

SENATE No. 212.

[Mr. Woodfall moves to amend the report of the committee on Street Railways, leave to withdraw, on the petition of Eben Moody Boynton for an amendment of the charter of the Boston and Lowell Bicycle Railway Company (accompanied by bill, House, No. 221), by the substitution of this bill.]

Commonwealth of Massachusetts.

In the Year One Thousand Eight Hundred and Ninety-six.

AN ACT

To incorporate the Boston and Lowell Bicycle Railway Company.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

- 1 SECTION 1. Eben Moody Boynton, Hugh H.
- 2 Mawhinney, James Bell, Robert D. Evans,
- 3 Edward L. Sanborn, Fred S. Pearson, Harlan P.
- 4 Conant, Albert Conant, Charles F. Conant, George
- 5 A. Bruce, L. Edwin Dudley, Oliver O. Howard,
- 6 William A. Stevens, Francis W. Breed, Isaac B.
- 7 Newcombe, Albert H. Overman, Henry W. Moul-

8 ton, Albert W. Greenleaf, John F. Merrow, Wil-
9 liam H. Boynton, David C. Reusch, Henry I.
10 Bartlett, their associates and successors, are
11 hereby made a corporation under the name of the
12 Boston and Lowell Bicycle Railway Company,
13 with all the powers and privileges and subject to
14 all the duties and conditions and restrictions set
15 forth in our general laws that now are or here-
16 after may be in force relating to railway com-
17 panies, except as hereinafter provided.

1 SECT. 2. Said company is hereby authorized
2 to construct and operate an elevated or surface
3 railway under the patents known as the Boynton
4 Bicycle Railway Company patents, the roads to
5 be elevated within cities, with one or more tracks,
6 as may be required, and with convenient turn-
7 outs and switches, in part upon private land and
8 over and upon any streets and highways over the
9 following described route, to wit:—

10 Beginning at Quincy market, Boston, or at
11 such other point in the city of Boston as may be
12 decided upon by the board of mayor and aldermen
13 of said city, as a terminal station, passing over
14 Union street, Haymarket square, Haverhill, Cause-
15 way, Leverett and Charles streets to Cambridge
16 street, along Cambridge street, over the West
17 Boston bridge and Main street, through Harvard
18 square, over North avenue, Cambridge, over Ar-
19 lington street, Arlington; thence along Charles-
20 town and Lowell streets, through Lexington,
21 Burlington, Bedford to Main street, Billerica;

22 thence through Chelmsford to any part of Lowell;
23 or, at the option of the incorporators, from said
24 point of beginning near Quincy market in the city
25 of Boston, thence through Cambridge or Somer-
26 ville, Medford, Winchester, Woburn, Burlington,
27 Billerica, Tewksbury, to and through the city of
28 Lowell. The above route may be changed be-
29 tween terminals in any city or town through which
30 it passes, as the mayor and aldermen of the cities,
31 and as the selectmen of the towns, may deter-
32 mine. If over any part of the above route there
33 is a structure built, or proposed to be built, for
34 the use of cars made under the patents known as
35 the Boynton Bicycle Railway Company patents,
36 by any company proposed or in existence, this said
37 Boston and Lowell Bicycle Railway Company
38 may unite with such proposed or existing com-
39 pany in joint building or use of said structure.

1 SECT. 3. Said railway shall consist of one or
2 more tracks, each track consisting of a single rail;
3 the structure on the elevated portion of said rail-
4 way shall be of steel and wood, with steel posts
5 fourteen feet above the street; except in crossing
6 high grades it may be twelve feet from the pave-
7 ment in the clear. They may be placed at or
8 within the curbing of the streets or highways as
9 shall be located by the authorities of the cities.
10 The said posts shall not exceed twelve inches in
11 diameter. Wherever it is practicable single posts
12 shall be preferred, and when said single posts shall
13 be used they shall not exceed sixteen inches in

14 diameter at a point three feet above the pavement,
15 and shall be, if practicable, located in the middle
16 of the streets. The strength of the structures
17 shall be computed as fivefold the loads proposed
18 to be carried thereon as a safety factor.

1 SECT. 4. The fares on said railway shall not
2 exceed five cents within the city limits or within
3 five miles of the city hall of Boston.

1 SECT. 5. Said company shall maintain and
2 operate said railway by electricity or any other
3 approved motive power, and with the consent of
4 the authorities of the cities and towns through
5 which said railway passes, may make such under-
6 ground alterations in such streets and highways
7 as may be necessary to establish and maintain said
8 railway.

