

SENATE....No. 236.

Commonwealth of Massachusetts.

IN SENATE, April 21, 1869.

The Committee on Mercantile Affairs, to whom was referred the Senate Order to "consider the expediency of amending chapter 176 of the Acts of 1862, so as to exempt from compulsory pilotage vessels plying regularly as packets between the ports of this State and the British Provinces of North America," and the remonstrance of ship-owners, pilots and underwriters against any such amendment, having fully considered the subject, beg leave most respectfully to

REPORT:

Your Committee gave the parties in interest full and patient hearings, having before them some of the oldest and most prominent merchants of the city of Boston engaged in foreign commerce, the pilot commissioners, pilots, and agents of vessels owned in the British Provinces, and from testimony offered, your Committee find it to be the unanimous opinion of all parties, that some system of pilotage should be by law established to guard and protect vessels upon their entrance into the waters of this Commonwealth.

The agents of colonial vessels claim it to be a hardship upon this class of foreigners, to be compelled to pay half-pilotage, when the masters of such vessels decline to receive the pilots who offer their services. This Commonwealth, as early as

1783, established by law a system of pilotage which, from time to time, has been altered and amended. In the year 1862, the present law, being chapter 176 of the Acts of that year, was passed. In the framing of that law great care was taken to make it as perfect as was possible, being drawn and submitted to the legislature by the late Hon. Charles G. Loring, the then chairman of the Committee on Mercantile Affairs and Insurance.

In all countries, and from the earliest times, the principle of compulsory pilotage has been adopted as the rule of civilized nations for protecting the lives and property on board of vessels arriving at the different ports. There is no way of ascertaining when a vessel is in need of a pilot or in distress, but for the pilot to go near her, and the service so rendered should be compensated for; the law as it now stands assures him of such compensation, for if his services are refused he is entitled to half the fees he would obtain if he performed full services.

The laws regarding pilotage are considered the most beneficent which have grown up in modern commerce for the protection and safety of life exposed to the "perils of the sea;" they are to be classed with those other regulations of light-houses, harbor police, quarantine, &c., &c.

In regard to the pilotage laws of this State, Chief Justice Shaw, in the case of the Commonwealth *vs.* Rickston, 5th Metcalf, page 417, says:—

"It is obvious, from the course of legislation upon this subject, that it has been for a series of years the wise policy of the law of this Commonwealth to provide for the employment of a body of men as pilots of competent skill and experience, to take charge of vessels both inward and outward bound, so placed, and in such numbers that their services can readily be commanded by those in need of them. The requisite skill and experience are insured by providing that they shall receive their authority by a public appointment, upon the recommendation of persons of established experience and skill themselves; that they shall give bond for the faithful performance of the duties of their office; and be responsible for all losses occasioned by negligence, carelessness or want of skill. They are required (we speak of inward pilots,) to cruise at a considerable distance off the coast, whenever the weather will permit, to be ready at once to offer their services to vessels that

need their aid; and it is obvious, that the more boisterous the weather, the more their services are needed, especially by strangers. It is further the manifest policy of the law to encourage capable and responsible persons to undertake this laborious office, and faithfully to perform these meritorious and somewhat hazardous services, by securing to them the exclusive privilege of piloting vessels, and the enjoyment of the fees fixed by law. This exclusive right to take fees from all vessels to which their services are seasonably offered on the coast, whether accepted or not, and to take the fees fixed by law, which may seem large, and somewhat extravagant for their services, when done by daylight, in fair weather, and at a moderate season of the year, serves as a compensation to them for performing the same services in the darkness of night, in stormy weather, and at an inclement season.

“And considering the nature and importance of their services at all times, and the varying circumstances under which they must be performed, it seems that their exclusive privilege is fairly purchased by corresponding benefits to the public; and therefore it is fit that it should be guarded by penalties upon those who would encroach upon it, and who have given no such guaranties to the public for skill, good conduct and faithful devotion, at all times, to this service. The fees are undoubtedly intended to be so graduated that, taking favorable and unfavorable times together, they shall form a reasonable compensation for the whole service.”

