making a difference in favor of the Cabot route of forty-eight hundredths of a mile.

In estimating the relative cost of the two roads, the committee were compelled to look beyond the estimates of the engineers, as the estimate of the one did not include the same items of the cost of the road which were included in the estimate of the other.

And upon a careful review of the testimony, as to the probable cost of each road and of the similarity of the character of

the country over which both routes were to pass, the committee were of the opinion that the cost, per mile, of constructing the two roads, would not so far vary as to give to either any decided preference over the other, and that the important difference in the outlay necessary for the construction of the two roads, would be found to arise from the difference in the length of new road necessary to be constructed by each.

The length of new road by the Cabot line, from Salem to Tewksbury, if the Cabot road should leave Salem by an independent line, would be eighteen thirty-three hundredths miles. Length of new road by the Wakefield route thirteen seventy-one hundredths miles,—difference in favor of Wakefield road four sixty-two hundredths miles.

If the Cabot road shall unite with the Essex road at New Mills, the length of new road required would be but sixteen eleven hundredths miles. By the Wakefield Road thirteen seventy-one hundredths miles,—difference in favor of the Wakefield route two forty-hundredths miles.

This estimate does not include any expense for the construction of a track, from the junction at Tewksbury to Lowell, a distance of five eighty-five hundredths miles.

3d. "It will furnish the greatest facilities for way business."

The committee did not find this position sustained by the evidence before them; but, on the contrary, it was clearly shown, that about two thirds of the inhabitants of Danvers, whose population is about six thousand, would be much better accommodated by the Wakefield route; and that, aside from the Danvers business, at least as large, if not a larger, business would be found contiguous to the line of that road, than upon the Cabot line.

4th. "It did not infringe upon the rights of existing corporations."

Against granting the prayer of Joseph S. Cabot and others, the Boston and Lowell Railroad Corporation remonstrated, alleging that the granting of this road would be in violation of the following provision of the twelfth section of their act of incorporation, which provides that "no other railroad than the one hereby granted shall, within thirty years from and after

the passing of this act, be authorized to be made, leading from Boston, Charlestown, or Cambridge, to Lowell, or from Boston, Charlestown, or Cambridge, to any place within five miles of the northern terminus of the road hereby authorized to be made."

The ground assumed by that corporation was, that although this was not granting an entire road, under one charter, in violation of the foregoing provision of their act of incorporation, yet this road, when completed, would, in connection with other existing roads with which it would unite, form a direct line of communication between Lowell and Boston, as expressly prohibited by their charter, and that, if the legislature could not grant such a road directly, then they cannot do it indirectly; and that no restrictions, which might be placed upon this road, at its crossing of the Boston and Maine road, would be effectual to afford permanent security to their rights. Fortunately, the committee were not left in doubt as to the opinion of former legislatures upon this subject. This question was adjudicated by a committee of the legislature of 1845, upon the petition of William Livingston, one of the petitioners in the present case, for a road, similar in its effects, upon this question, a report on which will be found in Senate Document, No. 30, of that year. It was again examined, in the year 1847, on the petition of John Moreland for a road from the Boston and Maine Railroad, at Ballard Vale, to the Lowell and Lawrence road, being less direct, as a Boston road, than would be the one here prayed for; the report on which will be found in Senate Document, of that year, No. 104:—in the first of which cases, the committee were unanimous in reporting leave to withdraw; and, in the last case, but one dissenting voice. In both cases, the house sustained the report of their committee. But it hardly seems necessary, in the present case, to discuss this question at all, as a route is presented, free from all the objections urged against this, and one which will render as great, if not greater, facilities to the public.

Against the Wakefield petition, the Essex and Eastern roads both appeared; but the counsel for the Eastern road expressly

stated, that that road objected to so much of the petition as had for its object the construction of a road from South Danvers to South Reading, but was understood to raise no objection to a road from Salem to Lowell.

The counsel for the Essex road objected to the Wakefield route, as forming a competing line with that road, while he favored the petition for the Cabot line, for a road running some miles nearer the Essex road, than would the Wakefield.

The Committee were unable to discover how the Wakefield road was to prove a more dangerous rival than the Cabot, as the distance from Salem to Lawrence is greater by the Wakefield than by the Cabot line, and more especially, if the same restrictions were to be placed upon both roads, at their crossing of the Boston and Maine Railroad.

