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SPEECH

OF

MR. BROWN, OF BURLINGTON,

IN FAVOR OF THE BILL INCORPORATING THE

CAMDEN AND KEYPORT RAILROAD COMPANY.

Made in the House of Assembly, Feb. 18, 1851.

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1851.

SPEECH.

The task I have to perform to-day is, in some respects, unpleasant. Not much used to public speaking, and disconnected from the legal profession, I am somewhat disqualified for the discussion of the bill before us. For, a bill of so much moment deserves an advocate, at home in the forum and extensively familiar with law. But in another point of view the duty I now undertake is agreeable to me, because it has the approval of my conscience, and I shall therefore proceed to its discharge with such ability as I can now command.

At the last session of this Legislature, a bill similar to this in its essential parts, and aimed at the same objects, was presented by me and considered by this house.

In the course of the debate that then arose, I offered some remarks concerning the history of corporations. I stated that they were known in the Roman Republic, and that their existence then was at the mercy of a Senate or an Emperor—that municipal corporations were established during the feudal ages to counteract baronial despotism—that in the progress of time fraternities were endowed with corporate privileges for business purposes, and to this cause was to be attributed in some degree, the emergence of the world from the gloom of the dark ages. That in more modern times, charitable, literary and religious institutions of this kind were authorized for the purpose of advancing morals and civilization. But corporate privileges, as commerce grew, checked the free circulation of labor, and were injurious to the freedom of trade. That originally, when corporations were subject to extinction by the sovereign power, their tendency and management was beneficent, but that the policy of enlarging their powers was too much extended. That in this country corporations had been authorized and were now in being, formidable in number and power, by legislative authority, sanctioned by no express constitutional provision, yet subject to no direct repeal, and limited in their duration only upon conditions unlikely to occur, but still judicially excused upon the plea

that their creation is a fit exercise of inherent sovereign power. That they were established for the purpose of conducting almost all branches of business. That this power, outside of the constitution, but recognized as public law above the constitution, had been most freely exerted in rendering private interests subservient to the construction and regulation of highways. That the courts had adjudged that private property of any kind could be taken for public use, upon making compensation therefor; and that there was no difference between a monopoly privilege or franchise and any other property, and that the Legislature was the proper body to decide when the necessity for such public use existed. That moral honesty much less excused the divestiture of the rights of individuals than the rights of powerful corporations.

The Legislature of New Jersey authorized the united companies, upon the implication of public use, compensation being made, to take the land of farmers—to break their closes—to raze their dwellings to their foundations—to wrench from them homesteads, consecrated, perhaps, by family occupancy of a century—legalized such treatment of the men who are anchored to the soil—who it may be were born on the land they till—who, being thus directly linked to the domain of the state, are the first in time of invasion, to rally round their hearth-stones and fire-sides, to contend for the last inch of their country's earth, and make their grave on the last spot where the hope of victory deserts them. It is held to be just to do this; but a breach of faith, even with compensation, to impair the vested and constitutional rights of the joint companies! Vested rights? What are they? The term vested is used in contradistinction to contingent or prospective. The rights of landholders are such. Constitutional rights? Why, the title to every foot of land in New Jersey, whether it be derived from the English crown, or the colony of New Jersey, or the United States, or the state of New Jersey, is sanctioned by the constitution, and is in contemplation of

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law a right constitutionally granted. The landholder's right is such.

The position the opponents of this bill assume, is unfounded. If it be constitutional and honorable to appropriate the land of a farmer to public use, it is likewise constitutional and honorable to appropriate the franchise of a railroad company to public use.— And if the Legislature of New Jersey could presume, that a public use warranted them to confer a monopoly on the joint companies, compensation being made, it can also constitutionally presume that a public use warrants them to infringe that monopoly, compensation being made for such infringement. This, according to the decisions of the courts, is as certainly true, as that houses may be blown up to arrest a conflagration, or that in time of war the state can take private property to sustain a starving army.

This is a brief abstract of the remarks I made at the last session concerning two of the points discussed; namely, the honesty and constitutionality of this bill. Then I produced no judicial authorities to fortify the positions of law I assumed; but, to-day, I shall so far trespass upon your patience as to refer you to reported decisions of the most respectable courts in the Union. And I think you will be satisfied that the courts sustain this branch of my argument.

But before I call your attention to the few books which I intend to adduce, I lay down the proposition that no legislature can confer power upon a corporation which cannot be taken away by a subsequent legislature, either conditionally, or else unconditionally. Or, in other words, no legislature can pass an act to grant corporate power which a subsequent legislature cannot annul, either by a naked repealing act, or else by an act providing compensation for the disseisin of such corporate power.

Every species of property, belonging to the citizen, which is susceptible of pecuniary valuation, can be appropriated to public use upon compensation. The constitution of the United States recognises no distinction between the different kinds of property, when it declares "nor shall private property be taken for public use without just compensation," and the same may be said of our own constitution, which adopting language almost identical, says "private property shall not be taken for public use without compensation." The general principle recognized by the courts, as I shall presently show, is that *all private property* can be taken for public use if paid for. Hence if corporate franchises are private property, and common sense and all the authorities hold that they are, they can be taken if paid for.

If this were not true, one legislature could abridge the powers of a future legislature, or in other words would usurp the office of the constitution. For all the powers of the legislature are either expressly defined by the

Constitution, or are such as are judicially held to be necessary and proper for carrying the express powers into execution. Now the assumed power to incorporate is deemed incidental to the powers expressly given, and belongs to each and every legislature. And if one legislature can bestow upon corporations, property either corporeal or incorporeal, which a succeeding legislature cannot take upon payment, then one legislature can contract and restrain the powers of a future legislature. This is allowing to the legislature power that properly and only belongs to a convention composed of members directly delegated by the people to frame a constitution. I conclude, then, that if one legislature can confer corporate franchises, another can appropriate them, indemnification being made, when public utility require.

If this were not true, then a legislature might give one company power to manage all the manufacturing business of a state forever. And a bank, after the expiration of existing charters, might be established at Trenton, with a provision excluding all other banks, and prohibiting all competition, and to continue for all time. These oppressions might be imposed upon us, and yet if the doctrine I am now maintaining be unsound, then relief would be impossible. The doctrine that charters are irrevocable upon any condition, if true to one limit, is true to all limits, and like the mountain avalanche, if it starts a foot or moves an instant, it goes to the bottom.

Perhaps there is no decision expressly sustaining the point I here take, but it is clearly derivable from the general principles to which I have adverted, and must sooner or later be established by an age contending for the enlargement of individual liberty, to the utmost extent consistent with the public safety.