This, from the late chief justice of our State, would seem to be conclusive as to the wisdom of our law. Your Committee desire to submit as full a case as possible upon the justice of law in regard to pilotage, and in addition to the opinion of Judge Shaw, would add that of Justice Field, of the Supreme Court of the United States, in the case of *Steamship Company vs. Jolliffe*, found in 2d volume of Wallace's Reports, page 456:—

“The claim to half-pilotage fees, it is true, was given by the statute, but only in consideration of services rendered. The object of the regulations established by the statute was to create a body of hardy and skilful seamen, thoroughly acquainted with the harbor, to pilot vessels seeking to enter or depart from the port, and thus give security to life and property exposed to the dangers of a difficult navigation.

“This object would be in a great degree defeated if the selection of a pilot were left to the option of the master of the vessel, or the

exertions of a pilot to reach the vessel, in order to tender his services, were without any remuneration. The experience of all commercial states has shown the necessity, in order to create and maintain an efficient class of pilots, of providing compensation, not only when the services tendered are accepted by the master of the vessel, but also when they are declined."

The foregoing, with the following opinion of Justice Curtis, would seem to cover all the law necessary.

"Justice Curtis of the Supreme Court of the United States in case of *Cooley vs. Board of Wardens of Philadelphia*, found in Howard's Reports, 12th vol., page 312, says: We think this particular regulation concerning half-pilotage fees is an appropriate part of a general system of regulations of this subject. Testing it by the practice of commercial States and countries legislating on this subject, we find it has usually been deemed necessary to make similar provisions. Numerous laws of this kind are cited in the learned argument of the counsel for the defendant in error; and their fitness, as a part of a system of pilotage, in many places, may be inferred from their existence in so many different States and countries. Like other laws they are framed to meet the most usual cases, *quæ frequentius accidunt*; they rest upon the propriety of securing lives and property exposed to the perils of a dangerous navigation, by taking on board a person peculiarly skilled to encounter or avoid them; upon the policy of discouraging the commanders of vessels from refusing to receive such persons on board at the proper times and places; and upon the expediency, and even intrinsic justice, of not suffering those who have incurred labor, and expense, and danger, to place themselves in a position to render important service generally necessary, to go unrewarded, because the master of a particular vessel either rashly refuses their proffered assistance, or contrary to the general experience, does not need it. There are many cases, in which an offer to perform, accompanied by present ability to perform, is deemed by law equivalent to performance. The laws of commercial States and countries have made an offer of pilotage service one of those cases; and we cannot pronounce a law which does this, to be so far removed from the usual and fit scope of laws for the regulation of pilots and pilotage, as to be deemed for this cause, a covert attempt to legislate upon another subject under the appearance of legislating for this one."

In addition to the legal opinions herewith submitted, showing the importance of maintaining the law in regard to compulsory pilotage as it now stands upon our statute books, we have the remonstrance of the principal ship-owners, and all the marine underwriters of the city of Boston, against any change in said laws.

The agents of British vessels who appeared before your Committee, all admitted the necessity of some law to govern pilots, but desired it should be so as to leave it optional with masters of vessels to take a pilot when he offered his services, and in case his services were not required no fees should be demanded.

Justice Curtis in the opinion says,—

“There are many cases in which an offer to perform, accompanied by present ability to perform, is deemed by law equivalent to performance. The laws of commercial States and countries have made an offer of pilotage service one of those cases.”

This appears to your Committee to settle the question, that when a pilot has been at the trouble and expense to hail a vessel, his services should be accepted and paid for, or he should be paid for offering them, which the law now justly provides for. It is contended by the advocates of free trade that the abolition of our compulsory pilot regulations would be of benefit to the commerce of Boston; if this is so, how does it happen that the largest and most flourishing commercial ports and countries in the world, have had the most efficient systems of pilotage, and all these systems embody the principle of *compulsory* pilotage.

