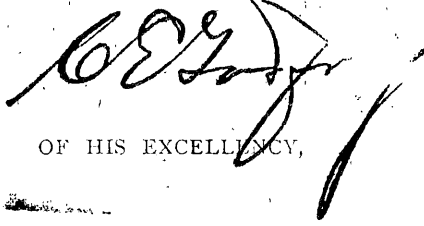


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(1886)

VETO MESSAGE



OF HIS EXCELLENCY,

LEON ABBETT,

TO

HOUSE SUBSTITUTE FOR

SENATE BILL No. 42.

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1886.

GOVERNOR'S VETO MESSAGE.

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
TRENTON, N. J., March 17th, 1886. }

Hon. John W. Griggs, President of the Senate :

SIR—I herewith return to the Senate, in which it originated, Senate Bill No. 42, entitled “A supplement to the act entitled ‘A supplement to an act entitled “An act respecting bridges”’ [Revision], approved April 10th, 1846, which supplement was approved April 5th, 1878,” together with my objections thereto.

This act purports to be a legislative interpretation of the act of April 5th, 1878, (Laws 1878, p. 343,) but is in fact a radical change of that act. The bridge supplement of April 5th, 1878, provided that no *bridge* shall be erected over any part of the navigable waters separating this State from other States where the tide ebbs and flows, without express permission of the Legislature previously given by statute for that purpose.

This bill changes the supplement of April 5th, 1878, by extending it so as to prevent *viaducts and fixed structures* from being erected by any person or corporation over or in any part of the navigable waters separating this State from other States, without express special permission of the Legislature.

If the act of April 5th, 1878, prohibits the building of a railroad viaduct over Staten Island Sound there is no necessity for the passage of this act. It is because the act of 1878 does not prevent the building of such a viaduct that the Legislature sent certain resolutions to Congress and also passed this bill.

This act also radically changes our general railroad law. When the act of 1878 was passed the distinction between *bridges*, such as were provided for in the bridge act, and *railway viaducts*, was clearly understood. The Court of Errors and Appeals, in the case of the Proprietors of Bridges over the Passaic and Hackensack *v.* The Hoboken Land and Improvement Company (2 Beas. 509), defines the meaning of the term bridge, and in its opinion draws a clear distinction between a railway viaduct and a bridge. That case determines that a railway viaduct is not a bridge. In 1873, when the Legislature passed the general railroad act, they provided in section 36 (Revision, p. 934) for

building *viaducts* over any navigable river or other stream or bay of water which a railroad might cross, and gave directions as to the mode of constructing such viaduct so as to cause the least interference with navigation. In section 23 of that act the Legislature provided that companies whose roads should be constructed under the act should have the right to connect their roads with any railroads within this or any other State upon such terms as might be agreed upon, or, if they failed to agree, then under the direction of commissioners to be appointed as provided in that section.

The term used in the general railroad act was "viaduct" and not "bridge." The word viaduct was used after the decision in 2 Beasley, which was made at November term, 1860, and with a full knowledge of the difference between a bridge and a railway viaduct.

This act before me is an Assembly substitute for Senate bill No. 42 as originally introduced, which was in express language an amendment of section 36 of the general railroad act. There is no substantial difference between the effect of Senate bill No. 42 as it passed the Senate and Assembly substitute. They were both intended to prevent the building of any railway viaduct to connect railroads in this State with railroads in adjoining States unless their projectors should first apply to the Legislature for, and obtain the passage of an act specially authorizing, the construction of the necessary railway viaduct. This act cannot become a law without an abandonment of our existing free railroad system.

The people of the State will not forget the long and bitter contest which ended in their securing the passage of the general railroad act of 1873. They will not forget that even after the act of 1873 was passed an attempt was made to have it declared unconstitutional. It was, however, held to be constitutional by the Court of Errors and Appeals in 1880, in the case of the National Dry Docks Railway Company and others, appellants, v. Central Railroad Company in New Jersey, and others, respondents (5 Stew. 755).

The effect of the constitutional amendments of 1875 was stated by the Chancellor when the application for an injunction was before him in that case (4 Stew. 489). He says:

"By the amendments to the constitution the *Legislature was shorn of its power* to confine the building of railroads to such enterprises as it should specifically designate and approve. By these amendments (Const., Art. IV., Sec. 7, Pl. 11,) the Legislature is not only prohibited from passing special laws granting to any corporation, association or individual any exclusive privilege, immunity or franchise whatever, but also from passing special laws granting to any corporation, association or indi-

vidual the right to lay down railroad tracks, and it is required to pass general laws providing for such cases. It, therefore, cannot by special enactment give to any corporation, association or individual the right to build a railroad, but *the right is to be given by a general law*. If it cannot grant the right to build a railroad by special act *it cannot itself determine the necessity for the exercise of the right of eminent domain in any particular case. It must therefore delegate the power.*"

We are not left in doubt as to the meaning of section 36 of the general railroad act in respect to the building of railway viaducts crossing State waters.