But, sir, it is unnecessary to rely upon such a proposition, in order to make out my case. I urged it for the purpose of showing how unreasonable is the position of those who think the property and existence of incorporated companies out of the reach of legislative power. And I shall proceed to argue that the legislature of New Jersey has the constitutional right to infringe the exclusive privilege conferred upon the Camden and Amboy R. R. Company, by the act of 1832 supplementary to its charter, *upon providing for compensation.*

Before proceeding, however, to this argument I will comment upon an extract or two from the *Appeal* of Commodore Stockton to the people of New Jersey, published in 1849, a document written with all the enthusiasm that characterises the soldier, and the vigor of style peculiar to the intelligent business man. It was probably published with the sanction of the controllers of the United Companies, and if so, they are bound by its concessions. In one place he speaks thus.—

"But certain *political agitators* who have been laboring to poison the public mind against the companies, have at length come before the people with an address and resolutions, emanating from what they call a State Convention, in which the ground is broadly and deliberately taken that *a part of the existing contract between the State and the companies is null and void*, and the public are called upon to make *this* the great question in the election of the members of the ensuing legislature." Now, in reference to this, I have to say that whatever may have been the views and intentions of the originators of the warfare against the exclusive privileges of the Camden and Amboy R. R. Company, yet at the last session of this body the application for this bill was made, and the application to this body is now made, without designing to engender political agitation, without presuming that any part of the contract between the State and the joint companies is null and void, and without laboring to poison the public mind against the companies. While we do not deny, sir, that the position, which the Commodore supports with the opinions of Horace Binney, Charles Chauncey, George Wood, Ogden Hoffman, David B. Ogden, Isaac H. Williamson, Garret D. Wall, Samuel L. Southard, and others is impregnable; yet we deem that position, which only asserts that Sec. 2. of the Act of 1832, cannot be *unconditionally* repealed, entirely consistent with, and even admitted by, the bill to incorporate the Camden and Key-port Railroad Company. Whatever others may think of the constitutionality of the act of '32, this bill concedes, and I concede, its validity, and we who are struggling for the new road stand upon the very platform, which the same *Appeal* to the people of New Jersey bolsters up, when it declares that "no legislature ever had the power to repudiate a contract without compensation to the parties injured." This is equivalent to an admission that the right to repudiate a contract, when compensation is provided, when exercised by the legislature, is an exception to the general rule prescribed by the constitutions of this State and the United States, that "the legislature shall not pass any law impairing the obligation of contracts." This is a recognition of the doctrine I hold, and which this bill admits, though perhaps informally expressed in this *Appeal*. The doctrine I propose to vindicate and which the *Appeal* does not deny, is that any legislative grant, to a road, bridge or ferry corporation, of a franchise or other property, is subject to an implied condition, by which such franchise or other property may be taken for public use upon making compensation.

I need not spend time to argue that roads, bridges and ferries, are alike, so far as respects the application of this principle. This is universally conceded.

I wish, sir, to put the House in possession of all the principles of law that ought to be

noticed in the consideration of the questions that arise under this bill, and shall cite a few authorities for that purpose. But first of all I admit the constitutionality of the act of 1832, commonly called the monopoly act. I do not use the term "monopoly" to indicate the sole power of doing a particular business, obtained by engrossing the market, or by unlawful or unconstitutional means, which is its odious sense; but I use it to express by a short, significant, and well known word, an exclusive corporate privilege granted by the legislature.

In order to show what the law is with reference to taking private property for public use, I request your attention to 2 Kent's Commentaries, 338-9-40, 4th edition.

But there are many cases in which the rights of property must be made subservient to the public welfare. The maxim of law is, that a private mischief is to be endured rather than a public inconvenience. On this ground rest the rights of public necessity. If a common highway be out of repair, a passenger may lawfully go through an adjoining private enclosure. So, it is lawful to raze houses to the ground to prevent the spreading of a contagion. These are cases of urgent necessity; but private property must, in many other instances, yield to the general interest. The right of eminent domain, or inherent sovereign power, gives to the legislature the control of private property for public uses only. * * * * So, lands adjoining the New York canals were made liable to be assumed for the public use, so far as was necessary for the great object of the canals; and provisions were made for compensation to the individuals injured, by the assessment and payment of the damages. In these and other instances which might be enumerated, the interest of the public is deemed paramount to that of any private individual; and yet, even here, the constitution of the United States, and of most of the states of the Union, have imposed a great and valuable check upon the exercise of legislative power, by declaring, that private property should not be taken for public use without just compensation. A provision for compensation is a necessary attendant on the due and constitutional exercise of the power of the law-giver to deprive an individual of his property without his consent; and this principle, in American constitutional jurisprudence, is founded in natural equity, and is laid down by jurists as an acknowledged principle of universal law.

It undoubtedly must rest, as a general rule, in the wisdom of the legislature, to determine when public uses require the assumption of private property.

This, sir, is a fair exposition of the principles upon which the legislature takes private property for public use.

I next cite 6 Howard, U. S. Reports, to show that *the legislature may take the whole property and franchises of a bridge corporation, for public use, upon making compensation*. This was a case of the West River Bridge vs. Dix and others. In 1795, the Vermont legislature created the West River Bridge Company, a corporation for one hundred years with exclusive privilege of erecting a toll-bridge over West River, within four miles of the place where that stream unites with the Connecticut river. By an act of the Vermont legislature of 1839, towns were authorized to take private property for the construction of highways, making compensation, pro-

vided that no such property, easement, franchise, or right shall be taken, unless the whole property, &c., belonging to a corporation, shall be taken. Windham county court appointed commissioners to explore a road and assess the value of said bridge and their franchises, the commissioners appraised the said bridge and franchises, and the court confirmed the report, which approved the laying out of said road over said bridge, and ordered the defendants to pay the said assessment to the plaintiff. These proceedings were confirmed by the Supreme Court of Vermont, and the case taken by writ of error to the Supreme Court of the United States. Seven of the nine judges of said Supreme Court of the United States affirmed the judgments of the Vermont courts. The opinion of the U.S. Supreme Court was delivered by Justice Daniel, and the following are extracts from that opinion:

Under every established government, the tenure of property is derived mediately or immediately from the sovereign power of the political body, organized in such mode or exerted in such way as the community or state may have thought proper to ordain. It can rest on no other foundation, can have no other guarantee. It is owing to these characteristics only, in the original nature of tenure, that appeals can be made to the laws either for the protection or assertion of the rights of property. Upon any other hypothesis, the law of property would be simply the law of force. Now it is undeniable that the investment of property in the citizen by the government, whether made for a pecuniary consideration or founded on conditions of civil or political duty, is a contract between the state, or the government acting as its agent, and the grantee; and both the parties thereto are bound in good faith to fulfil it. But into all contracts, whether made between states and individuals or between individuals only, there enter conditions which arise not out of the literal terms of the contract itself; they are superinduced by pre-existing and higher authority of the laws of nature, of nations, or of the community to which the parties belong; they are always presumed, and must be presumed, to be known and recognized by all, are binding upon all, and need never, therefore, be carried into express stipulation, for this could add nothing to their force.—Every contract is made in subordination to them, and must yield to their control, as conditions inherent and paramount, wherever a necessity for their execution shall occur. Such a condition is the right of eminent domain. This right does not operate to impair the contract effected by it, but recognizes its obligation in the fullest extent, claiming only the fulfilment of an essential and inseparable condition. Thus, in claiming the resumption or qualification of an investiture, it insists merely on the true nature and character of the right invested. The impairing of contracts inhibited by the constitution, can scarcely, by the greatest violence of construction, be made applicable to the enforcing of the terms or necessary import of a contract; the language and meaning of the inhibition were designed to embrace proceedings attempting the interposition of some new term or condition foreign to the original agreement, and therefore inconsistent with and violative thereof. It, then, being clear that the power in question not being within the purview of restriction imposed by the tenth section of the first article of the Constitution, it remains with the states to the full extent in which it inheres in every sovereign government, to be exercised by them in that degree as shall by them be deemed commensurate with public necessity. So long as they shall steer clear of the single predicament denounced by the constitution, shall avoid interference with the

