

HOUSE....No. 304.

Commonwealth of Massachusetts.

HOUSE OF REPRESENTATIVES, May 12, 1865.

The Committee on Matters of Probate and Chancery, to whom was referred the Order relative to publishing legal notices, submit the following Report, and recommend that the same, with the Order, be referred to the next general court.

For the Committee,

DAVID H. COOLIDGE.

Commonwealth of Massachusetts.

R E P O R T .

Your Committee have considered the subject brought to their attention by this Order, and are satisfied that there is occasion for further legislation, although not prepared to recommend the passage of an Act upon the subject at the present session of the legislature.

They are of opinion that it is extremely desirable that some system should be adopted for the publication of legal notices, by which any person whose rights or property are liable to be affected by the proceedings of which notice is to be given, should be able to assure himself, in the most easy and prompt manner, whether such proceedings are pending, without the necessity of examining the files of numerous journals, or visiting the great number of places which may be designated as "public" in any town or county. They think, also, there can be no doubt that it is of grave importance that the system should preclude the possibility of the selection by parties who desire to conceal, rather than to publish their proceedings, of some newspaper, issued, it may be, in a distant portion of the country, or not likely to be sought for, or seen, by parties whose knowledge it is desired to prevent. In addition to these considerations, it is also believed to be of great value and importance to the public interest to adopt some safe and convenient method of preserving the evidence of publication, and furnishing an easy and quick means of reaching it in subsequent years. A brief allusion to the legislation at present in force upon this subject, and a hasty indication of the difficulties, dangers, and inconveniences attendant upon it, will show the great advantage of some improvement, and perhaps suggest a remedy.

“Legal notices,” so called, in newspapers, may be divided into two classes.

First. Those which, by some special provision of law, are to be published in a certain manner, and upon which titles to property often depend.

Second. Those whose publication in a public journal is merely one mode of communicating them to persons interested, who may be supposed likely to see them, while it may be used in evidence, and become of importance in legal proceedings.

Our present system, as to the first, is singularly ill adapted to the purpose of securing public knowledge of the matter to be notified. Probate notices, for example, are to be published in any newspaper selected by the applicant, and, although the court may order additional publication, it is not often done in fact, while in some instances parties have been known to express their desire to select some newspaper which would give as little publicity as possible. When the notice is published in good faith, it is ordinarily in one journal only, and may be in any, so that a person desiring to ascertain whether such a notice is published, must examine every column of every newspaper, or, as it may be posted in “public places,” he must visit every town-house, church, “four corners,” store, or what not, which he has reason to fear may be used for that purpose. It may be said that a person in search of such a notice, could apply to the officers of the court itself. It is quite true that, in some cases, he might do so, but that suggestion applies to instances in which he knows something is, or may be, before it; while, in many cases, that may be a serious inconvenience, and, in the large class of cases for which notices are most important, viz., where they may affect parties who are ignorant of any occasion for notice, there is something almost absurd in the provisions of our laws which assume that they will see nearly every number of every newspaper in the county or neighborhood. Again, when parties at a distance from the jurisdiction, or living many years after legal proceedings may have occurred, desire to ascertain the fact of publication as affecting a title to real estate, or other important interests, the labor becomes greater, and the task, in the latter instance, extremely difficult, if the evidence has not been properly perpetuated. So, a notice of an application for a private Act

may be published in one newspaper, and yet affect interests in the most distant corner of the State. The customary notice of sale, under a power of sale mortgage, by usage, is to be in any newspaper in the county. The mortgagor, indeed, may have it otherwise provided, but borrowers are proverbially indifferent, and this is one of the cases where legislation should guard them, while the rights and interests of others, who have no power in reference to it, may also be materially affected. There is no mode of ascertaining whether an individual has been through insolvency, or when, except by a search through manuscript or newspaper files at the State House, or in the county or counties where he may have resided during any given period, or, as it happens, by searching the pages of a private periodical, month by month. If a careless executor, guardian, or trustee has died, and omitted to perpetuate the evidence of a notice on which an important title may depend, it is well-nigh impossible, after a considerable lapse of time, to ascertain whether it has been in fact published; or if land has been sold for taxes, and no affidavit filed, ten years after, all evidence may have disappeared. Notices to an absent defendant, whose property is attached, are ordinarily published by order of the court in a single newspaper, which the defendant, being absent, may never see, and is far less likely to hear of than he would be of a notice in a newspaper which he and all his friends would know must be the means of publishing it; so that a man may lose his property without a right to a hearing, except in the discretion of the court, after a year from the judgment; and although the courts do grant reviews in such cases when justice requires it, yet the trouble and annoyance may be serious, and any system which aids to prevent such things should be encouraged.