In the case of the Attorney-General *v.* Delaware and Bound Brook Railroad Company (12 C. E. Gr., p. 631), the Court of Errors and Appeals held that when Pennsylvania had authorized one of its railroad corporations to bridge the Delaware so as to connect with a New Jersey railroad, and New Jersey had authorized one of its railroad companies to bridge the Delaware so as to connect with a Pennsylvania road, such action was the giving of a consent by both States to the erection of a bridge over the Delaware river by the two companies conjointly, each from its own shore to the center of the stream, and the court further held that the general railroad act conferred the franchise of bridging the Delaware so far as the authority of New Jersey could avail for that purpose. Since the decision in this case at November term, 1876, there has been no question as to the meaning of section 36 of the general railroad law. By that act New Jersey gives her consent to and confers the franchise of crossing navigable waters between the State of New Jersey and any other State by viaducts, and no further legislation is necessary for that purpose. As the law stands to-day, any railroad company formed under the act of April 2d, 1873, can unite by a railway viaduct with any railroad authorized by the State of New York or Pennsylvania to cross any navigable interstate stream. It is now proposed to change this law and restrict the operation of the general railroad act, so far as crossing streams is concerned, to those wholly within the State, so as to confine the beneficent operation of that act to purely local roads. It is intended to deprive through lines of the right to cross any navigable waters between New Jersey and adjacent States without a special application in each case to the Legislature for the passage of a statute conferring such authority. Nearly all the local roads in the State of New Jersey are feeders to the great trunk lines. The passage of this act would practically amount to restricting the general railroad act to the construction of local roads. If capitalists desired to extend any through line of travel across the State to connect with railroads in adjoining States, they could no longer, as they can to-day, proceed under the general law

and build the road. If this act becomes a law, they must, whenever they desire to cross the waters which bound the eastern or western shores of New Jersey, ask the Legislature for a special act authorizing them to build a railway viaduct over the interstate stream. In other words, with all reference to all future through lines of travel, we must return to the condition of things which existed prior to 1873.

I do not propose to discuss the power of Congress to pass the bill now pending before it in reference to the construction of a post road and viaduct across Staten Island Sound. I have been interested in discussion of this question, but it is not relevant to the bill before me. Congress has not yet authorized any railway viaduct over Staten Island Sound and the State can certainly act until Congress has legislated upon the subject. While such an act is pending it is proper for the Legislature and the people of our State to present their views to Congress, and there can be no just criticism upon such action. The validity of such an act of Congress, if the bill before me became a law, is a question that would have to be decided by the courts of the United States. The question for us to consider is, what is there wrong in the general railroad law of the State that calls for the restrictions embodied in the proposed legislation? If there is any wrong that can be done to our citizens or to any material interest of the State under the general railroad act, we should hasten by legislation to remedy it. But in seeking to remedy an evil, if one exists, we ought not to make that evil an excuse for breaking down all that is valuable in existing law. The bill under discussion does not lay down any rule or prescribe any regulation as to the mode of bridging the Arthur Kill or any other interstate stream. It does not provide reasonable rules and regulations to which all must conform. It does not contemplate any general rules or regulations to protect commerce. On the contrary, it abandons the vital and living principle of the free railroad law which enables all who conform to its provisions to construct railroads without any application whatever to the Legislature. The proposed statute tramples upon that principle. It proclaims that hereafter you shall not construct any railway between the cities of New York and Philadelphia, or between any other points where interstate streams must be crossed, unless you go to the Legislature and obtain a special act authorizing the building of a viaduct. This authority the Legislature may refuse or it may grant. In each instance it becomes a question for action upon the special case presented. In each case it is a special plea made to the Legislature. No one familiar with the history of the State will fail to remember that prior to 1873 every attempt to build a competing through line was met by the determined opposition of the existing roads with

whom such new corporations would be brought into competition. The power and money of the old roads were used to prevent the building of competing lines. Will not the proposed act, if valid, bring all the evils upon us which are prevented by the general railroad act of 1873?

This bill is an abandonment of our free railroad system as to through lines and will meet with emphatic condemnation.

If this act established general regulations in reference to crossing Arthur Kill, or any other interstate stream deemed necessary to protect the commerce of such waters, it would not be subject to this criticism. It would then be a general act and all would have to conform to it. It is because it requires special legislation that I criticise it. Such special legislation is in violation of the spirit of the general railroad act, and certainly is against the spirit if not the letter of the constitution.