obligation of the contracts, the wisdom, the modes, the policy, the hardship of any exertion of this power are subjects not within the proper cognizance of this court. This is, in truth, purely a question of power; and conceding the power to reside in the state government, this concession would seem to close the door upon all further controversy in connection with it. The instances of the exertion of this power, in some mode or other, from the very foundation of civil government, have been so numerous and familiar, that it seems somewhat strange at this day, to raise a doubt or question concerning it. In fact, the whole policy of the country, relative to roads, mills, bridges, and canals, rests upon this single power, under which lands have been always condemned; and without the exertion of this power, not one of the improvements just mentioned could be constructed. In our country, it is believed that the power was never, or, at any rate, rarely questioned, until the opinion seems to have obtained, that the right of property in a chartered corporation was more sacred and intangible than the same right could possibly be in the person of the citizen; an opinion which must be without any grounds to rest upon, until it can be demonstrated either that the ideal creature is more than a person, or the corporeal being is less. For, as a question of the power to appropriate to public uses the property of private persons, resting upon the ordinary foundations of private right, there would seem to be room neither for doubt nor difficulty. A distinction has been attempted, in argument, between the power of a government to appropriate for public uses property which is corporeal, or may be said to be in being, and the like power in the government to resume or extinguish a franchise.—The distinction thus attempted we regard as a refinement which has no foundation in reason, and one that, in truth, avoids the true legal or constitutional question in these causes; namely, that of the right in private persons, in the use or enjoyment of their private property, to control and actually to prohibit the power and duty of government to advance and protect the general good. We are aware of nothing peculiar to a franchise which can class it higher, or render it more sacred, than other property. A franchise is property, and nothing more; it is incorporeal property, and is so defined by Justice Blackstone, when treating, in his second volume, chap. 3, page 20, of the Rights of Things. It is its character of property only which imparts to it value, and alone authorizes in individuals a right of action for invasions or disturbances of its enjoyment. Vide Bl. Comm., Vol. III., chap 16, p. 236, as to injuries of this description of private property, and the remedies given for redressing them. A franchise, therefore, to erect a bridge, to construct a road, to keep a ferry, and to collect tolls upon them, granted by the authority of the state, we regard as occupying the same position with respect to the paramount power and duty of the state, to promote and protect the public good, as does the right of the citizen to the possession and enjoyment of his land under his patent or contract with the state, and it can no more interpose any obstruction in the way of their just exertion. Such exertion we hold to be not within the inhibition of the Constitution, and no violation of a contract.

Here was a case where the whole property and franchises of a corporation were taken upon the principle of eminent domain. But although the *opinion* of the court manifestly vindicated the right of the legislature to impair or diminish a franchise, upon indemnification, yet it may be said that the maintenance of that doctrine was not material to the *decision* of that particular case, and hence that the decision is not authoritative law to establish the point I have presented. But I answer that the opinions of the highest judi-

catories in this country are entitled to profound respect, and the existence of a large number of them defending, and none attacking the proposition I have laid down, justifies me in saying that the only reason so few binding adjudications in favor of that proposition can be found is, that cases necessarily involving that proposition seldom occur. I think, however, it will not shock the judgment of any one to remark, that if a legislature can take for public use the whole works and monopoly privilege of the Camden and Amboy Railroad Company, it can with equal, if not greater propriety, authorize a rival road, upon paying it for the infringement of the exclusive privilege it claims.

To show that the Legislature has power to impair the monopoly of the Camden and Amboy Railroad Company without taking the whole property, I refer to a case in 7th New Hampshire, 35—Piscataqua bridge vs. the New Hampshire bridge and others. The plaintiffs had, by act of the Legislature, exclusive right to build a bridge between certain points on Piscataqua river, and an act was passed incorporating the New Hampshire Bridge Company, and authorized it to build a bridge within the limits of the exclusive right of the Piscataqua Bridge Company, without providing compensation. The court granted a writ of injunction to restrain the defendants from the erection of the bridge, upon the ground that *there was no provision for compensation* in their act of incorporation. Justice Parker delivered the opinion of the court, from which I make a few extracts.

Cases may exist where, owing to a change in the population, business, and intercourse of the country, the public interest may require the opening of new avenues within the limits of such exclusive grants, and in which the individual right should be made subservient to the public use; but this may be done without a violation of the public faith. Whatever the public require they are able to pay for—and it is not for the public interest that the grants of the government should be held good so long only as there is no desire to interfere with them—good while they are onerous to the grantee, and invalid when others may wish to participate in the benefits derived from them.

It is argued that the only pretended right of the plaintiffs is a promise not to give liberty to others to build a bridge; but we do not view it in that light. The charter of the plaintiffs contains a grant of a franchise—an incorporeal hereditament. The grant of an exclusive right is a part of that franchise—granted in connection with their right to build a bridge, and in aid of that right—holden with that right—capable of being used by the erection of a bridge elsewhere than in its present location—may be attached with the rest of the franchise, and taken on execution—and under it the plaintiffs may grant a license to build a bridge within those limits to any one who has obtained a grant of authority from the legislature to erect such bridge.

We are of opinion that if the charter of the defendants had made proper provision for a compensation to the plaintiffs, the legislature might have authorized the building of another bridge within their exclusive limits, even without their consent.

In such case the grant itself would furnish plenary evidence that the public interest required the

taking of private property for public use; and we see no objection to taking a part of the plaintiffs' franchise.

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But if adequate compensation is provided, in a proper manner, it is admitted that private property may be taken without the special consent of the owner in each particular case.

No distinction is made in the constitution between property of one description and that of another; and if a franchise is property, we do not discover upon what ground it claims an exemption from the same liabilities to which other property is subjected.

If the government had been the owner of the land along the Piscataqua river, and had granted to the plaintiffs a tract of land co-extensive with their exclusive limits, the legislature might, afterwards, have authorized the taking of a portion of the land so granted—making provision for compensation to the grantee—notwithstanding the exclusive nature of the grant.

If, instead of a corporeal hereditament, the legislature have granted an incorporeal hereditament of such a nature that it may afterwards be necessary that the property, or a part of it, be taken for public use, why is not that subjected to the public servitude, and in the same manner? There seems to be no substantial difference between the two which requires the adoption of a different rule in this respect.

Had the legislature granted merely the right to build and maintain a bridge from point to point, and take tolls, and the public necessities afterwards required that a portion or even the whole of that bridge should be taken for other public purposes, is there any question that this might have been done, if due compensation was provided for the owners? We think not. 7 Pick. 459, 500. Yet, as has been before stated, the grantees would most unquestionably have had an exclusive right in their bridge and tolls. Where then is the difference between a grant exclusive in its effect, and one exclusive in its terms? The latter is no more than exclusive.

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The grantee of a fee simple takes, under a contract, an absolute estate in some respects, but subject to an implied condition or limitation, by which the lands may afterwards be taken for public use—for turnpikes, rail-roads, canals, bridges, &c., whenever the public necessities demand it; and "a grant of franchises is not in point of principle distinguishable from a grant of any other property." 4 Wheat. 634.

