

## HOUSE...No. 123.

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### Commonwealth of Massachusetts.

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HOUSE OF REPRESENTATIVES, March 24, 1854.

The Joint Standing Committee on Railways and Canals, to whom was referred the Petition of the Boston and Maine Railroad Company, and the Petition of Levi B. Pratt and others, and the Petitions and Remonstrances connected therewith, have considered the same, and submit the following

#### R E P O R T :

In 1844, the Boston and Maine Extension Railroad Company was incorporated, with authority to enter the city of Boston, as far as Haymarket Square, and crossing Causeway, Traverse and Market Streets. By the act of incorporation, it was provided, that the act should be void, unless the railroad was constructed the entire distance between its termini; and by the fourth section of the act, the motive power and rate of speed for crossing the streets was put under the control of the mayor and aldermen of the city of Boston, the language of that section being as follows:—

“The motive power, and rate of speed, for crossing any of the streets of the city of Boston, as well as the securities at the crossings, shall be regulated in such manner as shall be required

by the mayor and aldermen of said city." In 1852, the Eastern, and in 1853, the Lowell Railroads were authorized to enter the city, crossing Causeway Street, subject to the same control as the Boston and Maine Extension Company, by the mayor and aldermen of the city.

The Boston and Maine Extension Railroad was built soon after it was incorporated, to Haymarket Square, and united with, and became a part of the Boston and Maine Railroad. Gates were constructed across Causeway and Traverse Streets, and steam-power was used in crossing those streets, from the time the road went into operation, until the first of January, 1854, at which time the gates were removed and horse-power substituted for steam in crossing those streets; the mayor and aldermen of the city, having passed an ordinance, which took effect at that time, requiring it, and horse-power has continued to be used ever since.

The Eastern Railroad has been constructed into the city as far as Causeway Street, and a temporary depot built on that street, but the Lowell Railroad has not yet been extended at all.

The petition of Levi B. Pratt and others, prays, "that so much of the charters of the Eastern, Boston and Maine, and Boston and Lowell Railroads, as allows them to cross Causeway Street, may be repealed." And the petition of the Railroad Company prays, "that such legislation may be had as will enable them to cross the streets with steam-power, to lay more tracks across the streets, and to take additional land for depot purposes.

The petitioners, the several railroad companies, and the city of Boston, by their respective counsel, appeared before the committee, and a long and elaborate hearing was had, extending through several weeks, and all the various questions raised by both petitions, were fully considered. The Eastern and Lowell Railroads, however, taking no part in the hearing, but expressing a willingness to receive such legislation as should be had in relation to the Boston and Maine, and desiring that no part of their charters should be repealed, unless that of the Boston and Maine was also.

The proposition to repeal that part of the charters of the several railroads, which authorizes them to cross Causeway

Street, was neither favored nor opposed by the city of Boston, and the hearing upon this proposition was conducted by the petitioners for repeal, and the Boston and Maine Railroad Company. The petitioners for repeal offered to indemnify the Boston and Maine Railroad Company for all loss they should sustain, in case they were set back, on account of land taken or purchased, or structures erected, south of Causeway Street.

The question of granting a charter to a railroad company, and the question of the repeal of the charter or any part of it, after it has been granted, and the rights of the company fixed, the road constructed, and the habits and associations of the public using the road have become confirmed, are certainly very different questions; and whatever views your committee might have entertained, had the question of allowing these railroads, or any of them, to cross Causeway Street, been presented to them as an original question, they are unanimously of opinion, that no sufficient reason exists for the *repeal* of that part of their charters, which allows them to cross that street. At the time the Boston and Maine Railroad was authorized to enter the city to Haymarket Square, the old canal extended from Charles River to the Square, and the railroad was constructed upon the line of the canal and filled it up; at that time, also, the population, business and travel in that section of the city, was comparatively small, yet the increase, since that time, has not been greater, than the legislature at the time of the granting the charter must have supposed it would be, either from the natural growth of the city, or in consequence of the construction of the railroad; and it can hardly be supposed that the legislature designed to allow the railroad to enter the city, to be driven out, in consequence of an increase of travel and business in its vicinity, which must have been foreseen. In 1852 and 1853, when the Eastern and Lowell Railroads were authorized to cross Causeway Street, the question was again deliberately settled by the legislature; the effect produced by the crossing of the Boston and Maine, which had then been in operation several years, was fully known, and the state of facts in all respects, was substantially the same as at present. The three railroads, being in many respects competing roads, it seems just, that all should be allowed to cross



