

SENATE No. 151.

Commonwealth of Massachusetts.

EXECUTIVE DEPARTMENT,

BOSTON, March 19, 1883,

To the Honorable Senate of the Commonwealth of Massachusetts.

There has been presented to the governor for his revision a bill allowing the Somerville Wharf and Improvement Company two years further time in which to organize, which bill originated in your honorable body.

This company was incorporated by chapter 147 of the Acts of 1880. Upon an examination of the report of the committee of the Senate, I find no reason stated why this time should be extended, nor am I informed from any discussion which took place in either branch of the legislature of any reason presented to either House why the company should have this extension of time.

I am led, therefore, to look into the provisions of the original Act of incorporation for the object of its existence, and the subjects upon which it may operate.

The Act provides that certain persons therein named "are made a corporation by said name, with power to purchase and hold in fee simple or otherwise, all or any part of a tract of land bounded as therein described, containing about two hundred acres. Said corporation shall

have power to sell and convey, lease, mortgage, and otherwise dispose of and deal with *said corporate property*, or any part thereof, and to manage, improve, fill and grade the same, with authority to construct docks, wharves and buildings, and to *lay out streets* and passageways, and otherwise improve the same, as it shall deem expedient," with a restriction upon building further into tide-water than the harbor commissioners may permit, and subject to all the liabilities, duties, limitations and restrictions imposed by the general laws, "*applicable to such corporations.*" The capital stock shall be six hundred thousand dollars, and the corporation may increase its stock from time to time to an amount not exceeding one million dollars.

It will be seen that the original Act was for the incorporation of a company for the sole purpose of holding and trading in real estate, with one extraordinary power, which would seem to be in contravention of all laws relating to public ways. The quantity of land to be held by the company is stated to be about two hundred acres, or about one-thirteenth of the territory of the city of Somerville, this territory to be increased as much as it may by filling in tide-water, up to the commissioners' line. Over this territory the company has "power to lay out streets." Being so empowered by a direct Act of the legislature, it is difficult to see why such streets would not be public streets, and the maintenance and care of them become a public burden. If not, it might be that they would be wholly within the jurisdiction of the company.

The great and controlling objection to the original charter, which, having expired by limitation, this bill proposes to revive, is that it gives to the corporation the right to hold land in perpetuity, and to act for no other purposes whatever.

This land, in the language of the books, would be held in *mortmain*, or *by the dead hand*.

In all ages, and in all civilized governments, to hold land in perpetual succession has been held to be against public policy, except that corporations have been allowed to hold land in limited amount, sufficient to enable them to carry out the other purposes of their incorporation.

It is said that as early as the third century the Christian emperors of Rome found it necessary to pass decrees against this method of holding land. Such holding of land was the fruitful source of the wrongs and oppressions which caused the French Revolution with all its frightful results. And of all the laws enacted by the National Assembly which obtained power in that revolution, substantially that which now remains in force is the one that requires the division of lands among certain heirs-at-law of the deceased at death; the result of which is that the lands of France have now become divided into very small holdings; and this is the source of the great prosperity and wealth of her people, which enabled her to recover so speedily from the immense losses and vast military impositions of the conquerer in the Franco-German war.

This evil was felt in England as early as the reign of the III. Henry, principally, however, by reason of the action of the religious societies, which then were the absorbers of lands. Very stringent laws were passed against it, known as Magna Charta, which laws were re-enacted under the I. Edward, and have been the policy of England from that day to the present, in regard to corporations, which can only hold lands for their own purposes by license of the king, as they are now limited here by acts of our legislature.

But England had another form of holding large bodies of lands in perpetuity through the laws of primogeniture

and entail. And I suppose it is a familiar fact that those laws have resulted in making a privileged class of landlords and a pauper class of tenants, to the great detriment of the realm of England, and still worse in Ireland.

At least, so our fathers considered, because they sternly swept away the laws of primogeniture and entail, and enacted laws against perpetuities in the holding of lands, limiting the power of tying them up by wills, and requiring them to be divided at the death of the holder, after a limited period.

Such is still the policy of our legislation. And while we permit corporations to be formed by general laws for doing almost every other kind of business, save banking and insurance, an inhibition has been placed in the general corporation law against forming corporations for the purpose of holding and trading in lands.

All monopolies are bad enough, but of all monopolies that of the land on which men are obliged to exist is the worst.

It is true that in a few instances corporations have been formed which were permitted to acquire large bodies of land. But those corporations have usually been created for the purpose of some great public improvement; generally for the purpose of improving the navigation of rivers, or the creation of water-power by dams for manufacturing purposes.

Examples of these are the Proprietors of the Locks and Canals at Lowell, the Essex Company at Lawrence, the Holyoke and Turner's Falls companies upon the Connecticut, and the Boston Water Power Company.

This last corporation, by the obliteration of its water-power from the growth of the city of Boston, has degenerated into a land company, pure and simple, and its stock has become a mere fancy stock for manipulation of

the stock market — not a very creditable exhibition to the State of Massachusetts.

The East Boston Land Company, by which Noddle's Island was improved and communication established between it and the city, stands upon a different footing.

The Hyde Park Company was purely a land company, ruining all who had anything to do with it, and would seem to me ought to have served as a warning against any like legislation.

The "Fifty Associates," who have absorbed so large an amount of the real estate of Boston, is a company *sui generis*, commencing with very small beginnings, has now become one of the richest and most powerful, by its power to hold land, none of which, so far as I am informed, it ever sells. It is believed that no similar body could obtain corporate powers to-day.

Many reasons could be stated for this public policy, but its universality, which I have shown, is the strongest evidence of the necessity for preserving it.

Holding lands in perpetuity in the form of shares in a corporation deprives the widow of her dower, and the children of their inheritance, and renders it possible for the price of land to be regrated for the benefit of the corporators as against the ordinary purchaser.

Of course, no body of men desire a corporation to hold and trade in lands except for their own benefit, and that benefit is to be had by holding the lands and raising the price thereof, thus making money out of the community without any specific advantage coming to the public which would offset the inconvenience.

Perhaps there can be no better illustration of these facts than that afforded by the act we are now considering, which seeks to revive itself by this bill. It was passed in 1880. That there was no public, or proper private exigency for it, is seen by the fact that not a dollar of

its capital stock has been paid in; it has not had even strength enough to organize for three years, and now asks the legislature to continue the cloud upon the title of one-thirteenth of the land of the city of Somerville for two years longer that it may organize.

In my opinion every possible restriction should be removed upon the sale and division of lands, and especially in the suburban cities of Boston; so that they can all be thrown upon the market for sale, in order that the mechanics and laboring men who have their employments in Boston can find cheap lands on which to build their homesteads easily accessible in its immediate vicinity.

I have looked in vain to find any reason officially stated, for either the passage of the original act or of this bill continuing it. Certain it is that no report of the committee accompanies the bill which gives any such reason, nor do I find that there was any discussion of the matter in either branch. The Executive therefore is left without any knowledge of the grounds of public policy which require the passage of the bill.

It is a fact which might excite curiosity that this bill comes from the Committee on Mercantile Affairs. While I admit that either House can refer a bill to any committee it chooses, by any name it chooses, yet it is usual to refer it to a committee which has other matters germane thereto under consideration. And what mercantile question is involved in a simple land company I am at a loss to discover.

In the hope that the legislature will "proceed to reconsider" this bill, if it has ever been considered by it, and that, if it ought to pass, the Executive as well as the people of the Commonwealth will be shown the reasons why it ought to pass, should any exist, I respectfully return it to the body in which it originated, with these objections in writing.

BENJ. F. BUTLER,

