

CHESAPEAKE AND OHIO CANAL COMPANY.

MEMORIAL

OF

Stockholders, &c. in the Chesapeake and Ohio Canal Company.

FEBRUARY 12, 1829.—Referred to the Committee of the Whole House on the state of the Union on bill No. 370.

To the Congress of the United States :

The memorial of the subscribers, who are stockholders in the Chesapeake and Ohio Canal Company, or owners of landed property in the District of Columbia, through which the canal, as traced, is intended to pass,

RESPECTFULLY REPRESENTS :

That they have perceived, with surprise and regret, in a bill now pending before the House of Representatives, numbered 370, and entitled "A bill to amend the charter of the Chesapeake and Ohio Canal Company, and for other purposes," a provision, in the 3d and 4th sections, whereby it is proposed to arm the Board of Directors of that company with the very extraordinary power of acquiring, by condemnation or purchase, lands to an unlimited extent, unnecessary as to the object contemplated by all in the creation of the company; injurious, as your memorialists believe, to its real interests; and certainly unjust, in the highest degree, to the proprietors of lands in the vicinity of the canal.

Your memorialists must presume that this power has been asked for by the Board of Directors; and if so, it has certainly been without the authority of the company. At the two general meetings, (and the only two held by the stockholders since the organization of the company,) the directors were authorized to petition Congress, and the other legislative bodies, parties to the charter, among other matters, for some amendments to the charter; but no such power as this was contemplated or discussed at either meeting, and much less was it delegated to the directors to seek for the obtaining it. On the contrary, the only authorization in relation to water-rights was given to the Board of Directors at the general meeting held on the 17th September, 1828, and expressly confines it to "requesting such a modification of the charter of the company as to remove any doubt of the power of the company to apply to manufacturing purposes, by selling or letting water-rights, such part of the surplus water as may be deemed by the President and Directors expedient for the company," without a word about acquiring lands. By the charter, the company is expressly restricted from disposing of any water from the canal, for the

supply of works and machinery, except the waste-water, "where wastes shall be essential to the security of the said canal." (See 16th section of the acts of Virginia of 1824.) And this was deemed a necessary restriction at the time, as well by those who solicited the charter as by those who granted it, intended to confine the company strictly to the main object in view; that is, to the use of the water introduced into the canal for the purpose of navigation only; and thus to prevent, on the one hand, any encroachment on private rights, more than indispensable for the high way on the canal, and on the other, to avoid the mischiefs that might accrue by producing currents in it; and from collisions likely to arise between the interests of those claiming, under water-rights sold and those navigating the canal, as to the quantity of water to be drawn off for the one purpose, or retained for the other. The company, however, at the general meeting held in September last, did venture (as by the instruction to its directors herein before quoted) to seek to obtain the power to sell or let, all along the margin of the canal, such surplus water as the Board of Directors might deem expedient to permit to be applied to manufacturing purposes; but they went no further. They did not venture to ask to take land from the possession of individuals, by the high handed power of condemnation, or even by purchase, but for the plain and avowed purpose of producing an artificial navigation for the good of the whole community.

The power now asked of your honorable body, your memorialists beg leave to show, is of a very different character. It goes to make the company landholders to an indefinite amount, throughout the country, upon speculation, with funds designed, by those who contributed them, for a very different purpose, and whose consent should have been obtained before it was asked; because it may, and most probably will, divert from the true object of their destination toward imaginary profits, that may never be realised, such portion of the funds of the company, as to jeopardise the completion of that work which was singly in the view of the stockholders, when they respectively subscribed their money to the terms of the charter as it then stood.

But the power contemplated by the bill is, in another point of view, greatly more dangerous, and is, as your memorialists believe, unprecedented in our country. It wantonly invades the sacred right of private property.

It is a maxim of law, handed down to us by our ancestors, and cherished by every freeman in this community, that private property shall remain undisturbed in the hands of its possessor, except in cases where the interference may be required by the most urgent and palpable public good; and the public necessity must be manifest and imperious, before the hand of the law can be raised to dispossess an individual of property acquired by his own industry, or that of his forefathers. And it is a doctrine required by the safety of the people, and long practised, that corporations be limited, in the quantum of landed property, to the absolute and indispensable requirements of the direct object for which they may have been created.