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The grant under which the plaintiffs took this property is admitted to be a contract, and that contract is inviolable. The legislature cannot annul that contract, or in any way impair its obligation. The plaintiffs have taken and received all the legislature contracted to give. It is an executed contract, (4 Wheat. 690.) and the plaintiffs entitled to be protected in the enjoyment of the property acquired under it, to as great an extent as they are protected in the enjoyment of any other species of property.

It does not impair that contract to hold that the property acquired under it may be taken for public use—that it is liable to be subjected to the public servitude and the public burthen. 6 Cranch 145, Fletcher vs. Peck; 8 Wheat 89, 101, Green vs. Biddle; 4 Peters S. C. R. 563, Providence Bank vs. Billings.

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If a grant of franchises is like other grants of property, why should a covenant be implied extending the right of property in a franchise of this character beyond the rights of the holders of other property, and enabling the grantees to resist all public improvements, and deny all public wants entirely, or until such compensation as they please to demand shall be made to them?

To the same point I adduce again 2 Kent 339, close of note (a) 4th edition.

The Supreme Court of Massachusetts in *Boston Water Power Co. vs. Boston and Worcester R. R. Co.*, January, 1840, held that the right of eminent domain might be exercised in the case of franchises as well as of personal property, in proper cases, and on making due compensation. There is no doubt of it. Property in a franchise is not more sacred than private property in land under a patent, and the principle was declared in the case of *Bonaparte vs. Camden and Amboy Railroad Co.* The doctrine of the case in 14 and 18 Wendell, appears to settle this principle of constitutional law upon a reasonable and practicable foundation. See also the strong and clear case of the *Louisville C. & C. Railroad Co. vs. Chappel*, 1 Rice's S. C. Rep. 383, to the same point.

The next authority I have to produce is 17 Connecticut, page 40. The *Enfield Toll Bridge Company vs. the Hartford and New Haven Railroad Company*. The plaintiffs had the exclusive right of maintaining a bridge from Enfield to Suffield, between the north line of Enfield and the south line of Windsor. The New Haven Railroad was incorporated with power to build a railroad bridge within the prohibited limits, with a section saving the vested rights of the Enfield bridge, and another section providing for compensation. The railroad company built its bridge across the Connecticut river, without compensation to the plaintiffs. A bill in Chancery was brought to the Superior Court of Connecticut, praying that the railroad be restrained from using their bridge.—An injunction was advised to be granted, because compensation was not made. The unanimous opinion of the court, delivered by Ch. J. Williams, contained the following arguments:

What are the rights of the plaintiffs? They are derived from the grant of the legislature, and are what in law is known to be a franchise; and a franchise is an incorporeal hereditament, known as a species of property, as well as any estate in lands. It is property, which may be bought and sold, which will descend to heirs, and may be devised. Its value is greater or less, according to the privilege granted to the proprietors. The owner of such property may repose, with the same security for its protection, under the wings of the constitution; but we know not why he should expect any greater exemption from public burthen, than the owner of any other estate. It was the intention of those who made that instrument, that the rights of all should be secured, and equally secured. If, as we believe, it is a conceded point, that the owners of lands, buildings and all property of this description, must yield up that property for public use, upon compensation, how is it, that property of this kind claims a higher privilege, or is guarded by stronger force? If any property ought to be peculiarly guarded, it certainly is not that which is merely a matter of dollars and cents, but it should be the homestead, the fireside, the place where the owner has enjoyed his domestic comforts, and where he hopes to spend his declining years; and yet this must be yielded to public exigencies. The one, it is said, is hidden directly by grant of the legislature, and to take it away, is impairing the contract. But are not all our lands held under a grant from the legislature, directly or indirectly? Was not the property all apportioned out, under legislative supervision? Take the case of a grant of land made, as many have been, and as in some states they constantly are now made, directly by the state, to an individual; may not this

land be taken, by the government, for highways, for railroads, or any other public purposes? This will not be denied. Is this impairing the contract?

It will hardly be claimed. But when the state grants a tract of land, they grant an estate in fee, as much as when an individual grants it; but in both cases, it is subject to the right to retake it for public use, on compensation made. The fact is, that such has been the law of nations upon this subject, that there is reserved or implied a right in the state of this sort: that is to say, they have the same right to the use of the property they have granted, that they have to other property, and no more. They have the right of eminent domain; and we know of no principle which should limit this right to lands, or other real estate.

The right rests upon the principle, that individual interests must be subservient to that of the public, and that they must yield, when public necessities require. This, however, in constitutional governments, is not to be done, but upon compensation. The principle, then, is broad enough to include all kinds of property.

But the argument is based on this, that you are then impairing your own contract, and thus violating the letter of the constitution. This is to assume that there is no implied reservation, in any contract with the state, of the right of eminent domain, or that it does not apply to cases of this kind. If, as we suppose, it is admitted in the case of a grant of land, we ask why the same principle does not extend to other grants? It is said, however, that the constitutional provision, does not extend to a grant of lands; for that is a contract executed.

But it was decided in *Fletcher v. Peck*, 6 Cranch, 87-87, that a contract executed, was a contract within the meaning of the constitution of the United States; and that case remains, and we trust will remain, unshaken. We cannot see, then, why contracts executed and executing, are not, as it regards this provision, placed, by the supreme court, upon the same ground. If, therefore, it is not a violation of this clause in the constitution, to take land, granted by the state, for public uses, we cannot see how it should be any more a violation, to take other property, even although that property rests on an unexecuted contract. The doctrine seems to be countenanced by the words, rather than by the spirit, of the constitution.

Subsequently, freeholders were appointed by the Superior Court, according to the railroad charter, damages assessed and tender of compensation made. After the former decision, the cause was continued until January term, 1846, when the plaintiff moved for the injunction prayed in their bill. A supplemental answer was filed by the defendants, mentioning the fact of assessment and compensation offered. The injunction was refused because compensation, ascertained as provided in the railroad charter, had been offered to the plaintiffs. The following extracts are taken from the opinion of the court by Justice Williams. Same book, page 461.

CHURCH, J. When this case was before us at a former term, we held, that the franchise of this bridge company was subject to the same legislative control for public use, as any other species of property, whether belonging to corporate or natural persons. We suppose the question made on this argument respecting the constitutional power of the Legislature, though varied somewhat in its phraseology, was distinctly raised, and decided by us, on the former hearing, as it had been before, in the case of the town of East-Hartford v. The Hartford Bridge Company, 17 Conn. R. 41. 80. We shall not now discuss again a question so recently, and as we think, correctly settled.

I might, Mr. Speaker, go on citing cases to confirm the position that the Camden and Amboy Railroad monopoly can be infringed for public use, compensation being made, but I will not exhaust your patience. The cases I have noticed seem to me conclusive. There is only one objection I have heard offered against the lawfulness of this bill, when these cases have been read. And that I suppose to be urged because the cases were not thoughtfully considered and perfectly understood. The objection I refer to is, that the state of New Jersey in 1832, entered into a *covenant* or *contract* with the Camden and Amboy Railroad Company, that no other railroad should be constructed to carry passengers and freight between New York and Philadelphia, or to compete in business with said company.

In answer to this I would say, and I have already said, that there is no property which cannot upon certain conditions be devoted to public use. For it seems to me self-evident, that no legislature can, by covenant or contract, bargain away the right of eminent domain, so as to deprive a future legislature of one of its constitutional powers. How can a legislature make a contract which will strip the people of the rights of providing for the public weal, and of taking, when paid for, any property if public necessity demands its use—rights which are inherent in the people, though exercised by their legislative agents?

