

SENATE.....No. 9.

P E T I T I O N .

*To the Honorable the Senate and House of Representatives of
the Commonwealth of Massachusetts.*

The Memorial of the Western Rail-road Corporation respectfully represents:—

That their Road was constructed at great expense and sacrifice on the part of the original proprietors and of the Commonwealth; that it has been doing a large and constantly increasing business, a great share of which passes over the Boston and Worcester Rail-road; that it has thus added to that road a great and profitable trade, the benefits of which it would not otherwise have enjoyed. That, in consequence of the heavy expenses of construction and the cost of operating their road through a mountain district but sparsely settled, and the excessive charges made by the Worcester Company for doing upon their road the business of the Western, your petitioners have, from year to year, labored under serious embarrassments from the inadequacy of their net income to pay a remunerating profit to their stockholders. That they repeatedly applied to the Directors of the Worcester Company to fix reasonable rates of toll and charges for doing the joint business of the two companies; but this application was uniformly denied. That, in granting the charter of the said Worcester Company, the Legislature provided that no other road should be made within a specified distance of the Western termination of that road to Boston;

but in order to protect the interests and rights of citizens in the vicinity, and westward of Worcester, against excessive charges by that Company, the Legislature, at the same time, *reserved the right to authorize another road to enter upon that road, paying for the right of using the same such a rate of toll as the Legislature might, from time to time, prescribe.* With these provisions before them, the Western Rail-road Corporation was created, the stock was subscribed subject to these provisions, and its stockholders paid their money with a full knowledge that they were entitled to its privileges.

Under these circumstances, therefore, your Petitioners, in January, 1844, applied to the Legislature to prescribe the rate of toll which they should pay to the said Worcester Company for the right of using their road for the business of your Petitioners. Whereupon, after a partial hearing before a Committee, the questions at issue were, by agreement between the two Companies, referred to the decision of the Hon. John M. Williams, Linus Child, and Charles H. Warren, whose award, a copy of which is annexed, gave to your Petitioners partial relief for one year, and until one party should give to the other a prescribed notice to terminate said award. That, at the time prescribed, said Worcester Company terminated the same by such notice. Whereupon, sundry applications were made to that Company to agree upon reasonable rates of toll, and charges, for the joint business—but without success. And your Petitioners, in January, 1845, were again compelled to apply to the Legislature for an act prescribing the terms upon which the said Worcester Company should transact such joint business. And, thereupon, several hearings were had before a Joint Committee of the Legislature, in which your Memorialists urged their right to have the Legislature themselves decide definitely the questions in issue between the parties. But said Committee reported a general law to regulate all similar cases by Commissioners to be appointed by the Supreme Court, and the same was passed under the title of "*An Act to regulate the use of Rail-roads,*" which law they supposed would afford a speedy and effectual remedy for your Memorialists. Your Memorialists then made sundry attempts, without success, to arrange

this unpleasant controversy by negotiation. They also offered to submit the same to a new arbitration,—but the Directors of the Worcester Company peremptorily and repeatedly refused to assent thereto; and your Memorialists were then compelled to enter upon a vexatious suit at law. And in the month of April last, they presented their petition to the Supreme Court, setting forth their grievances, and praying for the appointment of Commissioners, under the provisions of the law above recited.

To this petition, the said Worcester Company, after notice, in the month of May last, filed a long special answer, near the close of that term of the Court, setting forth sundry reasons why the prayer of said petitioners should not be granted; and, among other things, alleging divers facts, which being denied by your Memorialists, must result in a laborious trial of fact in some form, whenever the case can be reached, in its order, upon a large and crowded docket; and denying the right of the petitioners to any redress for their grievances, and the *right* of the Legislature to give that redress in any form, and particularly the power of the Legislature to enact the said law for the appointment of Commissioners, and for the delegation of their authority to them, and averring that the said law was not applicable to them; thus raising various questions for the hearing and decision of the full Court in law term, whenever the issues thus presented can be made up in form, and the other business of the Court will give time for the argument, examination, and decision thereon.