If it is impossible to construct a railway viaduct across the navigable waters of Staten Island Sound without substantial injury to navigation, this bill and every other method should be resorted to to prevent injury to our commerce; but the Senator who introduced the bill, and who represents large and important interests, stated in his speech to the Senate that "If the bridge is restricted to some part of the stream with wide spans and where there are true tides, it could be constructed so as to avoid the above objections. The entire basin through which Staten Island Sound flows has a solid foundation and there is no engineering difficulty in erecting such a bridge as will not impede navigation or that would require an undue expenditure of time and money."

In the arguments before Congress by those interested in commerce, one of their most distinguished representatives said: "I do not appear before you to oppose the building of a bridge from New Jersey to Staten Island, but appear in the interests of navigation only. I do oppose the *plan* and *location* of the proposed bridge. * * * The bridge can be built so as not to interfere with commerce, and it ought to be if built at all."

I have had presented to me the views of those interested in the navigation of the Kills, and I am satisfied that their objection is not to the building of a railway viaduct, but to the place where it is proposed to locate it by the Baltimore and Ohio Railway Company. These citizens favor the passage of this bill because they believe it will prevent the building of a viaduct at the place proposed. But they would be entirely satisfied with a bill which would provide for the building of a viaduct at another point in the Kills, under regulations that would protect their interests, and they all agree that such viaduct can be built. Their objection is one that can be fully reached by a general act, which will not sweep away the most vital and important pro-

visions of the general railroad law. Their interests can be protected by general legislation, providing that all railroads crossing Staten Island Sound shall have a railway viaduct at a proper height, with wide draws, and at a point where there will be sufficient stretch of true current not to interfere with the large towing and vessel interests which use the waters. Their interest can be fully protected, without hereafter subjecting all competition by through lines to the will of the Legislature. Let them appeal to the Legislature for the passage of a general law embodying regulations which will protect their interests, but let the act, when passed, apply to all railroads built or to be built, without the obnoxious provisions that requires special legislation before any new through line can be built over interstate streams.

If the Legislature has the power to pass the act submitted to me, it has the power to regulate the question of crossing Staten Island Sound by railway viaducts. If the broad power of prohibition exists, the power of regulation certainly exists. If regulations are necessary to protect the commerce of New Jersey in the interests of her citizens, they should be embodied in laws which will apply to all, and not require subsequent appeals to the Legislature before capital can invest in competing lines.

It has also been suggested by the friends of this act, that we ought to stop all railroads on the west shore of the Hudson or of the Kills, and not run them into New York State, and thereby enable that commonwealth to deprive us of the benefits of warehouses and terminal facilities upon our own shores. This has not been the policy of the State of New Jersey when an improvement has been asked for that would give an outlet to the great corporations whose termini are to be found on the Hudson river, opposite the city of New York. The Hudson Tunnel Railway Company was organized under the general railroad act in 1874 by filing its certificate. By its articles of association the road was to commence "At some convenient and eligible point upon the western shore of the Hudson river and within or near Jersey City or Hoboken, in the county of Hudson and State of New Jersey, and thence to run by the most direct and feasible route under the bed of said river to a convenient and eligible point in that part of the boundary line between the States of New Jersey and New York, lying between said Jersey City or Hoboken, in said State of New Jersey, and the city of New York."

This tunnel was to meet at the boundary line of the two States another tunnel, constructed by a corporation organized under the laws of the State of New York. These two companies were consolidated and a railroad was to be built in the tunnel from fifteen to thirty-five feet below the surface. (The

State, Morris & Essex R. R. Co., Pros., v. Hudson Tunnel R. R. Co., 9 Vr. p. 548.)