Causeway Street, if they desire it, or that all should be set back together. A majority of the committee are also of opinion, that if any thing should ever be done, some much more extended action should be had with reference to all the railroads entering on the northerly side of the city, than is contemplated by any of the petitions before the committee.

The railroad company, under that part of their petition praying for such legislation as will enable them to cross the streets with steam-power, propose that the section of their charter giving to the mayor and aldermen of the city authority to prescribe the motive power, and rate of speed for crossing the streets, should be repealed, or that they should be authorized to cross Causeway and Traverse Streets by a bridge, leaving a clear space for passage on the streets of twelve and one-half feet in height.

It appeared in testimony, that the whole number of passengers over the railroad in 1853, was 1,820,752, and that the number of persons travelling on Causeway Street, the same year, was still larger. It also appeared that the time occupied in the passage of the cars between the depot and the northerly side of Causeway Street, is about three minutes longer with horses than with steam at the rate of speed adopted between those points when steam was used. It also appeared, that while steam was used there was usually more or less detention of carriages and persons on foot, on the streets, every time the gates were shut for a train to pass, and that occasionally, the detention was great.

Evidence was introduced at considerable length, to show that steam-power for crossing the streets, without gates, is safer than horse-power at the same rate of speed; but the committee are of opinion, that considering the danger of frightening horses by the locomotives, the liability of locomotives to exceed the rate of speed prescribed, and the notice that travellers on the streets have, of the approach of a train, by first seeing the approach of the horses, that the use of horse-power is safer. They are also of opinion that the detention of travellers on the streets is very much less, with horse-power as now used, than with steam-power as used formerly, and that the travelling public on Causeway and Traverse Streets, is very

well satisfied with the present arrangement, and they see no reason for relieving the railroad company from any of the liabilities and restrictions, under which they were authorized to cross the streets, and without which they might not have been authorized to enter so far into the city.

The proposition to bridge the streets is opposed by the city and by the owners of estates in the vicinity of the railroad. The passage way under the bridges will not be sufficient to allow the largest loads to pass on the streets; an embankment or other structure, some fifteen feet high, extending from the depot across Causeway Street, and gradually sloping off some 1,500 feet on to the bridge, across the river, would be an obvious damage to estates in its vicinity, and it is very questionable whether the danger of frightening horses, by the engines and cars passing on the embankment or other structure or bridge, would not be greater, than by engines and cars passing on the level of the street; besides, the inconvenience to the public travelling over the railroad, in being obliged to pass up and down a long flight of steps, in going to and from the cars, would be very considerable. For these reasons your committee do not recommend that authority be granted to the company to bridge the streets, if they have not that authority, under the general laws of the Commonwealth.

Your committee are of opinion, that a space five rods in width across a great thoroughfare like Causeway Street, is as much as should be granted to a railroad for laying tracks, and as this company have already that space, they think no more should be granted.

All railroad companies have authority under the general laws of the Commonwealth to take such land as may be necessary for depot purposes, with the approval of the county commissioners, or the mayor and aldermen in the city of Boston, and there seems to be no reason for special legislation in this case.

The committee recommend that Levi B. Pratt and others, and the Boston and Maine Railroad, have leave to withdraw their petitions.

WALDO COLBURN,

*Chairman on the part of the House.*