Your Committee, therefore, after a careful examination of all the testimony presented, and the relative merits of the two routes, have arrived at the following conclusions:—

*1st.* That the Cabot line possesses no merit over the other as an independent line.

*2d.* That the difference in the length of the routes, being only forty-eight hundredths of a mile, is too inconsiderable to have any important bearing in deciding this case.

*3d.* That the difference in the grade, the highest on the Cabot line being twenty-five feet, while that on the Wakefield route is forty feet, which it was in evidence could be reduced to twenty-eight feet, being fifteen feet without this reduction in favor of the Cabot line, is of less importance in this case, than it would be, if a very large business was contemplated upon this road, and does not therefore outweigh other considerations.

*4th.* That the expense of constructing the Cabot road from Danvers to Tewksbury, would be as great, if not greater, (as the road is longer,) than would be the expense required for the construction of the Wakefield road, and this aside from any expense for a track by the side of the Lowell and Lawrence road from Tewksbury to Lowell.

*5th.* That, while the citizens of the cities of Salem and Lowell would be equally well accommodated by either route, yet

the Wakefield route would accommodate the greater amount of way business.

On the petition of Horace P. Wakefield and others, the Committee report the accompanying Bill.

For a majority of the Committee,

JAS. THURBER.

**Commonwealth of Massachusetts.**

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In the Year One Thousand Eight Hundred and Forty-  
Eight.

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**AN ACT**

To incorporate the Lowell and Salem Union Railroad  
Company.

*BE it enacted by the Senate and House of Representa-  
tives, in General Court assembled, and by the authority of  
the same, as follows :*

1    **SECT. 1.** Horace P. Wakefield, Thomas P. Pin-  
2    gree, and Samuel Lawrence, their associates and suc-  
3    cessors, are hereby made a corporation, by the name  
4    of the Lowell and Salem Union Railroad Company,  
5    with all the powers and privileges, and subject to all  
6    the duties, liabilities, and restrictions, set forth in  
7    the forty-fourth chapter of the Revised Statutes, and  
8    in that part of the thirty-ninth chapter of the Revised  
9    Statutes relating to railroad corporations, and in all  
10  general laws that have been, or shall hereafter be,  
11  passed relating to railroad corporations.

1 SECT. 2. The said company may construct and  
2 maintain a railroad from some convenient point in the  
3 Essex Railroad in South Danvers ; thence, running in  
4 a northwesterly direction towards Humphrey's Pond,  
5 and by said pond on the southerly side thereof ;  
6 thence, through Lynnfield and through Reading,  
7 passing northerly of the village in the south parish of  
8 said Reading, crossing the Boston and Maine Rail-  
9 road, but not to connect therewith, and thence to the  
10 Boston and Lowell Railroad, at Wilmington, near the  
11 present passenger station of said road.

1 SECT. 3. The capital stock of said company shall  
2 consist of not more than three thousand five hundred  
3 shares, the number of which shall be determined from  
4 time to time by the directors thereof ; and no assess-  
5 ments shall be laid thereon of greater amount in the  
6 whole than one hundred dollars on each share ; and  
7 said company may take, purchase and hold such real  
8 estate, and may purchase and hold such engines, cars  
9 and other things, as may be necessary for the use of  
10 said railroad, and for the transportation of passen-  
11 gers, goods and merchandise.

1 SECT. 4. If the location of the road, as provided  
2 for in the second section, be not filed, according to  
3 law, in two years, and the said railroad be not com-  
4 pleted in two years from the passage of this act,  
5 then the same shall be void.

1 SECT. 5. The said company are hereby author-  
2 ized to enter upon and unite their railroad, by proper  
3 turnouts and switches, with the Essex Railroad, at

4 South Danvers, and also to enter upon and unite their  
5 road with the Boston and Lowell Railroad, at Wil-  
6 mington, and to use said Boston and Lowell Railroad,  
7 and said Essex Railroad, or any part thereof, accord-  
8 ing to law.

1    SECT. 6.    The legislature may authorize any rail-  
2 road company to enter upon said road or any part  
3 thereof, and use the same according to law.

1    SECT. 7.    The legislature may, after the expira-  
2 tion of five years from the time when said railroad  
3 shall be opened for use, from time to time, reduce  
4 the rates of toll, or other profits upon said railroad ;  
5 but the same shall not be so reduced, without the con-  
6 sent of said company, as to produce less than ten per  
7 cent. per annum on their capital stock.