1 SECT. 6. The capital stock of said company
2 shall not exceed two hundred and fifty thousand
3 dollars, nor be less than one hundred thousand
4 dollars per mile, except that outside of large cities
5 said minimum sum may be reduced to not less than
6 ten thousand dollars per mile, and excepting that
7 said company may increase its capital stock sub-
8 ject to all general laws applicable to said increase.

1 SECT. 7. Said company may, from time to
2 time, by the vote of the majority in interest of the
3 stockholders, issue coupon or registered bonds to
4 an amount not exceeding one hundred and twenty-

5 five thousand dollars per mile, for a term not ex-
6 ceeding thirty years from the date thereof, and
7 bearing interest at a rate not exceeding six per
8 cent. per annum: *provided*, that no issue of bonds
9 shall be made unless there shall have been actually
10 paid in an amount of the capital stock equal to
11 the amount of said increase. To secure payment
12 of such bonds, with interest thereon, said company
13 may make a mortgage of its railway and franchise
14 and any part of its other property, and may in-
15 clude in such mortgage property thereafter to be
16 acquired. Such company may, by its directors,
17 sell, or otherwise dispose of in the due course of
18 business, property which may become worn, dam-
19 aged, or unsuitable for use in the operation of its
20 railways: *provided*, an equivalent in value is sub-
21 stituted therefor; the proceeds arising therefrom
22 may be used for any proper purpose. All bonds
23 so issued shall first be approved by some person
24 appointed by the company for that purpose, who
25 shall certify upon each bond that it is properly
26 issued and recorded.

1 SECT. 8. No stocks or bonds shall be issued
2 or otherwise disposed of at less than fair market
3 value thereof. All issues of stock or bonds by
4 this corporation shall be subject to the provisions
5 of chapter four hundred and sixty-two of the acts
6 of the year eighteen hundred and ninety-four;
7 except as hereinafter provided. If the decision
8 of said commissioners upon any application of
9 said company for a certificate that a proposed

10 issue of stock or bonds is reasonably necessary, is
11 adverse to said company, it shall have the right
12 to petition the supreme judicial court for a hear-
13 ing, and if said court is satisfied that such pro-
14 posed issue of stock or bonds is reasonably
15 requisite for the purpose for which it is to be
16 issued it shall enter an order approving such
17 issue of stocks or bonds and the issue may then
18 be made.

1 SECT. 9. Said company may make a prelimi-
2 nary survey of its route and submit maps and
3 plans showing the same, together with an applica-
4 tion for a location to the boards of mayor and
5 aldermen of cities, and the boards of selectmen
6 of the towns within which it is proposed to build
7 any part of said road, showing the streets along
8 and above which it is proposed to build said road,
9 and the said board shall within thirty days there-
10 after grant said company a location along and
11 above streets and highways or through private
12 lands as near the route proposed by said company
13 as shall seem to them to be feasible and most
14 convenient to the citizens of their respective cities
15 and towns. The elevated structure of said rail-
16 way shall be subject to the approval of the board
17 of railroad commissioners as to its strength and
18 its height above any public way across or along
19 which it shall be built. Should the boards of
20 mayor and aldermen or selectmen of two adjoin-
21 ing municipalities fail to make a location that will
22 give a reasonably direct route between Boston and

23 Lowell, said company may apply to the board of
24 county commissioners and they shall, within
25 thirty days, decide upon the location and their
26 decision shall be conclusive. Whenever said cor-
27 poration shall make any excavations in or near
28 any public highway or shall set any foundation,
29 pier or post in or near the same, the surface of the
30 street, sidewalk or other ground shall be restored
31 as soon as practicable to the condition, as near as
32 may be, in which it was before the excavation was
33 made; and any interference which shall be made
34 with, or change in, water or gas mains, or pipes
35 drains or other subterranean work shall be upon
36 condition that the same shall be immediately re-
37 stored to a serviceable condition as good as before
38 such change or interference, and at the sole cost
39 and expense of said corporation. If, in the
40 opinion of the mayor and aldermen of any city,
41 or the selectmen of any town, through which said
42 railway may be built the widening, strengthening
43 or rebuilding of any bridge or the rebuilding of
44 any street or highway in such city or town is at
45 any time rendered necessary by the location, con-
46 struction or operation of said railway upon said
47 street, highway or bridge, application may be
48 made by such board of mayor and aldermen or
49 selectmen to the supreme judicial court or the
50 superior court sitting in equity, and said court
51 shall, after notice, hear the parties and apportion
52 the amount which shall be paid by such city or
53 town and by said company on account of such
54 widening, strengthening or rebuilding of such

55 bridge, street or highway, said court shall make
56 such order as it may deem necessary in the prem-
57 ises and enforce the same by injunction or other
58 appropriate remedies.