But, sir, this objection is distinctly met and satisfactorily answered in the opinions of Chief Justice Williams and Justice Church, from which I have just quoted. Williams, C. J., says, on page 62 of 17 Conn. :

It has been said, that in a case like this, the law acts upon the contract itself; whereas, when the contract is executed, it operates only upon the interest under it. It is not easy to see how a law taking property acquired under a contract with the state, can be constitutional, and a law preventing the acquisition of property under that contract, can be unconstitutional. It seems, in effect, to say, that it is constitutional to take from a man the fruits of his labour, but it is unconstitutional to prevent him from gathering those fruits. In this case, the franchise is not in fact taken, but its value is in some measure impaired; and we see not why compensation may not be made for this, as well as for any other injury to property.

And Church, J., says, on page 462 of same book :

The plaintiffs claim, notwithstanding, that here is something beyond the bridge franchise, which has been invaded. A contract has been impaired. They insist, that the legislature, in their charter, entered into a covenant or a contract with them, that no bridge should thereafter be erected across Connecticut river within certain limits, which could not be constitutionally impaired, either with or without compensation, by the defendants, under any pretended authority from the legislature. This doctrine has the sanction of some respectable opinions, but of no adjudged case. There is a fallacy in the argument in support of it. The contract constitutes the franchise. All franchises emanating from the government, are the results of contracts between the state and individuals. To say, therefore, that although such franchises may be taken for public use upon compensation, and at the same time to insist, that the contract or covenant by which they are erected, is unconstitutionally

impaired, is an absurdity. That contracts may as well exist between the state and corporate bodies, as between individuals, which are beyond their franchises, and beyond legislative control, is true; but the contract creating the corporation and defining its powers and privileges, is not of this character. This is identical with the franchise itself, and subject to the same laws.

There is, in my view, no unexecuted contract now subsisting with respect to the franchise, unless you choose to denominate the duty of the state, as a government, to defend that franchise an unexecuted contract. The right the company acquired by the contract is its franchise. The franchise is the property the company has received for a consideration, now in the course of payment, and hence is within the grasp of eminent domain.

The error arises from considering the contract not executed, but executory, on the part of the state. But the state has executed its part of the contract as fully as I have executed my part of a contract to convey to my neighbor the sole right of way across my farm for the yearly sum of fifty dollars, when I have given him a deed for the sole right of way. In this latter case the state government is bound to protect my neighbor in the use of his franchise, just as the state government is bound to protect the company in the use of its franchise—the franchise in either case being liable to be taken for public use upon making due compensation. The confusion of the objectors results from their neglecting to distinguish between the state as a *contracting party* granting the monopoly, and the state as the *governing power* protecting the monopoly, just as it protects all other property.

But whether I am right in this last opinion or not, it is certain that the *authorities* I have adduced establish the proposition, that the New Jersey legislature has the constitutional right to infringe the exclusive privilege of the Camden and Amboy Railroad Company, upon providing for compensation.

But still, sir, if the law is not clear we have a right to argue from inconvenience.—The right of eminent domain, by which this monopoly was granted, is unknown to our constitutions, and is made, rather than declared by the courts, it is brought from monarchy, and since it has been recognized by our judicial tribunals must be exercised so as to preserve the liberty of the people. If, by means of its use, rights have been taken from the people to promote the public good, those rights should be restored to the people to remove a public evil. This is good law and sound reason. How can it be otherwise? Suppose that the necessity for this Camden and Keyport Road were as palpable to the understanding of every man, as is the necessity for the free navigation of our rivers, can it be thought that an intelligent and liberty-loving people would allow its construction delayed forever? No, not even for a

year. Suppose again that a new state, made from one of our territories, should be admitted into the Union, and that its first legislature should empower a company to build the only Railroad that should ever be constructed across its surface, even though millions of fertile acres might lie in wilderness for the want of ready access to market, will it be believed that the enterprising and intrepid pioneers who bought and settled on the soil would long endure such gross oppression?—No, sir. If the courts adjudged such a monopoly in everywise irrepealable, the impotency of a suffering people would force them to bend their judgments so as to concur with the public necessity, or else a change would be wrought by a peaceable amendment of the constitution, or else insurrection and bloodshed must follow.

Indeed, I have asked some of the defenders of this monopoly, and their number, now immense, is rapidly increasing, what mode could be devised to relieve us of its burden? None, has been the answer; for your bill is unconstitutional and in bad faith, but if right, still cannot be passed; and if the state can overcome the obstacle presented in the fourth article of the constitution, yet she cannot take the works at appraisement, for the company can control the legislature; and it can prevent an alteration of the constitution; and your only remedy is revolution! If this be so, and the time shall come when revolution is indispensable to freedom, I believe the people of New Jersey will be ready for revolution, and I rejoice that I am one of the people of New Jersey,—that I was born here, have lived here, and hope to die here. For the stamp act and the tea tax, the sparks which kindled the flames of the American Revolution, that burned to ashes British dominion in these colonies, were insignificant in comparison with such a monstrous principle. It seems to me, sir, if we hold that we are bound to acquiesce in the perpetual enforcement of such a principle, we assert the inadequacy of our present constitution, and acknowledge that we are unworthy of the heritage transmitted to us from those who followed the elder Hart to the heights of Quebec, to fight for the rights of the mother country, and who afterwards, in the “seven years’ war” that tried the souls of men, by their heroic deeds, gained for us a name, imperishable as the stones in the walls of this capitol,—I mean the name of Jersey Blues.

But, sir, the mode of ascertaining the damages these united Delaware and Raritan Canal and Camden and Amboy Railroad Companies will sustain by intrusion upon their monopoly privilege, is disapproved of by some. To set this matter right, let me call your attention to the monopoly clause of the supplement passed in 1832, and then to the section of the bill before us, which provides for compensation. The monopoly

clause reads thus: “*Be it enacted*, That it shall not be lawful, at any time during the said railroad charter, to construct any other railroad or railroads in this state, without the consent of the said companies, which shall be intended or used for the transportation of passengers or merchandise between the cities of New York and Philadelphia, or to compete in business with the railroad authorized by the act to which this supplement is relative.” The bill for the Camden and Keyport Railroad is framed upon the hypothesis that the monopoly clause above mentioned is valid, and contains the following section, providing a mode by which the damage incurred by the joint companies, in case this rival road is made, can be assessed. “*And be it enacted*, That if the exercise of the powers granted to the company hereby incorporated, shall infringe any constitutional rights of the united Delaware and Raritan Canal and Camden and Amboy Railroad and Transportation Companies, and the value of damages, if any, due by reason of such infringement, cannot be agreed upon between this company and the said united companies, then either of the parties so disagreeing may apply by petition to the next Supreme Court of this state, giving notice thereof to the opposite party at least twenty days before the said application; and such proceeding shall vest in said Supreme Court full power to hear and adjudge the same, and thereupon to direct a proper issue or issues, for trial of the said controversy, to be formed between the said parties, and to order a jury to be struck, and the said issue or issues to be tried at the next circuit to be holden in such county as said court shall direct, upon the like notice and in the same manner as other issues in the said court are tried; and it shall be the duty of the said jury to assess the value of the said damages, if any; and judgment thereon, with costs, shall be entered and execution awarded therefor as the said court shall direct.”

