

"The Confluence Of Four Events That Led To The Creation Of The Atlantic Avenue Tunnel- The World's First Subway".

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The use of the streets by the locomotives of the Long Island Rail Road posed a problem to the municipality. Trains traversed Atlantic Avenue after 1836 so as to reach the terminal which was located in the heart of the city. At first, the Company was permitted to use only horses in drawing the cars through the streets of the city. Soon after the line began operating, however, the authorities decided to allow steam engines to enter the city

if their speed was confined to six miles per hour⁽³³⁾ This arrangement appeared to be satisfactory until accidents occurred in 1839 in which two youths were killed. The matter was then brought before the Common Council for renewed consideration⁽³⁴⁾ The aldermen determined to place more restrictions on the use of steam locomotives in the center of the community. The speed limit was again limited to six miles an hour and it was further stipulated that the use of locomotives would be prohibited between the hours of sunset and sunrise. Also, the engine was to be equipped with an attachment "calculated to take up any object or person lying or being upon the said railroad."³⁵ The train had to sound a warning when it approached a crossing and ring a bell when traveling between Clinton and Atlantic Avenues.³⁶

Common Council.

January 15th, 1844.

The Board met pursuant to adjournment.

Present—His Honor the Mayor, presiding; and Aldermen Van Wageningen, Thorne, West, Cornell, Greene, Low, Brigham, Gerald, Smith, Bouton, Osborne, Bergen, Boerum, Kelséy.

The minutes of the last meeting were read and approved.

The several petitions of C. Davis and others, and of William Cook and 170 others, requiring the Long Island Rail Road Co. to remove the cars and engines from the street to the wharf and ground near the foot of Atlantic st., and cut through, or tunnel through, the hill on said st.; were referred to the Street Com.

IN COMMON COUNCIL.

BROOKLYN, February 19, 1844.

The following Report and Ordinance were presented, accepted and laid on the table, and ordered published.

A. G. STEVENS,

Clerk of Common Council.

On the Petition of William Cook and 170 others, to require the Long Island Railroad Company to remove the Cars and Engines from the street to the wharf near the foot of Atlantic street, and Cut through or Tunnel through the hill on said street:

The Street Committee, to whom the petition was referred, Report in favor of granting authority to the Long Island Railroad Company to excavate and construct, on Atlantic street, a Tunnel between Boerum and Columbia streets, in this city, under the authority and supervision of this Board. The work to be done in a good and substantial manner, and within four months from commencement. All unnecessary incumbrance to the street to be prevented, and on completion of the Tunnel, all cross streets to be left free and clear; and all pavements removed, or streets and their appendages injured, in the construction of said Tunnel, to be restored and placed in as good condition as they were before the commencement of the work. Feb. 19 1844.

THOMAS J. GERALD, }
P. C. CORNELL, } Committee.
SAMUEL SMITH, }

In connection with the Report of the Street Committee in relation to the Tunneling of Atlantic street, they present the following Ordinance:

The Mayor and Aldermen of the City of Brooklyn, in Common Council convened, do ordain as follows:

1st. That the Long Island Railroad Company be authorised to construct a Tunnel under Atlantic street for the passage of their cars and locomotive engines, with entrances at each end, at the points and places and in manner and form hereinafter designated.

2d. That the excavation of Atlantic street shall be made from a point on said street where a line drawn on the easterly side of Columbia street will intersect said street; and that the intersection on the easterly part of said street commence at a point on said street where a line drawn on the westerly side of Boerum street will cross said street.

3d. That the work forming the open approach to said Tunnel shall be constructed within and not extend beyond the space between Boerum and Court street on the easterly end—and on the westerly end, between Columbia and Hicks street; and that the said entrances shall not exceed fourteen feet in width between the walls; and that the walls of said entrances shall be constructed of solid and durable materials, and surmounted both at the ends and sides with a good and sufficient coping, with an iron railing thereon, with suitable lamp posts and lamps on each side thereof.

4th. The said Tunnel to be constructed of good materials, the sides with good and substantial stone walls, and arched with brick or stone, laid in good mortar of lime or cement, and the whole work to be done in a safe and workmanlike manner.

5th. That the Long Island Railroad Company have authority to construct openings over said Tunnel on Atlantic street, for the admission of light, at several points—such openings not to exceed four feet in diameter, and be constructed with suitable railing, and surmounted by lamps; but no opening to be constructed on any of the intersecting streets.

6th. Whenever the said Company shall have constructed a Tunnel in accordance with the foregoing sections, they shall remove all the iron rails and fixtures of the Brooklyn and Jamaica Railroad Company between the points on said street described in the third section.

7th. The said Long Island Railroad Company shall be required, on the completion of said Tunnel, to remove all their trains of passenger and burden cars, locomotive engines, and other fixtures now used or permanently fixed on Atlantic street, to a wharf or wharves adjoining or in the neighborhood of said street, by means of a single track; and that all the operations of said Company in the lading or unloading of freight, be conducted beyond the limits of said street.

