

HOUSE....No. 279.

Commonwealth of Massachusetts.

HOUSE OF REPRESENTATIVES, May 8, 1856.

The Committee on the Judiciary, to whom was referred the Petitions of Ephraim Brown and of Reuben Nichols and others, and the Remonstrance of J. Sparhawk and others, respecting a Highway over River-Head Beach, have considered the same, and

R E P O R T :

The question presented in this case, is the propriety of authorizing the county commissioners of Essex county to lay out a road over a beach at the head of Marblehead Harbor, which connects Marblehead Neck, so called, with the main land.

This project has been the object of a discussion and controversy, which have been protracted through a long series of years.

The building of the road has been warmly opposed by the town of Marblehead, upon two grounds, viz.: First. That it was injurious to the harbor. Secondly. That it was expensive and unnecessary.

The Committee have confined their attention entirely to the first point,—considering the second to be exclusively within the province of the county commissioners to decide. Their inquiries have thus been directed to the single question, whether or not the construction of such a road would be detrimental to the shipping interests of Marblehead Harbor. From the facts, that much interest has been displayed on both sides, and that a decision of the supreme court has already been had, in the progress of the controversy,—as well as from the unquestionable importance of the matter, in its connection with valuable public and private rights and interests, the Committee have anxiously endeavored to reach a proper conclusion. They have heard evidence, and arguments of counsel, on both sides; and also visited the spot in person. After as thorough examination as they could give to the subject, they have reached a conclusion, in which they unanimously concur, viz.:—

That a road may be constructed without prejudice to any rights or interests,—and consequently, that the legislature may safely and reasonably authorize the county commissioners to lay out such road: *provided*, that other circumstances should, in their judgment, warrant such a measure.

The Committee have considered the position of public and individual interests, in regard to this road, to be so peculiar as to require the provision which they have inserted in the Bill herewith reported, for an assessment of the cost of the road, if it should be ordered to be built, according to the discretion of the county commissioners.

With these views of this troublesome and important case, the Committee report the accompanying Bill.

GEO. H. DEVEREUX, *Chairman.*

Commonwealth of Massachusetts.

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

AN ACT

In relation to a Road over River-Head Beach.

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 county commissioners of the county
2 of Essex are hereby authorized and empowered to
3 lay out a highway over River-Head Beach, so called,
4 from the main land to Marblehead Neck, if public
5 convenience and necessity, in their opinion, shall ren-
6 der it expedient so to do.

1 SECT. 2. The expense of building, or of maintain-
2 ing said road, if they shall consider it proper to lay
3 out the same, may be divided and assessed by the said

4 commissioners among and upon the town of Marble-
5 head, the county of Essex, and the proprietors of
6 lands and real property upon Marblehead Neck, in
7 such proportions as they may consider just and
8 equitable.