It is obvious that if there was some single medium through which every citizen of the Commonwealth knew that every notice affecting his interests must be published to have that effect; that if it were made easily accessible to every citizen, in such a form that it could be preserved for subsequent reference, and so arranged as to make that reference easy and prompt, a great service would be done to the public and to the Commonwealth, and it is believed that with modern facilities for rapid communication and centralization this could be easily and safely done.

The law at one time allowed the selection of a single journal by a probate court for its notices. This gave an opportunity for a suspicion of favoritism and concentrated a patronage, which it was desired to distribute among the press. On the other hand the difficulties of the present scattering system have from time to time led to the enactment of laws requiring individual notices in addition to newspaper publication, which have afterwards been found inconvenient and annoying. But a plan has been suggested to your Committee, which they think deserves the serious consideration of the legislature, and without committing themselves to its details, they readily express the opinion that it is well worth a trial.

This plan is the establishment of a newspaper to be called the "Massachusetts Gazette," to be published under the direction of the secretary of State, in which all notices required by law to be published should be inserted at least once, carefully classified and periodically indexed, so that any names could at once be found. Copies of this journal should be sent to every town and public office, and one at least permanently retained in each, for the inspection of all persons. Besides the notices thus inserted, the publishers might be allowed to insert other advertisements, which might be evidence of notice although not required by law, such as notices of the dissolution of partnerships and others of a similar character. Official orders, lists of public officers, of bankrupts or insolvents in the State, of the meetings of courts, commissioners, and public officers or bodies of all descriptions in which the general public were interested, would here find their appropriate place. A single number might contain the laws of each session now published at a large expense, and secure for them as great publicity, and render them as accessible to those who are affected by them, as at present.

In a short time it would be universally known that every notice whose publication was required by law would be found in the "Gazette." The "Gazette" would be found in every town in the State within two days of its publication. Every citizen would be able in a few minutes to determine what, under our present system, might require much time and trouble, and perhaps the expenditure of considerable money. Every person would seek this medium for the publication of notices which

would protect his interests, although not required by law, and the "Gazette," if permitted, would soon become a profitable medium for general advertisements, although these, of course, should be kept entirely distinct from the legal portion. The publication of official orders and a variety of other public matters would soon give an historical value to the files of the journal, and in a very few years, it would be felt to be a necessity.

It is obvious also that many subscribers could be obtained, who would diminish the expense and increase the circulation of the newspaper. It is not now proposed to abandon the publication of notices in the local newspapers as at present required by law, or to modify the obligations of individuals in any particular, except to require them to publish every notice once in the "Gazette," delivering a copy at the office, or mailing it to the secretary within a short specified time after it is ordered by the court.

It is believed, also, that the plan might be carried out without any serious expense or inconvenience to the State or to private individuals. If the secretary of State should be authorized to contract with the lowest bidder for the publication of all legal notices in a prescribed form, and with proper guarantees, it is quite probable that this might be done for a low rate, allowing the publisher the advantage of subscriptions and of extra advertisements. The publication, at this low rate, of a single copy of a notice would be but a very slight tax upon the estate or individuals interested—far less than the great advantage in many instances to them, in the preservation and facility of proof of matters upon which important interests might depend, and in all instances to the general public.

No local publisher or newspaper can be injured by this system, and certainly there are few reforms of this nature which would secure so great advantages at so slight an expenditure. If any fear is entertained as to that, the law might limit the expense of publication, or the State might assume it.

For although your Committee do not propose to abandon the present system of publishing notices in local newspapers, yet they cannot shut their eyes to the fact that a large sum might be saved to the citizens of the Commonwealth, without imposing a corresponding burden on its treasury, even by

the gratuitous publication and distribution of a gazette of this kind, in which alone all legal notices need be published. To secure general publicity, it might be sent to every town and county, and to every public officer, and a certain number deposited in various public places in every town. Supposing 25,000 copies, or about one for every ten voters in the State, of a daily journal in a quarto form, containing sixteen pages of solid matter, were thus distributed, it is believed that this would not cost the State, at a rough and approximate estimate, over about thirty-five thousand dollars per annum, while it has paid, during the past year, \$11,246.24 for advertising alone, including the publication in newspapers of the laws, and \$12,164.91 for printing and distributing the annual pamphlet edition of the laws, and thus for these two items, \$23,411.15, and the legal notices paid for by private individuals must have cost many times that sum. But the State would not have to pay full prices, since it could probably contract at lower rates, allowing the publishers to charge for matter not official or not required by law to be published, and to sell additional copies to subscribers, if desired, for binding and preservation.

Your Committee, therefore, while they are not prepared to recommend any legislation at the present session, believe it is desirable that the subject should be brought to the attention of the public, and they recommend that this Report be printed, and be referred, with the Order, to the next general court.

