

Appendix
(D.D.D.)

30th July.

road hereby authorized to be made and completed. Now your memorialists maintain, that it is difficult to find terms or language more explicit, showing the deliberate intention of both Legislatures to be to authorize the construction of a continuous unbroken line of Railway from the Saint Lawrence, at Montreal, to the Atlantic, at Portland.

But a Railway to be continuous must be on the same Gauge.—No Gauge being prescribed by law, the two Corporations were vested by their respective Acts of Incorporation, with full power and authority, not only to determine the Gauge, but to regulate the general plan and systems of construction, and to ordain and establish rules by which its operation should be conducted, with a view to the faithful execution of the trust confided to them, and of carrying out in good faith the intention of the two Legislatures, as expressed in their respective Acts of Incorporation.

And Your Memorialists would further represent that for the purpose of carrying into full effect those intentions in the spirit of liberality and mutual accommodations and interests, in which they originated, in authorizing the construction of said Railway. The President and Directors of the respective Companies on the 17th day of April, 1846, entered into a convention and agreement with each other, wherein, among other things, it was expressly determined, covenanted, and agreed—that “The proposed road shall be constructed throughout its whole extent on the same general plan and system.”

“The bed of the road shall be laid sufficiently high to protect it from being clogged up and rendered impassable by ice or snow. The rails shall be of a uniform pattern and of the same material and weight the yard: the Gauge shall be that of Five feet six inches in the clear between the rails. The Maximum gradient shall not if possible exceed sixty feet to the mile. The general direction of the road from the place of junction and connection to each terminus shall be as straight as the nature of the country through which it passes, and the Charters and other circumstances, will admit.”

“The road shall be laid out not less than six rods wide throughout its whole extent. The bed of the road shall be made and the rails laid in the first instance with the ulterior view of a double track, when the business of the road shall require it.”

“When the road shall have been so far completed as to be opened for business, each Company shall have furnished for the use of the road, a sufficient number of Cars for passengers and freight, suitable for the business of the road. Rules and regulations for conducting the business of the road shall be adopted, predicated upon the broadest and most enlarged principles of mutual convenience and accommodation, and with a view to advance the joint and reciprocal interests, as well of the contracting parties as of the public.

No distinction shall be made in the transportation of passengers on account of their citizenship or nationality; nor shall any difference or discrimination be made in the freight or other expenses of any article or merchandize on account of its foreign or domestic origin or ownership. The inhabitants of the British Provinces and the subjects of Great Britain on the one part, and the citizens of Maine and of the United States on the other, shall at all times be entitled to, and receive from, the parties of the first and second parts respectively, the same accommodation and the same privileges, at the same

rates and charges, without any distinction or discrimination whatever.”

To the terms and several stipulations of this agreement, a copy of which accompanies this Memorial, His Excellency in Council is respectfully referred.

Now, Your Memorialists, with great deference and respect contend, that, at the time of entering into the above mentioned agreement, the parties thereto, were fully authorized and empowered under their respective Charters to do so: that the several stipulations, agreements and covenants, became forthwith mutually binding and obligatory upon the parties to this indenture; and that the covenant and agreement, that “the Gauge shall be that of Five feet six inches in the clear between the rails,” is equally binding and obligatory as the other provisions. That stipulation forms part of a solemn contract, entered into after great deliberation and upon mature consideration, to which “The Atlantic and St. Lawrence Railroad Company,” which we represent, became a party at the time; and thereby assumed certain obligations, and became vested with certain rights, under, and by virtue of it. How then could it be any more competent for the Provincial Parliament, in equity and good conscience, and under the conservative laws of Great Britain, to divest “The Atlantic and St. Lawrence Railroad Company,” of their rights under that contract, than it would be for that Parliament to annul a Promissory Note or Bill of Exchange, given for a valuable consideration by the St. Lawrence to the Atlantic Company. We repeat, the St. Lawrence Company, under their Charter, had full power and authority to make the Contract at the time they made it, and in entering into the arrangement, they were manifestly carrying out the very purpose for which they were incorporated. If then, it be in the power of the Provincial Parliament to annul one legal contract with a third party, we are unable to see any reason, wherefore, they may not annul any and all contracts, which the St. Lawrence and Atlantic Railroad Company may legally enter into with any person whatever. A doctrine such as this, would be giving to the Provincial Parliament a power it is most respectfully submitted, which, it is believed, the Imperial Parliament never assumed.

But Your Memorialists would further represent, that although under their Act of Incorporation, the Atlantic and St. Lawrence Railroad Company had full authority and power to expend their funds in constructing any portion of their road through the territory of any intervening State, to the boundary of Canada; yet this could only be done with the assent of the State through which the road would pass. To remove all and every doubt in regard to such assent, the President and Directors of the Atlantic and St. Lawrence Railroad Company, applied to the Legislature of the State of New Hampshire for their assent at the last Session of that Body; whereupon, without a dissenting voice, the Legislature of that State passed an Act, 30th June, 1847, giving their assent, as prayed for; and conferring on said corporation power and authority, “for the purpose of locating and constructing said Railroad in continuation through the territory of said State,” and to the boundary line of Canada, near the Connecticut River; there to connect, in such manner, with the St. Lawrence and Atlantic Railroad, and to be constructed from Montreal to said boundary line at the same place, so as to form and constitute one continuous line of Railroad from the St. Lawrence, at Montreal, to the Atlantic Ocean, at Portland.” It is manifest therefore, that no objection to the convention and agreement of 17th April,

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