Is this such a case? Far from it: it is that, upon a speculative and remote calculation of an addition to the company's funds, at the expense of individuals, the company is to be empowered to take, to hold, to improve, and to sell out lands to great, and, in some instances, to an unlimited extent. By the 3d section of the bill, it may, by condemnation, (one of the

means pointed out by the act of Virginia therein referred to,) wrest from the hands of individuals all the land lying between the line of the canal and Potomac river, to be sold or let by it as sites for manufacturing or other purposes. And by the 4th section, it may, by like process of condemnation, divest the proprietors of their lands to any amount, and however situated, which it may think proper to need, under the special pretext of giving strength to basins or moles; which land, so obtained, it is to be at full liberty afterwards to let for wharves or other buildings, (as warehouses, &c.,) or to retain and improve at its pleasure. And again: by the same section it may, *whenever* it shall be deemed to the interest of the company so to do, purchase and hold for ever, or sell or let, any tract of land, of any size, (of ten thousand acres, if such a case occurs,) through which it may happen that the canal is conducted. By the 5th section, a power alike unthought of and unauthorized by the stockholders, and equally oppressive to the community, is to be given to the company, which goes, by the intervention of condemnation, to debar proprietors the right of access across the canal from one portion of his estate to another, where it may have been divided by the canal.

Such are the provisions by which it is sought, unnecessarily and wantonly, to invade private rights, and to complicate and to jeopardise the interests of the company, by the acquirement and management of large landed interests, wholly foreign to its original design, and that have no direct relation to the object for which the privileges already enjoyed by it, under its charter, were granted.

Your memorialists humbly conceive that there can be no sound or legitimate motive for granting any such powers: and they respectfully and earnestly pray, that, as well in consideration of the true interests of the company, as in tender regard to the rights of individuals, the 3d and 4th and 5th sections of the before mentioned bill may be stricken out, or so modified that their provisions may be restricted to the right of disposing of water rights only on the margin of the canal, in such manner as provided by the act of the State of Pennsylvania, (of February, 1826,) for incorporating the same company; and, as to bridges and ferries, in such manner as is provided by the said act of Pennsylvania for bridges and fords.

Your memorialists cannot, however, dismiss the subject of the charter of the Chesapeake and Ohio Canal Company, in justice to their opinions, and, as they believe, to the interests of the stockholders at large, without some further remarks; inasmuch as the construction of an important part of that instrument has been brought to the consideration of Congress, by the memorial of the President and Directors of that Company, presented during the last month, (see Document, No. 12, of the House of Representatives,) in which it is assumed that the eastern termination of the canal, within the District of Columbia, has been definitively fixed at the mouth of Rock Creek, a position about two miles below tide water, available for such boats as will navigate the canal.

Your memorialists must deny that this termination has been so *finally* fixed: first, because it has been, as yet, only fixed by a decision of the stockholders, which may be changed or altered at the pleasure of any subsequent meeting, and especially as at the meeting at which it was fixed, but little stock was represented, except that subscribed on the part of the United States, and of the Corporations of this District, and of which, it is well known, the vote was entirely controlled by two persons only; those

who represented the stock of the United States, and that of the City of Washington and, next, because the subject is yet open to judicial decision, on the question whether the Company has exceeded the power granted by the charter in attempting to extend the canal along the margin of tide-water for several miles; unless, indeed, the legislatures, parties to the charter, should change the present attitude of the law by indirect acts, such as would strengthen the construction given in this measure by the company.

Your memorialists will not now detain your Honorable Body by detailing the reasons which have rivetted on their minds a firm conviction that, under the charter, as it now stands, the company have *no power* to continue the canal to any distance, however small, on tide water, between such point as that from which the canal boats may be safely let down into it; and that, if the company had the power, it would be inexpedient, and a waste of the funds of the company to do so.

Should an opportunity, however, be afforded them, they are prepared to support this opinion by showing, from various documents, the intentions on this point, as well of the party soliciting the charter as that which granted it. For the present, they will confine themselves merely to referring your Honorable Body to the proceedings of the canal convention, held in Washington, in November, 1823; to the memorials presented by its committees to the Legislatures of Virginia and Maryland, during the Winter following, and to Congress in April, 1826; to the language of the charter itself, and to the construction given it by Congress, as shown in the act of 24th May, 1828, authorizing the subscription on the part of the United States; which documents, among many others that could be produced, will evince, as your memorialists believe, that it never was intended or expected that an expenditure of several hundred thousand dollars would be made in digging a canal, making basins, erecting moles, constructing bridges, &c., where nature has furnished a river free from obstructions, and navigable not only for canal craft, but for sea vessels; and this, too, in diminution of a fund yet far short of the sum necessary to carry the canal to the point contemplated on the upper part of the river, the attainment of which is indispensable to its success.

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