1 SECT. 10. Said company and any officer, or
2 agent thereof, for the purpose of carrying out the
3 provisions of this act, may enter into and upon
4 any lands, and make surveys and examinations,
5 and place and maintain marks thereon, and may
6 do all other acts thereon incidental to such sur-
7 veys, examinations, and placing and maintaining
8 marks, and the company may take by purchase
9 or otherwise such lands, to the same extent and in
10 the same manner and subject to the same condi-
11 tions and restrictions provided by chapter one hun-
12 dred and twelve of the Public Statutes and of the
13 acts amendatory thereof and supplemental thereto,
14 excepting parks and other public property, as it
15 may deem necessary for its railway, its extensions,
16 branches, sidings, terminals, yards, stations and
17 other structures, and all lands thus taken, together
18 with the structures erected thereon, shall be the
19 property of said company: *provided, however,*
20 that the location of said railway outside of public
21 streets and highways shall not exceed fifty feet in
22 width except for the purposes of stations: *pro-*
23 *vided, further,* that no present location or land of
24 any railroad corporation shall be taken otherwise
25 than by purchase. But nothing herein contained
26 shall be construed to prevent the crossing of any
27 railroad above the grade thereof.

1 SECT. 11. Any person having an estate which
2 abuts upon the location of said railway, who be-
3 lieves that his property has been damaged or
4 diminished in value more than it has been im-
5 proved or increased in value by reason of the
6 location, construction, maintenance or operation
7 of said road, may, at any time after one year and
8 within three years after the construction of such
9 railway in front of his premises, file in the clerk's
10 office of the superior court for the county where
11 his said premises lie, a petition, setting forth his
12 claim and the amount thereof against said cor-
13 poration. He shall give to said corporation four-
14 teen days' notice of the filing of such petition, and
15 answer thereto shall be filed by said corporation
16 within thirty days after the return day of such
17 notice.

1 SECT. 12. Any such petition shall be heard
2 before a jury, if either party claims such right at
3 the time of the filing of the petition or within ten
4 days after the filing of the answer thereto; other-
5 wise they shall be heard before a court with-
6 out a jury. The finding shall be on the follow-
7 ing questions, to wit: First. Has the petitioner's
8 estate been damaged more than it has been bene-
9 fited or improved in value by reason of the loca-
10 tion, construction, maintenance or operation of
11 such railway? Second. If so, how much? If
12 the answer to the first question shall be "No," a
13 verdict shall be rendered for the corporation;
14 otherwise a verdict shall be rendered for the

15 petitioner for the amount found in answer to said
16 second question, including interest from the day
17 of the filing of the petition.

1 SECT. 13. Said corporation shall, upon the
2 entry of judgment pursuant to findings upon
3 the foregoing provisions of section twelve, pay or
4 tender to the judgment creditor the amount of
5 said judgment, with costs. If such payment or
6 tender shall not be made within thirty days after
7 the entry of such judgment, the court in which
8 the same has been entered shall issue its execu-
9 tion to compel the payment thereof.

1 SECT. 14. Said company shall pay all dam-
2 ages sustained by any person in his property by
3 reason of any taking or other act done under the
4 provisions of section six of this act, and if any
5 such person cannot agree with said company as
6 to his damages, the same may be determined by a
7 jury in the superior court for the county where
8 the property is, in the manner and subject to the
9 rules of law provided for the determining of
10 damages for taking land in laying out railroads,
11 on petition of said company or of said person
12 therefor filed in the clerk's office of said court,
13 within three years after such taking, or the build-
14 ing of such structure, and judgment shall be
15 entered upon said determination and costs shall
16 be taxed and execution issued in favor of the
17 prevailing party as in civil cases.

1 SECT. 15. The supreme judicial court and
2 any justice thereof, and the superior court and
3 any justice thereof, shall have jurisdiction in
4 equity, on petition of any party interested, to
5 compel compliance with the provisions of this
6 act, and to enforce any order made under the
7 authority of this act, and to prevent violation of
8 any of the provisions hereof: *provided, however,*
9 that no petition in equity shall be filed for
10 damages for which an action is given by this act
11 until payment thereof has been refused on execu-
12 tion issued as provided in section thirteen.

1 SECT. 16. Said company shall be deemed a
2 street railway company, and all general laws
3 relating to railroad and street railway corpora-
4 tions, so far as applicable, shall apply to said
5 company.

1 SECT. 17. This act shall take effect upon its
2 passage.

