

SENATE No. 328.

Commonwealth of Massachusetts.

IN SENATE, June 4, 1868.

The Committee on the Treasury, to whom was referred the House Resolve, appropriating the sum of fifty-three thousand dollars to Herman Haupt and Company, submit the following

R E P O R T .

From the statement of the Committee on Finance, made to the House and accompanying the Resolve, it seems that they did not regard the appropriation made by the legislature of 1867, or their present recommendation, as resting upon "any solid ground of right or equity," but from considerations of expediency they report that the Resolve ought to pass.

The Committee on the Treasury feel that they are not justified in recommending the payment of so large a sum by the Commonwealth upon such grounds. They have therefore endeavored to make themselves as familiar with the facts and circumstances involved in the case presented for their consideration as the brief time at their command would permit, and to present the same for the consideration of the Senate.

It appears that the Commonwealth, by sundry Loan Acts of the legislature, passed at different times from the year 1848 to the year 1860, undertook to aid in the construction of the Troy and Greenfield Railroad and Hoosac Tunnel, and became obligated, upon the fulfilment of certain conditions by the said railroad corporation, to issue from time to time certain amounts of scrip.

Herman Haupt & Co. were contractors with said railroad corporation, having no contract, agreement or connection whatever with the Commonwealth.

In the summer of 1861, the delivery of a certain amount of scrip to the corporation was withheld on the ground that the conditions upon which it could rightfully be called for had not been complied with.

This action on the part of the Commonwealth, the contractors affirm, caused them to abandon the work, and the claim that the scrip was at that time wrongfully withheld is made the basis of their present demand upon the State treasury.

This question, together with the transactions of the railroad corporation and the Commonwealth have been repeatedly considered and reported upon by legislative committees and individuals.

In the winter of 1860, the legislature appointed a committee to inquire what payments, if any, had been made to the corporation, and whether or not all the requirements of the Loan Acts, authorizing such payments, had been fully complied with. This committee in their report say, "That the work required to be done prior to the several payments, has not been always done in amount and quality according to the requirement of the acts," and, "that the corporation has no means, and the contractors can furnish no further means for the work, and that the work must be prosecuted in future for a long period at least, by means furnished by the State, or cities and towns benefited by it, or else it must stop."

Mr. Ashburner, the engineer employed by this committee, to visit and examine the road and tunnel, made a report the same year, confirming the statement of the committee.

In 1862, among others, we have statements from engineers Whitwell and D. L. Harris. The latter, in an estimate he gave of the amount received by Haupt & Co., up to that time, makes the total sum nearly three hundred thousand dollars *more* than they had expended.

The joint standing "Tunnel" Committee of 1866, examined fully into the history of the connection of the Commonwealth with the corporation, and the dealings of the contractors with the same, and in their report they say that, "it appears that the contractors with the Troy and Greenfield Railroad Corpora-

tion have received from the State, three hundred and nineteen thousand nine hundred and thirty-six dollars and eighty-two cents *more* than the value of the work which the corporation surrendered under the mortgage, and that the State has lost that amount of money, in its efforts to assist in the construction of the work. Mr. J. W. Brooks, then chairman of the "Tunnel" commissioners, in a statement made to the above committee confirming the report just referred to, also says, "that if proper deductions had been made from the amount earned, on account of unfinished condition of the seven miles, west of the Tunnel, on which the first fifty thousand dollars was paid, and on account of the worthless masonry and bridging which have been reckoned in at full cost, the over payments would be shown more correctly to exceed in amount the sum of three hundred and fifty thousand dollars.

The Legislature of 1866, in response to a memorial of H. Haupt & Co., authorized the governor to appoint commissioners "to examine and report to the governor and council upon any claims of Herman Haupt & Co. which said commissioners may deem equitable and just, for labor, service, machinery, materials, and land, or any payment and expenditures in the construction of the Troy and Greenfield Railroad and Hoosac Tunnel," and empowered the governor to provide for the payment of any sum the commissioners might find due.

