

**HOUSE - NO. 201, PETITION OF
THE BOSTON, HOOSAC TUNNEL
AND WESTERN RAILROAD
COMPANY, PP. 153-227:
CLOSING ARGUMENT**

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House - No. 201, Petition of the Boston, Hoosac Tunnel and Western Railroad Company, pp. 153-227: Closing Argument by William L. Burt & G. R. Blanchard

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WILLIAM L. BURT & G. R. BLANCHARD

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HOUSE.....

.....No. 201.

Petition of the Boston, Hoosac Tunnel and
Western Railroad Company.

CLOSING ARGUMENT

OF

GEN. WILLIAM L. BURT,

BEFORE THE

JOINT SPECIAL COMMITTEE OF THE LEGISLATURE ON THE HOOSAC
TUNNEL AND TROY & GREENFIELD RAILROAD,

TOGETHER WITH THE

TESTIMONY OF G. R. BLANCHARD,

ASSISTANT RECEIVER OF THE ERIE RAILWAY.

MARCH, 1877.

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A R G U M E N T .

If the gentlemen who compose the Committee will allow me one suggestion before I commence the matter of our own application, in reply to the position of Mr. Gooch, who represents the interest the Troy & Greenfield Railroad claims to have to redeem the Tunnel, I shall say now all I propose to say on that point, and it will then be out of the way.

Right to Redeem from the State.

The Commonwealth of Massachusetts, several years ago, undertook to complete this railroad and Tunnel, because the enterprise, as they regarded it, was too large, too immense in its expenditure, to be carried forward by any corporation or individuals. They found, as they thought, that the advances by the loans of the Commonwealth that were being made, so far from completing the Tunnel, would simply lead to this result: that this loan, having been expended, there would then be another loan required, and they themselves, having the bottom mortgage, would either be obliged to have the work relinquished entirely, or make an additional loan. They concluded to make an additional loan, but not to allow it to be expended by the corporation. They took a conveyance from all parties in interest distinctly, as mortgagees in possession, and for the purpose of completing the Tunnel and not for any breach of condition. The previous mortgage, which had been three times renewed,—for this mortgage, gentlemen, was first executed to the Commonwealth in 1855, and it has been executed to the Commonwealth four times,—that same mortgage covered all their property, real and personal, and all right over and over again. I shall have occasion to refer to that again, incidentally. Under that possession and under this condition of things, the State, in possession for the purpose of completing the Tunnel, has now completed the Tunnel and road.

But by the same Acts of the Legislature the Commonwealth reserved to this corporation the right in equity, at any time within ten years after the Tunnel was completed, to go to the Supreme Court and have all questions of amounts, have all questions of equities and legal rights, adjudicated. They could and can bring into court all parties, including the Commonwealth. I suppose that none of the gentlemen sitting at this table know the fact, that when the examination of the original vouchers for expenditures of the first loan was made, it was found that Mr. Haupt, instead of representing merely a contractor's interest, owned three-quarters of the stock of the Troy & Greenfield Railroad, and owned the Southern Vermont Railroad absolutely, and was the whole corporation in both States. He was receiving as contractor all the advances the State was making for the Tunnel, and when the corporations and Mr. Haupt and all released, it was supposed that the State had dealt with all parties in interest in fact and in equity.

They provided, furthermore, that Mr. Haupt himself should have a right to come as an injured party and apply for redress, which he did subsequently, and thus it was supposed that all parties were provided for. Now, they claim they are not, and claim a right to redem. Now, a proceeding in the Supreme Court, under the law, is the only proceeding that will bind all parties. When Mr. Haupt, with the parties that he then represented, are brought into court, you can control them. He would not be bound by any "Resolves" or "Laws" or "Acts" you might pass, or anything you might enact, or by anything you might do. Neither would any one concerned in that railroad, in any manner or shape, no matter how worthy or unworthy their claim might be. But there is one tribunal that has ample power to compel the appearance of parties, the attendance of witnesses, and can discover and determine the facts. They may be shrouded in fraud, or concealed for purposes of profit,—reaching them all, probing the conscience of every man who appears asking for redress, and, standing for the Commonwealth as her own court, with ample jurisdiction and in simple justice, they will enter a decree that will bind all parties; they can make a decision we shall all be obliged to accept. This all will accept as just and right, whether it is satisfactory, or as we expected it to be, or not. That has been my feeling from the first; and when I have seen, at different times, attempts made to bring the question here before the Committee and before the Legislature as an objection (because it comes in that form), not only to the enterprise which I represent, but to any possible use of this Tunnel and the Troy & Greenfield—and as a means of tying up this Tunnel, so that the State, even in making contracts for its use, cannot charge what it ought, but is to charge,

as a mortgagee in possession,—when, I say, I have seen these attempts, I have felt that if this question was to be raised at all, it should be raised, not in the Legislature, where they can come year after year if and as long as they are dissatisfied, but in a court having ample jurisdiction and full power to dispose of it.

How came this before the Committee?

Now, do you think this matter is at all open to this Committee? If they could come here, why does not the Commonwealth direct the attorney-general to appear here, rather than to go down-stairs and listen to and resist the claim of Mr. Shanly for additional compensation for work done on the Tunnel? If you allow them to come before you in this way, claiming to have the Troy & Greenfield Railroad and the Hoosac Tunnel in their pockets, claiming to be the absolute owners of that property, costing \$17,000,000, without requesting the attorney-general to appear here to protect the interests of the State, it looks like almost complicity with a fraud. It is absolutely impossible that you can act in such a condition of things. It would be absurd to expect it, and they do not expect it.

Direct the Attorney-General to bring a Bill.