8th. On the approach of every train at the westerly end of the Tunnel on said street, due notice shall be given by the ringing of a bell placed permanently for that purpose; and on the approach to the said street from the depot or wharf, the same notice shall be given of the approach of each and every train, under the penalty of five dollars for each omission.

9th. On the compliance on the part of the Long Island Railroad Company, with the provisions of the foregoing sections, and with the provisions of so much of the law of this Corporation passed November 2d, 1839, as is not repealed, they, the said Long Island Railroad Company, shall be allowed and authorised to use steam power upon the said road within the city of Brooklyn, and through the said Tunnel to their depot beyond the limits of said street.

The Railroad Tunnel.

As this question possesses deep interest with our citizens, we have thought that the annexed opinion of Judge Greenwood, Counsel to the Corporation, respecting the right of the latter to permit the construction of a tunnel, would prove acceptable to the public:

My opinion has been requested "upon the right of the Common Council to permit the Long Island Railroad Company, or the Brooklyn and Jamaica Railroad Company, to construct a tunnel through Atlantic street, for the use of said Companies, under any circumstances whatever."

I am of opinion that the Common Council have such right. The object of a street or highway is the public convenience in respect to passage, and the transportation of goods and merchandize; and this object is, of course, best accomplished when such street or highway is made to afford the greatest amount of such convenience. Its use is not confined to any particular species of vehicles. A pavement is adapted to one kind of conveyance, and a railroad track to another. If the public accommodation requires or will be promoted by the latter, there can be no doubt as to the right of the Corporation, where no legislative restriction exists, to permit it to be laid down and used. By the charters of these companies no street or lane in Brooklyn can be used for their railroads without the permission of the Corporation of the city. This permission, however, being obtained, the use of the street by railroad cars as one of the means of public travel or transportation, and in such manner as not materially to obstruct it as to other modes, or otherwise to constitute a nuisance, is as much a matter of right as the use of it in any other way. This is the more true in the present case as the street in question was originally laid out and opened with express reference to its use by the Brooklyn and Jamaica Railroad Company, to whom, for a certain consideration, the right to lay down their rails upon it was given by the Common Council.

We come next to the immediate question proposed—viz: the right of the Common Council to permit the construction of a tunnel through the street. By the proceedings for opening a street the former owner is paid for the appropriation of his land. The title to the soil is still vested in him, it is true, and he may maintain an action of trespass against any private person who interferes with it or what is naturally connected with or growing upon it; but as between him and the public, he holds it subject to its use, to the fullest extent to which their convenience may require, for the purposes of an easement. The right of the public is not confined to its mere surface. The land itself may be dug and fashioned so as to be made the most subservient to their accommodation.

The power to construct the street after it is laid out and opened, to fix and alter its grade, and to regulate its use, is vested in the Common Council.—The greatest benefit to the public being the chief end in view, and the use of the street by railroad cars being lawful, if the running of the cars on a level different from that on which other vehicles run, be more conducive to the public convenience by expediting the passage of the former, or constituting less obstruction or annoyance to the latter, or to foot passengers, I can see no reason why the Common Council do not possess the power in question. A tunnel is nothing but a particular mode of adapting a way to use. Different modes may often be necessary in cities from those which would be sufficient elsewhere. It is in effect a part of the grade, except that if the top is covered, there are, as to a portion of the street, two grades or levels instead of one. If the public will be better accommodated in this manner than they otherwise would be, there can be no objection to it.—Suppose a great thoroughfare should become crowded and obstructed by the number of vehicles and foot passengers passing through it, and the evil could be remedied by different parallel grades, or could only be avoided by a subterranean grade or level in addition to that on the surface, could there be any doubt as to the power of the Corporation to adopt the measures?

In this case the tunnel will be appropriated principally, if not entirely to that portion of the public who pass or transport their property in railroad cars. An adaptation of the latter to a different kind, so long as the public convenience is consulted and promoted in both cases there is no objection to either.—The widening of a side-walk would abridge and prevent the use of a portion of the street by carriages, but it is often done, and is perfectly lawful where the accommodation of the public requires it.

That pecuniary benefit results to the railroad company from the use of the street or tunnel by their cars, is no objection. The owners of all other vehicles which convey passengers or goods for hire—as omnibuses, stages, cabs and carts—derive also pecuniary benefit from its use. The public are connected with, and benefitted by them all. It is upon this very principle that it has been judicially determined both by the Court of Chancery and Supreme Court of this State that private property may be constitutionally taken for a railroad as being a public use.

Upon the whole I am unable to arrive at any other conclusion than that first stated, viz: that the Common Council possess the power in question. Whether they will exercise it or not, is, of course, a question of expediency.

J. GREENWOOD.

Brooklyn, March 4th, 1844.