In New York, Philadelphia and Baltimore, no such thing is known as *half-pilotage*, while by the present laws of this Commonwealth, a vessel when spoken by a pilot and the master does not take him on board, he can claim but *half-pilotage* fees, while in the cities above mentioned the master must pay the full fees.

Your Committee in an Appendix to this Report give copies of remonstrance of the Boston Board of Trade—by a vote of its government—ship-owners, masters and underwriters against any alteration in the present pilot laws, which were referred to this Committee and to which the attention of the legislature is called.

The Committee on a full revision of the important subject committed to them, have come to the conclusion, *that no further legislation on the subject is necessary*, Representative Nash only dissenting.

For the Committee,

SAMUEL D. CRANE, *Chairman.*

A P P E N D I X .

REMONSTRANCE SENT TO THE LEGISLATURE AND
REFERRED TO THIS COMMITTEE.

BOSTON, January 9, 1869.

*To the Honorable the Senate and House of Representatives in
General Court assembled.*

We, the undersigned, Underwriters, Ship Owners and Ship Masters, would most respectfully inform your honorable bodies, that there is an effort being made by a few interested persons in the trade between this port and the British Provinces, to petition the present legislature for amendment to, or radical change of our Pilot laws, to meet their especial interest and those interested with them. Therefore the undersigned do respectfully remonstrate against any change that will tend to curtail anything from the business of pilotage, as we are of the opinion that the Pilot Laws and Regulations as now established, under the administration of a board of practical engineers and pilots, unsurpassed for efficiency, with a new class of large boats (averaging 100 tons each,) built and fitted for their use at a large cost, should not be interfered with or changed except upon petition of those practical citizens, the Boston Marine Society, having jurisdiction of this most important protective branch of the marine interest of this port, and we would most respectfully urge the importance of your honorable bodies protecting the pilotage interest from further encroachment, as any deduction from the present compensation, which is now inadequate for the dangerous and arduous duty they perform, must inevitably break up the

present reliable system which has been established for the past half century.

GEORGE F. OSBORNE, *President Neptune Insurance Company.*
 T. C. SMITH, *President Merchants' Insurance Company.*
 F. BACON, *President China Mutual Insurance Company.*
 ISAAC SWEETSER, *President Washington Insurance Company.*
 A. H. BEAN, *President National Insurance Company.*
 P. W. FREEMAN, *President Boston Insurance Company.*
 S. H. BULLARD, *President Mercantile Insurance Company.*
 SAM'L GOULD, *President Manufacturers' Insurance Company.*
 J. W. BALCH, *President Boylston Insurance Company.*
 WM. M. BYRNES, *President Franklin Insurance Company.*
 GEORGE C. LORD, *President New England Insurance Company.*

WILLIAM PERKINS.
 GEORGE B. UPTON.
 A. C. LOMBARD.
 WILLIAM BABSON.
 JACOB HALL.
 WM. H. KINSMAN & CO.
 GLIDDEN & WILLIAMS.
 BRIDGE, LORD & CO.
 THAYER & LINCOLN.
 NATHAN LORD & CO.
 RYDER & HARDY.
 BAKER & MORRILL.
 HENRY A. PEIRCE.
 WM. WORTHINGTON & CO.
 NATHANIEL STONE.
 PITCHER, FLINTNER & CO.
 ENOCH BENNER & CO.
 C. S. DAWES.
 HARTLEY LORD.
 THAYER & PEABODY.
 WM. P. & GEO. DRAPER.
 ADDISON GAGE & CO.
 RIDEOUT & ROBERTS.
 N. B. MANSFIELD.
 HENRY HASTINGS & CO.
 VAN PRAIG & CO.
 IASIGI, GODDARD & CO.
 BENJ. BURGESS & SONS.
 CHAS. BREWER & CO.
 RAY & WALTER
 CROCKER, BROS. & CO.
 GILL & LOOTZ.