I have not introduced these extracts from the bills under consideration, so much for the purpose of justifying the mode of assessment adopted, as for the purpose of showing the security against injury, which the Camden and Keyport bill affords to the joint companies.

For the jury is the proper tribunal to try such questions of fact. This is the tribunal which all writers on the common law declare to be the “palladium of civil liberty,” and trial by which our constitution declares shall be “preserved inviolate.” The truth is that the appraisement by commissioners is an innovation. And it is, certainly, not less practicable or fair for a jury to determine the damages incurred by the joint companies, by reason of impairing their monopoly, than for six commissioners, three of whom are to be appointed by the Chief Justice, and three by the joint companies, who, in case they cannot agree, are to select a seventh, to assess

the value of the whole personal and real property of the Camden and Amboy Railroad Company, in case the state concludes to take the said railroad at the end of thirty years from its completion, according to the said railroad charter.

And with reference to the objection urged against the bill at the last session, that constitutional questions are for the courts and not the legislature to decide, I submit a remark or two. Although the state is a contracting party in this case, yet she is also a law-making power. As a contracting party, she has the right to avoid unconstitutional contracts; and as a law-making power, she has the right to pass any constitutional laws. The first question which is presented to our minds as legislators, concerns the constitutionality of the bill upon which our action is demanded. The idea that we can never pass this bill until the constitutional question is put to rest by the courts, is absurd, and, perhaps, takes its origin in confounding the principle that a citizen *may* treat an unconstitutional law as null and void, when a breach of the peace *does not* necessarily ensue, with the principle that a citizen *may not* resist ministerial officers in the enforcement of an unconstitutional law, because from such resistance a breach of the peace, *does ensue*.

With these observations, Mr. Speaker, I dismiss the consideration of the legal and constitutional questions incident to the application for an act to authorize the construction of the Camden and Keyport Railroad. But there are other important points to be examined. And first, I shall attempt to show that the *revenue of the state*, instead of being diminished, *will be materially increased* by the operations of the road for which I am contending.

To make this appear it will be necessary for me to direct your attention to parts of the act incorporating the Camden and Amboy Railroad Co., and some of the supplements thereto, as well as to parts of the Camden and Keyport Railroad bill.

It has been feared that the state would lose the transit duties to which it is entitled from the joint companies, and I will show that the Camden and Keyport bill provides against any such forfeiture. Section 24 of the act incorporating the Camden and Amboy Railroad Company, reads thus: "*And be it enacted*, That if the state of New Jersey shall authorize the construction of any other railroad for the transportation of passengers across this state, from New York to Philadelphia, which road shall be *constructed and used*, and which shall commence and terminate within three miles of the commencement and termination of the said roads authorized by this act, then the payment of the said sum of ten cents for each passenger, and fifteen cents per ton for merchandise, to the treasurer of this state, shall cease, and the said company is hereby exonerated from the

payment thereof; *provided*, that if any other railroad shall be constructed for the transportation of passengers from Philadelphia to New York, it shall be liable to a tax, not less than the amount payable to the state by this company."

In order to avoid any loss by conflicting with the foregoing section of the Camden and Amboy Railroad charter, it is provided at the end of Sec. 5, of the Camden and Keyport Railroad bill, "that the said road shall not commence and terminate within three miles of the commencement and termination of the roads authorized by an act entitled 'an act to incorporate the Camden and Amboy Railroad and Transportation Company,' passed February 4th, 1830."

And in the first proviso of the 16th section of the Camden and Keyport Railroad bill, corresponding to the said 24th sec. of the Camden and Amboy Railroad charter, it is "*provided*, that this company shall be *liable to pay* to the state a tax *not less than the amount payable* to the state by the Camden and Amboy Railroad and Transportation Company, according to 'An act to incorporate the Camden and Amboy Railroad and Transportation Company,' passed February fourth, eighteen hundred and thirty." In these two provisos the commencement and termination of the new road are limited, and the amount of tax it must pay required, in the precise language of the 24th section of the act incorporating the Camden and Amboy Railroad and Transportation Company, so that the transit duties cannot be lost by collision with that section.

The only other section which can raise a question concerning the entire security of the transit duties, is sec. 3 of the supplement relative to these joint companies, passed in 1832, which enacts, "That if, within one year from the time that the said railroad from Bordentown to Amboy, is so far completed that passengers and merchandise be transported thereon, the transit duty reserved by the acts incorporating said companies, and the dividends on the stock hereby authorized to be transferred, shall not amount to thirty thousand dollars, it shall be the duty of the said companies to pay such deficiency to the treasurer of this state, out of the joint funds of the said companies, before any dividend is made to the stockholders; and that each and every year thereafter such deficiency, if any shall exist, shall be paid by the said companies, so as to secure to the state the aforesaid sum of thirty thousand dollars, at least, in each and every year during said charter."

Now, according to my memory, the state has never received, in all, more than \$30,000 upon this guaranty, and that was paid before the joint companies came into successful operation. For about fifteen years past, the transit duties and dividends referred to in the section last mentioned, have far exceeded the guaranty, and our present revenue from those sources justifies us in saying that it will

never fall below \$30,000, and consequently that the guaranty is valueless to the state. Besides, if the guaranty is not worthless, still the state does not sacrifice it by building this rival road, as we shall directly show, and the *new company*, not the state, is bound to pay to the joint companies any losses they may incur by contravention of the act of 1832.

From all of which the conclusion is, that the transit duties from the joint companies will remain payable to the state, if the bill before us should finally pass, and the new railroad be built.

In the guaranty just mentioned, allusion is made to the payment of dividends, upon stock of the railroad and joint companies, to the state; and let us next ascertain whether these dividends are lost by the passage of the Camden and Keyport Railroad bill. For certain considerations enumerated in "An act relative to the Camden and Amboy Railroad and Transportation Company," passed February 4, 1831, the said company transferred to the state of New Jersey one thousand shares of their capital stock. But by sec. 6 of said act it is enacted, "That when any other railroad or roads, for the transportation of passengers and property between New York and Philadelphia across this state, shall be constructed and used for that purpose, under or by virtue of any law of this state or the United States authorizing or recognizing said road, that then and in that case the said dividends shall be no longer payable to the state, and the said stock shall be re-transferred to the company by the treasurer of this state."

So that when the Camden and Keyport road shall be *constructed and used*, the state must part with the thousand shares of the Camden and Amboy Railroad stock, and this, as will presently appear, is the *only loss* which the state will suffer by the passage of this bill—a loss which will be far overbalanced by the gain that must accrue from the new road.

But, again, the Delaware and Raritan Canal Company, and Camden and Amboy Railroad Company, after their capital stock became consolidated by what is usually called the Marriage Act, passed February 15, 1831, did, by the supplement to an act relative to the joint companies, passed March 2, 1832, transfer to this state one thousand shares of the joint capital stock of the said companies, as part of the consideration for the monopoly franchise, granted as heretofore mentioned. This stock is not by the *terms*, nor by the *legal construction* of the act of 1832, to be re-transferred to the joint-companies, in case the new road is built, but remains the property of the state, and is to be assessed as a part of the amount due to the joint companies by reason of the infringement of their monopoly. On the same account the guaranty aforesaid likewise remains unimpaired so far as the dividends are concerned.