And your Memorialists aver that said case has now been pending in said Court, nearly one year, and it seems, in fact, little nearer to a termination than when said petition was filed. That such is the pressure of business in said Court, and such the intricacy and multiplicity of the questions raised by the said Worcester Company therein, that your Memorialists are advised, that a long time may elapse before a final decision can be effected by the Court, and before even Commissioners can be appointed to enter upon and hear the merits of the controversy between the parties; and it may be, that, after a protracted hearing before said Commissioners, the validity of any decision or order made by them may be contested, and your

Memorialists subjected to another long litigation to sustain the same.

And your Memorialists further allege, that these proceedings are subjecting, and will hereafter subject them to enormous expenses, and will necessarily withdraw the attention of their important executive officers from the duties of their stations, and embarrass all their business operations probably for a series of years. And, what is of great consequence to your Memorialists, as the provisions of the law under which said proceedings are had, may, perhaps, not be held to be retroactive in their operation, and as this decision of said commissioners can, in that event, only operate for the business done subsequently to the date thereof, your Memorialists will be entirely remediless for all the loss and diminution of income in the intervening time, which in itself offers to the said Worcester Company a large premium or bonus for any delays they may be able to cause in a final decision.

By these means, the provisions of the law aforesaid are entirely ineffectual for the relief of your Memorialists, and are oppressive to them.

In view of all these circumstances, your Memorialists most respectfully, but earnestly, ask the attention of your honorable bodies to the provisions of law, which seem to your Memorialists to make it the imperative duty of the Legislature *themselves* to examine into the merits of the questions in controversy between them and the said Worcester Company, and at the present session to pass an act which shall determine and fix "the rate of compensation" which shall be paid by your Memorialists to the said Worcester Company "for doing upon their road the business" of your Memorialists; and that the same may have reference as well to the business done since the filing of their petition in the Supreme Court, as above set forth, as to that hereafter to be transacted, or to grant to your Memorialists such other and further relief as may seem just and reasonable.

The Western Rail-road Corporation, by

GEO. BLISS, *President.*

AWARD OF THE ARBITRATORS,

MADE MAY 21, 1844.

The undersigned, the Arbitrators named in the Submission hereto annexed, marked A, having met and fully heard the parties thereto, do make the following Award:—

The Boston and Worcester Rail-road Corporation, having waived certain objections supposed by them to be well founded, to any action by the Legislature or by the arbitrators, in the premises, as appears by the paper hereto annexed, marked B, the arbitrators have passed upon the questions submitted to them, and make this award, upon what they deem to be just and equitable principles, without regard to legal objections.

They, in the first place, adopted the principle that the Boston and Worcester Rail-road Corporation are to be paid all the expenses to which they are subjected in the transportation of freight to and from the Western Rail-road, and that, in estimating these expenses, all the freight carried on the Boston and Worcester Rail-road, from whatever source derived, should bear its proportion of all the freight expenses on that road.

In addition to the sum thus to be paid as the amount of actual expense incurred in transporting the freight aforesaid, the arbitrators are of opinion that the Boston and Worcester Rail-road Corporation is entitled to a fair and reasonable profit upon this portion of their business.

In establishing a principle upon which the amount of this profit is to be determined, the arbitrators have had regard,

First. To what they deem to be the policy of the Commonwealth, as established by its legislation, that the construction

of new rail-roads, to be connected with roads already in use, is to be encouraged; and that the business brought to the old road by such new road is to be regarded as standing on a different footing from that brought from other sources.

Second. To the fact independently of such considerations of public policy, that the new road deals with the old road as a large customer bringing business in large masses.

Third. To the fact that, to a certain extent, the Western Rail-road brings a new business to the Boston and Worcester Rail-road; and,

Fourth. In some degree, to the pecuniary situation of the Western Rail-road.

The arbitrators, however, would say that the consideration last mentioned has had no weight with them, except so far as they have thought it for the interest of the Boston and Worcester Rail-road Corporation that their customers should be enabled to realize a profit from their business operations, which will induce them to continue them.

Proceeding upon the principles above indicated, the arbitrators are of opinion, and do award accordingly, that for all freight brought from or carried to the Western Rail-road, the Boston and Worcester Rail-road Corporation is entitled to receive two cents and seven-eighths of a cent per ton for each mile of their road over which the same is transported; that this sum includes a compensation for the use of the depots of the said Boston and Worcester Rail-road Corporation, and for the expense of loading and unloading thereat; that each Corporation is to supply the motive power over its own road; that each is to provide its proportion of cars and attendants according to the number of miles on each road each ton of freight is transported, and that each is to be subject to all expenses and to assume all risks on its own road.

