

## SENATE.....No. 37.

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### Commonwealth of Massachusetts.

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#### IN THE MATTER OF THE EASTERN RAIL-ROAD CORPORATION.

The Attorney-General, under the order of the Committee, respectfully submits :—

By a strict adherence to the provisions of the existing law, as it now stands, the funds to be provided by the Eastern Railroad Corporation, and paid over to the treasurer of the Commonwealth, to be invested for a sinking fund, would remain at the risk of the corporation, and if by any accident or misfortune, without fault on the part of the treasurer, the sinking fund, or any part, was lost, the loss would fall on the corporation.

If the Legislature changes the provisions of the existing law without the assent of the corporation, and a loss ensues, the loss would fall upon the Commonwealth.

If a new act, for the better regulation or investment of the sinking fund, should be passed by the Legislature and accepted by the corporation, it would establish a new contract between the government and the corporation, and its terms would be binding on both parties.

As the law now stands, the sole right of making the investment of the sinking fund is given to the treasurer, and he alone, without the intervention of the corporation on the one part, or

the Legislature on the other, may decide upon the mode of investment, kind of security, &c., that shall be accepted, being bound always to act with good faith, and his best judgment, by force of his official duties; but he is made by the law the common agent of both parties. Any act of the Legislature, controlling this agency, or appointing commissioners to control his discretion, or placing the fund in other hands, would be a material change of the terms of the contract; and unless the corporation should agree to the change, the funds would thereafter be at the sole risk of the Commonwealth.

The day when the sinking fund should have been deposited with the treasurer, was the day after the payment by the corporation of the ninety thousand dollars, as provided by statute of '38, chap. 193, sect. 4.

Respectfully submitted.

J. T. AUSTIN, *Attorney General.*

HON. J. G. ABBOTT, *Chairman, &c.*