Let a Resolve be passed directing the attorney-general, in behalf of the Commonwealth, to commence at once before the Supreme Judicial Court an equity suit to determine the rights and equities of all parties to the Troy & Greenfield Railroad and Hoosac Tunnel, and the amount and the terms upon which the Troy & Greenfield Railroad Company are entitled to redeem. It is not only an important question, but a dangerous one. They claim to redeem by paying the \$2,000,000, but the sinking fund of the Hoosac Tunnel is already over \$3,000,000. Shall the State give them the Tunnel and the \$1,000,000 beside?

Boston, Hoosac Tunnel & Western Railway.

Now, we will, if you please, come to the more immediate matter of the Boston, Hoosac Tunnel & Western Railway. Now, what do we ask? These petitioners have come before you with many disadvantages (with all deference to the Committee), I must insist upon it, with not many advantages for a fair, profitable, and impartial hearing. You were exhausted by the long preceding hearing on Mr. Crane's petition. When I opened our case here, I was told by you at the outset that these petitioners represented an evident and admitted want. That nobody disputed, and it was not desired that we should introduce testimony. It was not desired that we should appear here to show, by either oral or record testimony, at length,

the imperative demands of Boston and Massachusetts for a through independent competing line to the West under the control and in the interest of our State; and yet, after putting in our case in a day and a half, for a full week I have sat here, and you have sat here, and we have heard from one corporation after another, from all the interests that have been represented here, whether it was the Poughkeepsie Bridge, or the New Albany Bridge, or the Troy Bridge, or the New York & New England Railroad, or the Fitchburg Railroad, or the Troy & Boston Railroad, or the Vermont & Massachusetts Railroad, or the pretended lessees of the Southern Vermont Railroad, no matter who it was, even to the *possibility* of a railroad in the shape of the Massachusetts Central, something that may some time be a railroad,—this “estate in expectancy” of a railroad,—we have heard from them all the absolute, positive assurance that we of Boston have got all that is wanted. Did they not all tell you so?

The Hoosac Tunnel Car Line sufficient.

You have been told, have you not, that we have a “car line,” a “freight line,” that will be developed so as to meet every possible usefulness of the Tunnel, and want and need of the State of Massachusetts through the Tunnel. Two thousand freight cars, costing, on an average, \$500 apiece, pooled in by the New York Central and their alliances, represent, Mr. Chairman and gentlemen of the Committee, the entire expectations and perfect realization of my brother on the other side who appears here for the Fitchburg Railroad. One million dollars worth of rolling stock that might be switched off on to the tracks of the Boston & Albany or of any other road, and kept there on six months’ notice (and there would be no redress), represents this great “Hoosac Tunnel Line,” for which Massachusetts has spent \$17,000,000, and kept the Legislature in session for more hours and days, for more weeks and months, than any other single object for the last 15 or 20 years, and for which one-third of all the taxes of the State are levied to-day. Now, I do not believe it. I know you do not believe it. I know it is put forward here merely as a blind, a shield, to ward off our demand, and what we are determined Boston shall have.

Mr. TORREY. I do not want to interrupt you, and I would not, if you were not very far out of the way. You have only got it one-tenth what they claim is the possibility of this new line. The evidence was, that next year they expect to carry 1,000,000 tons of freight.

Mr. BURR. They said, gentlemen, that this line had 1,800 cars.

The witness said that they intended to increase the number to 2,000. Taking the 2,000 cars, I said they would cost \$1,000,000, at an average of \$500 a piece, and that was the entire and absolute investment of the Fitchburg Railroad, and all these twenty lines together, in what is called the "Hoosac Tunnel Line," and I said that they employed counsel, and they came here to represent that. I was going to add something which I think will relieve my brother's feelings. I know he don't believe it. Anybody connected with the Fitchburg Railroad would be ashamed to have you believe that that was the extent of the capacity of that road to do business, and meet the wants of the public through the Tunnel, which they expect, and reasonably expect, should be provided for. That was done at the dictation of the New York Central Railroad. It was done to have you understand that the New York Central Railroad and their arrangements did not prevent freight from coming through the Tunnel, and you would get "ever so much of it" one of these days. The New York Central Railroad can deprive the Troy & Boston Railroad absolutely of every pound of freight, and the Troy & Boston, in their turn, can deprive the Tunnel of every pound of freight and of every passenger, just as she is depriving it of a through line of cars to-day, and you have no redress. The testimony is unqualified, unanswered and unexplained, and none of the counsel who have appeared here have attempted to explain it.

What Vanderbilt demanded.

Mr. Stearns, whose management has been wise, thoughtful and prudent, relatively, when dealing with the Commonwealth, went to New York and told Mr. Vanderbilt, "You cannot have those cars excluded from running over the Fitchburg Railroad. While we are part of the Hoosac Tunnel line, the Commonwealth of Massachusetts comes in between, and if you had an exclusive contract over our road, you never could hold it through that Tunnel." Mr. Vanderbilt is not the most unwise man in the world, and he quietly goes to my friend of the Troy & Boston Railroad, who always comes to Boston when the Tunnel is to be looked after, and says, "You have got an offer from Pullman & Dixon for a through line to Boston, haven't you?" "Yes, sir." "Well, you cannot run their cars over the New York Central road, you know, Mr. Robinson?" "Yes, sir; I know that." "I want you to say to Mr. Pullman, 'You cannot run your cars over the Troy & Boston Railroad and so you cannot get them to the Tunnel.' That disposes of that matter. Now, I want you to contract exclusively with Mr. Wagner for his line, in which we are interested in this way: Mr. Wagner runs cars over my road, you understand, Mr. Robinson?" Mr. Robin-