The sum above-named is fixed with reference to the now existing freight tariff, agreed on by the parties. If the Western Rail-road Corporation shall hereafter increase the rates of freight, passing over any part of the Boston and Worcester Rail-road, to or from the Western Rail-road, they shall pay to

the Boston and Worcester Rail-road Corporation a corresponding *per centum* of increase upon the sum above-named.

The article of flour is not included in the foregoing part of this award. The rates of transportation of that article, in the judgment of the arbitrators, and, as it should seem, in the opinion of the parties, should stand upon other and peculiar grounds. In reference to this article, the arbitrators have endeavored to ascertain the cost to the Boston and Worcester Rail-road Corporation, of transporting it, and finding it to be about nine cents per barrel over their whole road, do award that that sum shall be paid by the Western Rail-road Corporation, for such transportation over the whole of the Boston and Worcester Rail-road, and *pro rata* for transportation over any part thereof. *Provided*, that if the rate of transportation from Greenbush to Boston, shall be fixed by the Western Rail-road Corporation at a sum exceeding thirty-six cents per barrel, the Boston and Worcester Rail-road Corporation shall receive one fourth part of the said sum so to be fixed, for transportation over their whole road, and *pro rata* for transportation over any part thereof.

In coming to this conclusion, the arbitrators have proceeded upon the principle that they would not be justified, in compelling the Boston and Worcester Rail-road Corporation to carry any article over their road for a sum less than the actual cost of transportation. If there be any counterbalancing incidental advantages, which should render it expedient for them to do so, they can be best weighed by the parties, and may become the subject of an agreement dictated by a regard to their common interests.

In regard to the transportation of passengers, the arbitrators have proceeded upon the principles heretofore stated, as adopted by them, in reference to the transportation of freight; and in pursuance of those principles, do award, that the Western Rail-road Corporation pay to the Boston and Worcester Rail-road Corporation, two and one half cents per mile for each passenger of the first class carried to, or brought from the Western Rail-road to the Boston and Worcester Rail-road, and

two thirds of said sum for each such passenger of the second class.

They further award that emigrants are to be considered as passengers of the second class, unless the parties, by mutual agreement, shall otherwise treat them.

And they further award, that, if the Boston and Worcester Rail-road Corporation shall hereafter reduce the fare for passengers of the first class on their road to less than two and a half cents per mile, or for passengers of the second class to less than two thirds of that sum per mile, the same deduction shall be made from the sums to be paid them for passengers by the Western Rail-road Corporation.

Each Corporation shall supply motive power, cars, attendants, and depot accommodations, and be subject to risks in the transportation of passengers, in the same manner, and to the same extent, as is herein before provided in regard to freight transportation.

In witness whereof, we have hereunto set our hands this twenty-first day of May, in the year of our Lord one thousand eight hundred and forty-four.

(Signed,)

J. M. WILLIAMS,
LINUS CHILD,
C. H. WARREN.

I hereby certify, that the foregoing is a true copy of the award of the arbitrators.

(Signed,)

J. M. WILLIAMS, *Chairman.*

A.

Whereas, the Western rail-road Corporation has presented to the Legislature of Massachusetts a petition, a copy of which is hereto annexed and makes part of this agreement :

Now it is hereby agreed by and between the Western Rail-road Corporation and the Boston and Worcester Rail-road Corporation, that the said petition shall be referred to the Honorable LINUS CHILD, of Southbridge, JOHN M. WILLIAMS, of Taunton, and CHARLES H. WARREN, of New Bedford, with power to hear and determine all matters which may be brought before them by said parties as fully as the Legislature could do, under the said petition, and the award of said referees, or of the major part of them, being made in writing, under their hands in the premises, shall be binding on the said parties, for the period of one year, from the first day of January, instant, and thereafter, until the expiration of three months from the date of notice of dissatisfaction therewith, given by one party to the other in writing.

If either party, being duly notified, should neglect or refuse to attend before the referees, they may proceed *ex parte*.

(Signed,)

NATHAN HALE,

Pres. Boston and Worcester R. R., and Chairman of the Com.

EDMUND DWIGHT,

President Western R. R. Corporation.

JANUARY 30, 1844.