Judge Lincoln F. Brigham, Hon. James T. Robinson, and Hon. Gershom B. Weston were appointed commissioners, and the report of their findings was communicated to the Legislature in 1867, from which it appears that a full hearing and thorough examination was given the parties upon all the questions and claims presented, and that as a result of such examination, the commissioners arrive at the following conclusions:

That the Troy and Greenfield Railroad and Hoosac Tunnel, as it was constructed and excavated at the time of the relinquishment of the same in July, 1861, did not have a value *in excess* of the amount of scrip and money the Commonwealth had already paid.

That there was *not due* to the claimants (Haupt & Co.) in equity and justice any moneys from the Commonwealth.

That the Commonwealth had fulfilled all the obligations to the Troy and Greenfield Railroad Company and to the claim-

ants which it assumed by the Loan Acts in good faith, and had delivered the scrip to them under these Acts, in excess of their right to the delivery of the same.

“That the estimate of the State Engineer, Mr. Whitwell, in July, 1861,” “was just, and in conformity with the Loan Act of 1860, and the theory, practice and usage of railroad engineering which prevailed in the New England States, and that such estimate did not justify the Troy and Greenfield Railroad Company, or the claimants representing that company, in imputations of misconduct, in the exercise of his office, to the State Engineer, William S. Whitwell, or bad faith in the fulfilment of its obligations, under the Loan Act of 1860, to the Commonwealth, or a relinquishment of the substantial construction of said eastern division of railroad, and the complete excavation of the Hoosac Tunnel.

“The Commissioners report that on each occasion of the delivery of scrip under the loan acts, from ten to twenty per cent. more expenditure of labor and materials in value, might justly have been required of the company, in construction of the railroad and tunnel, to fulfil the conditions of such delivery provided by the Commonwealth.”

Many other facts, not pertinent in this connection, are found in the report, and it hardly seems necessary to state that no money was called for or paid out under the provisions of the resolve of 1866.

The report of these Commissioners called out another memorial from Haupt & Co., and a resolve was passed by the legislature of 1867, giving them the sum of \$22,814, which has never been called for.

Early in the present session these claimants again memorialized the legislature, and after repeated hearings the committee to whom the memorial was referred, being equally divided, made two reports, one-half being of opinion that the petitioners have leave to withdraw, and the other half, on the ground that the Commonwealth is rich, and can afford to treat the claimants graciously and generously, because they lost money on a contract with a railroad corporation, recommend that they be paid in addition to the appropriation of last year, the sum of one hundred and fifty thousand dollars, and a resolve for this amount was introduced in the House and

referred to the Committee on Finance, who gave hearings and submit the result of the same in House Document No. 369, by which it appears that they reach substantially the same conclusions arrived at by previous committees, and the Commissioners, and in closing their report they say,—“But while the Committee do not believe that the appropriation of last year rests on any solid ground of right or equity, and is to be regarded only as a means resorted to to get rid of a troublesome controversy and an importunate claimant, they are willing, nevertheless, to accept it as a final settlement of the claim made by a competent authority.” They further assume to find an error in the action of the committee of last year, which they desire to correct, and for that purpose propose the passage of a Resolve giving the claimants fifty-three thousand dollars.

In view of these facts, the undersigned, a majority of the Committee, are of the opinion that the Resolve ought not to pass.

E. H. SAWYER.

H. ALEXANDER, JR.

The undersigned dissents from the foregoing Report.

D. G. MUDGE.

1890

THE STATE OF NEW YORK

In SENATE,

January 1, 1890.

REPORT

OF THE

COMMISSIONERS OF THE LAND OFFICE

IN ANSWER TO A RESOLUTION PASSED BY THE SENATE

APRIL 18, 1889.

ALBANY:

ANDREW FLETCHER, PRINTERS.

1890.