This improvement was for a railroad which should begin on the New Jersey shore of the Hudson river and end at a point in New York City. The cost of lighterage, the carrying across the river of freight and passengers in boats and cars, would thus be saved. If there is any force in the arguments of those who desire to stop all railroad lines on the New Jersey shore, then this tunnel, when built, would most certainly affect the value of the railroad improvements which had been made on the New Jersey shore of the Hudson, and yet the Legislature has again and again sanctioned this tunnel scheme. The time for the completion of the tunnel would have repeatedly expired except for the direct interposition of the Legislature. The first of these acts was passed March 21st, 1874, (L. 1874, p. 1167,) and is referred to in the opinion of the Court of Errors and Appeals in the case hereinbefore cited (9 Vr. p. 548), where the court held that this enactment of March 21st, 1874, healed any error or informality which might have existed in the mode of the formation of the company, and gave to it power to build the road between the points designated in the certificate filed under the general law as fully as if these terminal descriptions had been incorporated in the general railroad act. With this decision confronting it, the Legislature again, in 1882, extended the time for the building of this interstate tunnel and railroad. On March 31st, 1882, an act was passed allowing three years more for the consolidated companies of New York and New Jersey, known as The Hudson Tunnel Railway Company, to complete their tunnel and railroad (1882, p. 378). Again the Legislature, by the act of March 10th, 1885, (L. 1885, p. 432,) extended the time for the completion of this tunnel and railway five years. The acts of 1882 and 1885 were certainly passed with a full knowledge of their effect, as declared by the Court of Error and Appeals, that every one of these enactments healed and cured all errors and informalities which might have existed in the mode of the formation of the company and gave to it full power to build its road and tunnel between the points designated. When Legislature after Legislature sanctioned an enterprise which was to pour the great commerce that came over our through lines, into a tunnel which would land it in the heart of New York, they could not have believed that such an act would destroy the value of our riparian lands or injure the interests of the State or its citizens. The fact that this transcontinental commerce was to be sent through a tunnel into the heart of New York, would certainly be as injurious to the interests of the State as would be the sending of a portion of that commerce

across a viaduct to Staten Island, eight miles away from the city of New York.

It has also been suggested that if the building of this bridge across the Sound was prevented, it would compel the Baltimore & Ohio Railroad Company to purchase lands in Hudson county from individuals, or from the corporations now controlling the riparian lands on almost the entire stretch of river front from the township of Weehawken to Constables Hook. Whether it is wise to drive a railroad away from Union county and compel it to go to Hudson county is a question that I will not discuss. The evident effect of such action would be to increase the cost of the road and thereby increase the cost of transportation. The road, if compelled to go to Hudson county, would probably find it cheaper to lease some of the existing lines, than to purchase new land; and would be at the mercy of existing corporations, who could force it to make arrangements that would impose a serious burden upon its business, and thus virtually destroy all competition.

The interests of the people of the State are concerned in cheap transportation. It is not to their interest to legislate so as to increase the cost of a railroad or any other means of transportation, because that increased cost must finally be paid by them in freight and charges exacted by the railroad. The theory of the general railroad law is, that the railroads have a right to go where they please. The theory of this act is, to compel them to go to a particular place fixed by the Legislature, and is in violation of the spirit of the general law. The general railroad law allows capital to seek the place it pleases and build railroads anywhere, subject only to the general regulations provided in that act.

I do not think the proposed act could compel a railroad to take some other route than that deemed by its projectors to be the best. Take the present case of the Baltimore & Ohio Railroad. This road could, even if Senate Bill No. 42 becomes a law, build its road to Arthur Kill. It could acquire the State's land under section 36 of the general railroad act, by purchase from the riparian commissioners. It could acquire private lands under that act by purchase or condemnation. It could build its wharves at any point on the New Jersey side of the Staten Island Sound and its railroad cars could be run upon scows at that point, and transported across the sound to Staten Island, and then transferred to tracks to be laid upon that island, in the same manner as freight is transported from New Jersey to New York or Brooklyn, or passengers are transported by boat from Jersey City to the roads running east from New York. If this company found that it was cheaper to transport passengers and freight in the manner now adopted by the other companies, where they do not

desire to break bulk or change passengers from one car to another, than to purchase from existing corporations lands now held by them, or to expend large amounts of money in filling and reclaiming lands under water or leasing existing lines, it would of course do so notwithstanding this proposed act. This act can only have the effect of increasing the cost of transportation. It cannot stop it.

It is feared by some that this new enterprise will cause similar enterprises to follow it, so that the entire trade which passes through New Jersey will be deflected from the course it now takes and pass over to Staten Island; that the great corporations now occupying terminal facilities at Hoboken and Jersey City will abandon the lands which they have acquired there and seek this new outlet, and that such a scheme as this will have a tendency to prevent the building of warehouses on our shores. It is a fact patent to all who have any acquaintance with the locality that the present through lines have not built many warehouses here. The great bulk of through freight is now transported to Brooklyn and placed in warehouses there, or sent over in cars directly to the city of New York and delivered on the piers there. The companies have either felt that they were justified in making the expenditure of money necessary to erect large warehouses here, or that the business could be done cheaper in the present mode. If the Baltimore and Ohio, as a competing line, should establish warehouses on Staten Island so that the products of the country which are to be sent abroad can be placed directly upon outgoing steamers, and foreign products can be brought to that point and shipped directly west without cost of river transportation, which, I understand, amounts to from fifty to sixty cents a ton, it would compel the companies which now have their termini on the western shore of the Hudson to put warehouses there instead of in Brooklyn. In order to compete successfully with a company able to do its foreign business without river transportation, the present companies would require the same facilities, and the result would be that these desirable warehouses would be built, provided, always, that business could be done in that way cheaper than by river transportation. It is in every case a question of cost. A road will do its business under wise management in that mode which will enable it to keep its expenses at a minimum. The people of the State and of the country are interested with the roads in keeping their expenses at the lowest possible point, because the less the expense the lower the freight and charges.

