

HOUSE.....No. 7.

*To the Honorable the Senate and House of
Representatives, in General Court assembled :*

The undersigned, acting for and in behalf of the Eastern Rail-road Company, a corporation established by law in this Commonwealth, respectfully showeth :—

That the Legislature, by the act of April 18th, 1837, “loaned to the corporation the credit of the State to the amount of five hundred thousand dollars. The road and franchise were mortgaged for the redemption of the scrip to be issued. Such conditions were imposed as were deemed suitable to insure the ultimate repayment of the liberal advancement, and to render the pledge effectual.”

That the act of April 25th, 1838, “authorized a further loan of scrip to the amount of ninety thousand dollars, to be repaid in three years. The security obtained by the mortgage already existing was increased by a pledge of the net profits of the road from Boston to Salem. Three thousand shares of the stock were transferred to the State, to be held free of assessments. Two per cent. of the whole amount due to the Commonwealth, was required to be annually deposited in a sinking fund to extinguish the debt created.”

That by the act of April 1st, 1839, section 1, “the treasurer of the Eastern Rail-road Company is authorized to return to the treasurer of the Commonwealth, all the scrip or certificates of debt, issued in the name and in behalf of the Commonwealth, for the sum of ninety thousand dollars, by virtue of an ‘act in addition to an act to aid the construction of the Eastern Rail-road,’ approved April 25th, 1838: and the said treasurer

of the Commonwealth is hereby authorized and required to receive the same, and when received to deliver up to the treasurer of said company the bond executed and delivered by said company to the Commonwealth, for the performance of the conditions in said act mentioned, and to release to said company all claims and demands that the Commonwealth may have against said company, under and by virtue of said act, or under and by virtue of any pledge or mortgage to the Commonwealth, made in pursuance of the provisions of said act. Provided, that the treasurer of the Commonwealth may retain the three thousand shares of the capital stock of said corporation, as a pledge for the payment of all the scrip issued to said company; and so much of the fourth section of said 'act in addition to an act to aid the construction of the Eastern Rail-road,' as appropriates the whole net income of said road to the payment of said ninety thousand dollars, and all interest due thereon, and so much of the third section of said act as relates to said scrip for ninety thousand dollars, are hereby repealed." And by same act, sect. 3, "so much of an act entitled 'an act to aid the construction of the Eastern Rail-road,' and of said act in addition thereto, as is contrary to the foregoing provisions, is hereby modified and amended so as to conform hereto." In pursuance of the provisions of that act last recited, the said scrip for ninety thousand dollars was returned to the Commonwealth, and the company were thereby released from all claims or demands that the Commonwealth may have against it, by *virtue of said act of April 25th, 1838.*

That notwithstanding the return of said scrip, and the release aforesaid, the treasurer of the Commonwealth did, in the month of November last, and not until then, notwithstanding the road had been completed two years, make a demand on the treasurer of said company, that he should pay into the treasury of the Commonwealth the amount of the sinking fund stipulated in said act of April 25th, 1838.

That compliance with this claim or demand of said treasurer has been declined by the directors of the Eastern Rail-road Company, acting under the advice of counsel, inasmuch as it is authorized by no act or law of this Commonwealth, except

said act of April 25th, 1838; and as "*all claims and demands that the Commonwealth may have against said company, under and by virtue of said act,*" have been released, as before shown, by the return of the scrip of ninety thousand dollars aforesaid; and it is therefore believed that no law exists whereby the treasurer is authorized or empowered to receive, and make the State trustee for the amount demanded; and that, consequently, the Eastern Rail-road Company could have no claim in law or equity for the same, if it should be misapplied or improperly invested; and the directors are the more confirmed in their belief of the correctness of their position, as no provisions have ever been made by law, by which the company can have any voice or direction as to the investment of any such fund.

The undersigned is further instructed, to represent to your honorable bodies, that the directors of the Eastern Rail-road have appropriated a fund of two per cent. on the amount of scrip received from the Commonwealth, from the date of the completion of the road, for the future redemption and purchase of the said scrip; and to request the attention of the Legislature to the fact, that the interest and credit of the Commonwealth would be promoted by the absorption of as much of the scrip of the State as it is possible to procure, with the view to the passage of an act, whereby the said Eastern Rail-road Company, or if thought proper, any corporation indebted to the Commonwealth, may be permitted to deposit with the treasurer of the Commonwealth any sum, but at least equal to one or two per cent. annually, of the amount due by said company to the State, either in the scrip of this State, or in such securities bearing interest, not less than five per cent. as the treasurer may approve; and that on the receipt of such sum, if in the scrip of the State, the treasurer should be authorized and directed to release said company from so much of their debt as said scrip represents, or if in other securities, to give a receipt for the same, as being held as collateral security, or for a sinking fund for the final redemption of the whole debt, with liberty for the said company to exchange the same at any time, at the price at which they are valued when deposited, for state scrip of equal value on the face of it, dollar for dollar; and when this is done,

to take up the receipt given for said other securities, and receive in lieu thereof, a release to the company of so much of the debt as there may be State scrip received by him.

Since the preceding was written, the undersigned has been put in possession of a document marked "Senate, No. 5," containing a letter from the treasurer of the Commonwealth, a letter from the attorney-general, and the answer of the Eastern Rail-road Company, by their president and treasurer, to the demand made respecting the sinking fund. It would perhaps be improper in this petition, to notice the arguments made use of by the attorney-general on the subject, but it cannot be irrelevant to notice a material error into which he has fallen, in quoting from the report of the committee who submitted the bill of April 1st, 1839. In page six of the printed document, seventh line, he quotes, as from that report, *and in italics too*, showing his views of the importance of the phrase, the words "the *loans* created for its redemption," while, on reference to the report itself, it will be found the words are "the *liens* created for its redemption." It seems probable, that this trifling mistake has led him to adopt the conclusion which it is the object of his letter to maintain. Under all the circumstances of the case, the undersigned ask of the Legislature, such action in the premises, as will authorize the payment of the obligations of the Eastern Rail-road Company to the State, and its release therefrom, at such times as it may be enabled to do so, consistent with its own interest, and the interest and security of the Commonwealth.

And as in duty bound will ever pray.

D. A. NEAL,

President E. R. R. C.