

HOUSE....No. 188.

Commonwealth of Massachusetts.

*To the President of the Senate and the Speaker of the House
of Representatives :—*

The undersigned, Directors on the part of the State, of the Western Railroad, beg leave to represent, that in their opinion the interests of the State imperatively demand that some measures of relief should be provided by the legislature, from the very onerous conditions of the relations which now exist between this corporation and the corporation of the Boston and Worcester Railroad.

The State is at present the owner of 11,488 shares in the stock of the Western Railroad, valued at considerably over a million of dollars, besides its interest in the Sinking Fund of over two millions, which is pledged for the debt, amounting to four millions of dollars.

In fidelity to the trust reposed in us as the representatives of so large an amount of public property, we have endeavored to examine most carefully into the difficulties which have grown up between these corporations, and the result is, that in our judgment, the rights of the Commonwealth as a stockholder have been, and are subjected to a burden which ought not to be suffered to continue.

An award of commissioners appointed under the Acts of 1845, chapter 191, and of 1857, chapter 291, has been made, the practical operation of which is proved to be highly unequal.

The Supreme Court having been applied to for the purpose of setting aside this award, has decided that it has no power to interfere, inasmuch as the award, upon its face, appears to have been made within the scope of the authority of the commissioners. The court decided that it had no power to look under the face of the award, or to inquire into its justice, or its probable results in practice. It was made according to the technical forms of law, and must therefore stand until some new commission may possibly be found which will alter it, unless relief is provided by a remedial Act of the legislature.

Under the working of the system established by the award, its result for the year 1859 was, that over \$25,000 of the fair earnings upon freights alone, of the Western Railroad, were taken from it and contributed to the treasury of the Boston and Worcester Corporation; and a similar result will be annually felt until a relief is furnished.

To illustrate this, we give the following condensed statement of the president of this corporation, which we believe to be substantially correct.

Statement of joint freight business with Boston and Worcester Railroad for 1859.

Number of tons transported, 165,634, equal to—	
Tons 1 mile on Boston and Worcester Road,	7,096,919
“ “ on Western Road,	19,316,277
	26,413,196
Being a total of tons 1 mile to both roads,	26,413,196

The amount received was \$647,744.59, which divided by the award of 1858 gave to the Boston and Worcester Road, $2\frac{83}{100}$ cents per ton per mile ($22\frac{1}{2}$ per cent. over the Western) \$201,072.74, and to the Western Road $2\frac{31}{100}$, \$446,671.85.

Dividing the same amount *pro rata* per ton per mile, and the Boston and Worcester Road would receive \$174,041.45, and the Western Road would receive \$473,703.14; equal to $2\frac{45}{100}$ cents per ton per mile to each road.

Boston and Worcester Road get \$27,031.29 more than a *pro rata* division according to the work done.

In view of such a condition of things it could not be expected of us as faithful servants of the State, that we should remain silent or indifferent.

We have no other interest in the matter, than as guardians of the public property under the appointment conferred upon us by the legislature, and acting in that capacity, we feel it our duty to recommend the adoption of such measures as will give the earliest relief and do equal and exact justice both to the Commonwealth and all of its citizens who may be interested in either of these corporations.

Without presuming to make any recommendations as to the form of a law which may be deemed essential to accomplish this act of justice, we respectfully suggest, that it should establish a principle which will secure to each corporation, and to all corporations similarly situated, their own earnings, and which will limit to some extent the very large powers which the commissioners in the present case have claimed and assumed to exercise; powers which alone ought to be exercised by the legislature itself, and not to be delegated to a commission without rules for their conduct provided by law.

EDWARD R. TINKER.
GEO. A. SHAW.
STEPHEN A. CHASE.
E. C. SHERMAN.

BOSTON, March 22, 1860.