Hence the *entire loss* the State will sustain by the construction of the Camden and Keyport Railroad, will be one thousand shares of Camden and Amboy Railroad stock, the dividends upon which amount to *ten or twelve thousand dollars* annually. Now the last proviso of section sixteen of the Camden and Keyport Railroad bill provides, "That the amount of transit duties hereafter annually to be paid to this State by the said united companies, added to the amount annually to be paid by this company, shall make the sum of *one hundred thousand dollars*; and if in any year the transit duties paid by the said united companies, together with the transit duties paid by this company, do not amount to the said sum of one hundred thousand dollars, the deficiency shall be paid by this company, so as to secure to this state the said sum of one hundred thousand dollars for each and every year during the existence of this company and the said united companies."

Now, as the Camden and Keyport Road is by other parts of its charter obliged to pay transit duties at the rate of ten cents for every passenger, and fifteen cents for every ton of merchandize carried across the State, and also to pay a tax not less than the amount payable to the State by the Camden and Amboy Railroad Company, it is clear that the one hundred thousand dollar guaranty is largely more than sufficient to cover the loss of dividends on one thousand shares of the old railroad stock. According to the State Treasurer's last annual report, the State has received during the past year, for transit duties from Canal about \$20,000, for transit duties from Camden and Amboy Railroad about \$40,000, and for dividends on two thousand shares of stock of the companies, about \$20,000. Hence the new road guaranties to the State the annual payment of about \$20,000 additional to its whole receipts, for the last year, of transit duties and dividends from the joint companies. From the sum of \$20,000 additional as aforesaid, subtract \$10,000, being the amount of dividends upon the one thousand shares of joint stock, which the State does not lose, and we find that the guaranty of \$100,000 promises the payment of about \$30,000 annually, in addition to the amount of dividends and transit duties paid by the joint companies last year.

I take it, sir, to be unquestionable, that the new road, as soon as completed, will pay at least as much as \$12,000 in one year, for transit duties, which amount will indemnify the State, and in all probability the duties will make three times that amount. For it must be borne in mind that the new road is, by its charter, to carry through passengers at two dollars a piece, and at not more than three cents per mile for each way passenger, nor more than five cents per ton per mile for merchandize; instead of ten cents per mile for each passenger, and eight cents per ton for merchandize, and three dollars for each

through passenger, as the old road is allowed to charge. This reduction of rates of charge must attract travel and transportation to the new road, and therefore result in a large amount of transit duties.

But those who admit that the amount of transit duties from the new road may be safely calculated to exceed \$30,000 per annum, as soon as it is in complete operation, ask me how the interest of the State will be protected during the time that occurs between the passage of this bill and the construction and use of the new road. To this I answer that by the language of the supplement to the charter of the old road the 1000 shares of stock sacrificed, is not to be re-transferred to the old road until the new road shall be *constructed and used*.

I need not more than briefly notice the suggestion made by a few, that the State would suffer in her revenues, if the Camden and Amboy R. R. Company held back her dues upon the false plea that a rival company had been incorporated *against their charter and against good faith*. I have heard that such a threat has been intimated, but I am unable to believe that the gentlemen having the direction of the joint companies could contemplate such a movement. If they do as is alleged, attempt to control the law-makers, they certainly cannot control the laws themselves. But honest and faithful legislators should never be deterred from such legislation as is demanded by the voice of the people, and sure to promote the public good, by the fear that wrong-doers may defy the constituted authorities.

Thus, sir, have I disposed of all the questions that have arisen, in regard to the effect the bill before us will produce upon the revenue of the State. And it appears from what I *have said*, and may further appear from what I *shall say*, that the revenue will be greatly augmented. No loss will be incurred before the new road shall be *constructed and in use*, and it will be responsible for the payment of more than \$30,000 annually to the State, in addition to its present receipts.

One of the strong motives which impel me to advocate this bill is the desire to increase the financial resources of the State. New Jersey is now worth a million of dollars, and is annually receiving enough interest and taxes, without burdening the masses of the people, to pay the expenses of government, and make appropriations for the protection, instruction, and improvement of her people. And, with her natural wealth, her favorable position physically, must make her one of the richest States, of the same extent, to be found in the world. And I hope to see her resources abundantly enlarged, until we shall erect more institutions, if they be needed, similar in design to the penitentiary, the lunatic asylum and the house of refuge, to stand like light-houses along the

pathway which leads to the glory of the State, not only, but through it to the glory of the human race, and of that God who made the human race. But I would first of all wish to see ample means furnished for the establishment and proper management of free schools for our entire population, so that the man who has scarcely a shilling to buy a bible, may have his children gratuitously educated in all the elements of useful knowledge. This is the noblest enterprize to which the energies of government can be directed. Any one who has carefully observed the progress of mind in this country, must have seen that a great majority of our most valuable citizens in all pursuits and professions, has emanated from the poorer classes. Agreeably to the law that opposition to difficulty and hardship strengthens both mind and body, we discover that the necessity which goads poverty on to labor and industry, eventually advances it to wealth and knowledge and power. Like the bird of Paradise man seems to make headway best against opposing winds. The poor scholar with his books seldom fails, but braves every danger and surmounts every obstacle. He is like the Chamois hunter on the Alps, who carves steps in the solid rock with a knife he carries at his belt, and ascends precipices to heights where the eye swims and the brain reels. *I say, sir, we must have means to educate the poor.*

I now pass, Mr. Speaker, to the examination of another objection urged against this bill. The joint companies claim that they have increased our state treasure, added millions to the value of property in the state, relieved us of state tax, and erected works of necessity and charity, at great labor and great risk, and charge that it would be *bad faith* to interfere with their operations or curtail their profits. The inuendo is that they imperilled their own capital to benefit New Jersey. On the contrary, the history of the origin of the railroad shows that the stock, instead of begging, like that of the canal, for purchasers, was much sought after by capitalists, and was readily sold in a single day. And I would ask any one of the directors of these companies, any one of the stockholders, any one of the members of the bar employed or retained, or in some way welded to these companies, or any one of the vast crowd of politicians of all grades, who, for interested or inscrutable reasons, evince such deep concern in consummating all the schemes of these companies, and who are everywhere, like a tree of gloomy shade, spreading its branches from Sussex to Cape May, and driving its roots into the masses of society—I say I would ask them all, whether they suppose the proprietors of the Camden and Amboy Railroad would have risked one dollar in its stock if they had not expected or foreseen that it would be a profitable investment of their money? Some of them whom

I know favorably, doubtless were generous to the extent that, while they had their own interest most at heart, they were not blind to the interests of New Jersey. I am willing to grant that they have been and are the benefactors of the state. But all honest business men deserve the same laudation.—God-like disinterestedness is rare. Such considerations make it apparent that these united companies stand before us on no higher ground than individual citizens who have done their duty to the state and the people.

But, again; when the old railroad company embarked in their great enterprise they were invested with certain extraordinary privileges, upon the implied condition that the state should resume them at pleasure, upon making due compensation. This, as we have heretofore proved, is the law and was the law, and if the company was not mindful of this principle of law the fault was its own, for ignorance of the law excuses no one. And it is no more bad faith to take away those privileges from the companies in the manner I have described, than it would be for me to order a man, who had agreed to furnish my family with the necessities of life, during my pleasure, to stop, because I could do better with another.