GEORGE BILLINGS.
 H. C. BROOKS.
 ATHERTON, HUGHES & CO.
 MAGOUN & SONS.
 LARKIN, STACKPOLE & CO.
 NATHL. GODDARD.
 JAS. STURGIS.
 H. P. STURGIS & CO.
 A. S. & W. G. LEWIS & CO.
 N. P. MANN & CO.
 WM. F. WELD & CO.
 ISRAEL WHITNEY.
 H. F. GONDY.
 GEO. P. CLARK & CO.
 C. A. & A. BLANCHARD.
 MATTHEW BARTLETT.
 JOHN F. BROOKS.
 JOHN S. BLAKE.
 D. H. TULLY.
 CHAS. W. DABNEY, JR.
 N. BOYNTON.
 IVES G. BATES.
 PAGE, RICHARDSON & CO.
 HENRY BARTLETT & CO.
 PEIRCE, BROWN & CO.
 A. HARDY.
 PETER McINTYRE & CO.
 C. O. WHITMORE & SONS.
 DANIEL COOLEY.
 BOSTON BOARD OF TRADE, by
 CHAS. G. NAZRO, *President*, (au-
 thorized by vote of the governm't.)

To the Honorable the Senate and House of Representatives in General Court assembled.

The undersigned, branch pilots, commissioned for the harbor of Boston, do herein most respectfully appeal to your honorable bodies to protect them in their business and from radical changes in the law. As former changes in the law for special interests, with the decline in American commerce since the war, have reduced the emolument of the pilots to a small compensation, we are therefore compelled to ask your honorable bodies to protect us from further infringement of the laws for the benefit of foreign interests.

JONA. BRUCE, JR.
B. F. TREMERE.
ABEL F. HAYDEN.
AUGUSTUS HOOPER.
ALFRED NASH.
SAM. COLBY.
JOHN McFIELD.
WM. H. HARRINGTON.
ABEL T. HAYDEN.
HENRY L. GUERNEY.
JOHN LOW.
WM. P. BROWN.
WM. G. BAILEY.

A. H. JOSSELYN.
WM. F. TEWKSBURY.
W. W. McFIELD.
WM. R. LAMPEE.
JOHN A. McFIELD, JR.
P. H. CHANDLER.
W. C. FOWLER.
MAXWELL REED.
E. G. MARTIN.
D. F. ROBINSON.
FRANKLIN B. WHEELLOCK.
STEPHEN BURROWS.

BOSTON, March 15, 1869.

Committee on Mercantile Affairs, Massachusetts Legislature.

GENTS:—The undersigned, marine underwriters in the city of Boston, respectfully remonstrate against the proposed change in the shipping and pilotage law, exempting from pilotage vessels arriving with passengers from the British Provinces.

NEW ENGLAND M. M. INS. CO., by GEORGE C. LORD, *Pres't.*
WASHINGTON INS. CO., by ISAAC SWEETSER, *Pres't.*
CHINA M. INS. CO., by F. BACON, *Pres't.*
BOYLSTON INS. CO., J. W. BALCH, *Pres't.*
MERCHANTS' INS. CO., WM. C. ROGERS, *Pres't.*
NEPTUNE INS. CO., GEO. F. OSBORNE, *Pres't.*
MERCANTILE MARINE INS. CO., S. H. BULLARD, *Pres't.*
AMERICAN INS. CO., C. E. GUILD, *Pres't.*
FRANKLIN INS. CO., WM. M. BYRNES, *Pres't.*
NATIONAL INS. CO., by A. H. BEAN, *Pres't.*
MANUFACTURERS' INS. CO., by JAS. J. GOODRICH, *Sec'y.*
SHOE & LEATHER DEALERS' F. & M. INS. CO., JOHN C. ABBOTT, *Pres't.*
INDIA MUTUAL INS. CO., J. H. DANE, *Pres't.*
BOSTON INS. CO., by P. W. FREEMAN, *Pres't.*
INDEPENDENT INS. CO., by GEO. A. EASTMAN, *Asst. Sec'y.*