There are some constitutional questions involved in this bill. The first is one that would also have arisen upon Senate bill No. 42 as originally introduced. Both that bill and the Assembly substitute provide for a distinct legislative act in each case.

Does not the proposed act provide that the Legislature shall hereafter do what the constitution forbids it to do? This act provides that "no bridge, viaduct or fixed structure shall be erected by any person or corporation over or in any part of the navigable waters," &c., without express permission of the Legislature of this State, given by statute for that purpose. Would not express permission to construct a bridge, given to a designated corporation, be the granting of an exclusive privilege, and, therefore, in contravention of Art. 4, Sec. 7, Pl. 11, of the Constitution, which says that "the Legislature shall pass no special act conferring corporate powers?" This bill says, in effect, that corporate power to construct an interstate bridge shall not be exercised until conferred by special act. The courts may, however, hold that the constitutional amendments of 1875 leave untouched the power of the State to exercise its sovereign right (subject, of course, to the Constitution of the United States,) to decide whether or not it will permit its territory to be connected with that of another State by means of a railway viaduct. There is no question of proprietary right involved in the case, as has been contended, because the general railroad act permits the State's lands to be sold for railroad purposes by the Riparian Commissioners at prices to be fixed by them.

There is another, however, and a more serious constitutional objection which arises upon this supplement and does not arise upon Senate bill No. 42 as originally introduced. This bill purports to be a supplement to the bridge act of 1846. That act is almost literally a reproduction of the original act respecting bridges, passed November 5th, 1798, (Elmer's Digest, p. 47.) The bridge act relates to the erection, building and repairing of any bridge in a township, or between any two townships in the same county, the expense whereof shall not exceed a certain sum, and also relates to the expense of building, rebuilding or repairing any bridge between two counties. There certainly was nothing in the bridge act prior to 1878 which related in any way to railway viaducts or any such structures. In fact, the act expressly excluded bridges which were private or incorporated property. I have heretofore stated my views as to the act of 1878—that it does not in any wise apply to railway viaducts, and that the bill before me proposes to extend it to railway viaducts. This is new legislation, and a substantial change of the general railroad act. If, as I have heretofore endeavored to show, a bridge and a railway viaduct are two distinct and different structures, then this act would be subject to the criticism that it is not a law that embraces but one object, and that object expressed in the title of the law (Art. IV., Sec. 7, Par. 4, Const.) There might, of course, be a construction of the proposed act which would make it constitutional, provided it was limited to such viaducts or

structures as are embraced under the title of bridges. Such a construction is, however, not the one that the friends of this proposed act contend for or believe in. Their insistent is that this act will prevent the building of railway viaducts under the general railroad act to cross interstate waters. If it will have that effect, then certainly it relates to an object which is not expressed in the title of the act.

In summarizing the objections to this bill, my views are:

First. That the act is in violation of the constitution of the State.

Second. That it is unnecessary for the protection of those who object to the proposed structure of the Baltimore & Ohio Railroad across Arthur Kill. They can be protected by a general law providing for the proper height, for proper draws and for the proper location, under general regulations, of all railway viaducts which may be built across Staten Island Sound.

Third. This bill, while purporting to be an amendment to the bridge act, is in reality an attempt to destroy the usefulness of the general railroad act as applied to through lines.

Fourth. That the act tends to prevent competition between existing foreign railroad companies which now control the entire transcontinental traffic across the State, and new enterprises whose existence would naturally diminish the course of transportation.

Fifth. That it tends to keep out of the State corporations that would employ labor and develop the lands and industries of the State.

Sixth. That this law, if it should accomplish the object desired, would cause a return to the old methods existing prior to 1873, under which there was Legislative contest as to every new through line. If this act should become a law and should be held to be valid, the free railroad system of the State would be a thing of the past. No local line would be built except as feeders to the great foreign corporations that now control the railroad traffic of the State. No new lines for transcontinental travel would cross our borders, and competition will be destroyed by a syndicate of existing through lines.

Respectfully,

LEON ABBETT,

Governor.

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