Why, sir, the joint companies, through their agents or trustees, hold real estate and personal estate, ferries, hotels and steamboats, which are not essential to their legitimate business, but which are held contrary to the spirit of their charters. Is this not bad faith on their part? They are strongly suspected of direct or indirect interference in the popular elections of the state, and of intermeddling with our legislation. Were they incorporated for these purposes? And if this charge be true, is such conduct not a breach of faith? And should we not be faithless to the people of New Jersey if we did not guard their interests and their rights?

In the time of Lord Cornbury, one Huddy was empowered to exercise the exclusive privilege of carrying passengers and freight from the Delaware, across the state, to the waters that separate our shores from New York. The legislature remonstrated, and the monopoly was extinguished. This was not deemed to be bad faith. English power, before the Revolution, gave William Cooper the exclusive and perpetual right to ferry between Camden and Philadelphia. Numerous ferries, in conflict with this, have been established since, and amongst others the ferry connected with the Camden and Amboy Railroad; but I have not heard these intrusions denounced as breaches of faith. The cases I have read to-day, show that in other states monopoly rights have been terminated, when public good required, but it has not been alleged that these acts were in violation of good faith.

Again, we are implored to wait until the time arrives when New Jersey, according to

the charter of the Camden and Amboy Railroad Company can take the road at appraisal. But if the constitutional provision concerning the amount of debt the state may incur can be met or evaded, there is still no security that the machinations of the companies will not prevent us from attaining this end; and, if there were such security, it is doubtful whether the state would prosper in the management of such complicated business.

But the probability is that the two roads can flourish contemporarily. The transportation is annually increasing. Steamboats have been plying by way of the sea, between New York and Philadelphia, for some time past, and are found to be profitable. The Central Railroad across Pennsylvania, bringing Pittsburgh within twelve hours of Philadelphia, must divert much of the travel and freight from the route by the northern lakes, to the route through New Jersey, westward. Besides, multiplication of facilities of transportation, of itself, leads to large accessions of patronage. But, above all, the rapidly growing wealth and developing resources of the entire country, must produce an overwhelming flood of business across New Jersey—the principal thoroughfare of the Union. There will soon be more work than two roads can well accomplish.

The new road can only, if at all, impair the interests of the joint companies, by forcing them to reduce their railroad rates per passenger and per ton. But this reduction would increase their business and perhaps enhance their profits.

The joint companies, however, say that if the new road should be constructed, they will ultimately obtain control of the stock, because for the sake of preventing ruinous competition, they would be compelled to buy, or could afford to buy at a higher price than others would be willing to offer. Well, be it so. I am aware that this bill will not prevent them from purchasing a majority of the stock of the new company, but it will insure the construction of the road. For reliable commissioners are appointed to build the road, and the stockholders cannot elect their directors until the road is completed, and therefore, cannot control the operations of the company until the road shall be completed. When the track is laid and the road is furnished, if the companies can get, or shall have gotten the stock, let them govern the business on the terms this bill provides, and take a charter without a monopoly, one not perpetual, but subject to repeal.

We know we cannot shut them out, and all we insist upon is the road. And, year after year, we shall knock at the doors of this legislature, until we are heard and felt throughout New Jersey. If the companies will guaranty its construction in the manner designed, I will lay down my arms. I have no lance to break with any one of their cham-

pions, I would not rob them of a single bubble of their wealth—producing steam. I would not, with a rush, attempt to dam up the current of gold that is pouring into their coffers. I would say to them, go on, gentlemen, in the accumulation of property, and pile up riches mountain high. But never let us be pointed at as the citizens of a State in which monopoly stalks abroad triumphantly amidst as moral and intelligent a people as the world has ever known. Never let us be pointed at as the citizens of a State one of whose legislatures, composed of plain, unsophisticated, unsuspecting men, passed a law, which a large majority of the people hold to be oppressive and dangerous, which we have the power to, but dare not, repeal. Consent to stop the evil now, for stop it must. The power you *hold*, ay! and the power you *exercise*, is felt throughout the body politic. It is insidious in tempting you and equally so in encroaching upon us. It will deprave you—it is destroying us. We must be disenthralled, because to be free, to the utmost extent the public weal will allow, is the sacred trust reposed in us by an ancestry as pure,—as wise,—as brave as any to whom God ever gave the torches of rebellion to light up the fires of liberty round a tyrant's throne.

I hope, sir, I have shown that the honor of the State will not be compromised by the passage of this bill, and I hasten to a close.

The section of the State through which this road is intended to pass, though not all susceptible of high improvement, yet contains extensive tracts of land, which, for agricultural purposes, cannot be surpassed. The soil is easy to be cultivated, is adapted to the growth of all products suited to the climate; and abounds with natural manures, which within the last twenty years by faithful application, have, in many instances, doubled, and in some quadrupled the value of farms. Nearly 400,000 acres of land, and more than one twelfth of the population of the State, will be tributary to this new road. It was hoped by the people of Camden and Burlington counties, when in 1830 they warmly and perseveringly advocated the passage of the Camden and Amboy Railroad charter, that the road then chartered would pass through the farming districts, instead of following the Delaware River, and they are now applying for, what at that time they failed to obtain,—an *Agricultural* as well as commercial road.

No causes contribute more to the prosperity of a country, whose natural resources are ample, than abundant facilities for inte-

rior communication. England has spent more than \$100,000,000 in the construction of her ordinary highways, and the beneficial result is everywhere apparent. We are, with tardy feet, following her example in this particular, and if we are careful of our own interest, will not permit any obstacle, not absolutely insuperable, to interpose between us and the multiplication and perfection of our means of transportation. And I hope, sir, that if public utility demands such improvements, some of us will live to see this entire State ribbed with railroads, and blood-vesseled with canals.

I think I have shown, sir, that the State of New Jersey has a right to infringe the exclusive privilege of the Camden and Amboy Railroad Company, upon providing for compensation. That the revenue of the State would be increased by the road; that the honor of the State would not be impaired by the passage of this bill; that the section of the State through which the new road is to pass should be accommodated; and that the State of New Jersey should, consistently with good faith, encourage the construction of all the roads her business may require.

I respectfully submit, sir, that powerful railroad corporations ought to be watched with a vigilance that never sleeps. That those whose charters are not amendable or repealable by their own terms, or by the law making them so, are not, and ought not to be favored in this enlightened age. That where one of this kind does exist, competition by a road held by another company, or accommodation by a road held by the same company, under legislative control, are indispensable.

I remember a party in this State which at one time warred against all corporations, which declared that they abridged the rights of individuals, that they arrayed combined wealth against individual enterprise, that they had "no bodies to be kicked and no souls to be condemned"; and that they ground the people of New Jersey to powder beneath the iron heel of power. And furthermore, our present Governor informed us, in a letter recently written, that the election of last Fall, which resulted in his elevation to the highest office in the State, was a triumph of the anti-monopoly party over monopoly. Well, if this be so, we to-day, repent of the sin of which we are accused. And in the vote now to be taken upon this bill, I hope to find proof that the Democratic members of this House do not belong to that class of men, "who keep the word of promise to our ear, but break it to our hope."