

SENATE.....

.....No. 10.

M E M O R I A L

OF

H. G. OTIS, THOMAS H. PERKINS, JOHN PARKER,
THOMAS DENNIE, NATHANIEL GODDARD,

AND

FORTY-EIGHT HUNDRED OTHERS,

ON THE SUBJECT OF THE

L I C E N S E L A W .

Presented by Thomas Motley.

Commonwealth of Massachusetts.

MEMORIAL

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

WHEN a law has been enacted involving a new and dangerous principle in legislation, unequal in its operation, at best of extremely doubtful constitutional right, inefficient in promoting its professed end, and tending to endanger a good moral cause, by exciting opposition and stirring up division as to the means for promoting that cause, in communities where all good citizens were desirous to have a thorough reform in habit, and appetite effected by moral persuasion ; it becomes the duty, as well as right of the people to ask of their public agents, the repeal of such law.

For these general reasons, the undersigned respectfully ask for the repeal of the law passed at the last session, entitled " an act to *regulate* the sale of ardent spirits."

The title of that act, we submit, is a misnomer, for, instead of *regulating*, as all acts on this subject have hitherto assumed to do, it entirely *prohibits*, in any form or under any circumstances, to be used except in the arts or

for medicine, the sale of any liquid, "part of which is spirituous," unless sold to the extent of fifteen gallons, to be all delivered and carried away at one time.

The question is not whether this law, if enforced, might or might not promote temperance, but whether, in its application to a particular description of property, and to the free agency of the citizen, it does not contravene all sound principles applicable to the possession, use, and enjoyment of property as a whole, and the exercise of plain personal and domestic rights that lie at the foundation of free government. It is not a question merely affecting morals, but the highest constitutional guarantees of property and individual liberty.

We ask for the repeal of that law, on these grounds, for the following summary of reasons.

Because it assumes to prescribe the particular uses to which property lawfully acquired shall be put; prohibiting a use lawful in itself;—thus following the article when sold to the home and the closet of the citizen who buys, and instituting a new system of espionage upon his domestic acts.

Because the paramount laws of Congress authorize the importation of this article of merchandise and its incorporation into the mass of property, all of which is under a regulation of commerce, which power is wholly ceded to the United States by the States, and therefore no State can prevent such importation and incorporation into the mass of property.

Because when so incorporated, it becomes like all other merchandise or chattels lawfully acquired, a part of that property which the constitution of this State secures to every citizen, and guarantees to him "the right of acquiring, possessing and protecting," and in the "enjoyment"

of which property, like all other, the constitution says "each individual has a right to be protected by society."

Because to proscribe, by a State law, any particular description of merchandise which under the United States' constitution becomes the lawful property of a citizen of this State, and withhold from it the right of "enjoyment" secured to *all* property, on the ground that excess in the use of it is injurious to society; is as manifestly an evasion of the guarantee of property rights, as it would be to deny the constitutional protection to jewels, plate, equipage, or any article of luxury, the excessive use of which, or its use at all by the poor, tends to demoralize and impoverish a community.

Because when the constitution of this State and of the United States were adopted, the chattel now deprived of the most essential quality of property by this law, was fully recognised as possessing all the immunities attaching to other property; and hence it being the subject of lawful property under the supreme law of the land, for a State to deprive it of value by denying to it sale and transfer, is an act of nullification of the laws of Congress rendering the right of importation useless by destroying the right to sell.

Because, by thus singling out and virtually confiscating one species of property which one portion of society believe it is unsafe for another portion to hold, except in large quantities, an arbitrary and despotic precedent will be established, by which the sacred right of acquiring, possessing, and enjoying property, may be narrowed down to the mere will of a majority of the Legislature for the time being, as to the kinds and quantities of property they may think it safe to let the citizens enjoy.

Because the arguments in support of this law, drawn

from the legal suppression of gambling, lewdness, lottery tickets and drunkenness, are not applicable to a law which prohibits the sale from any and all citizens to others, of a specific chattel or property, imported and incorporated into the mass of property under the sanction of the paramount laws of the land.

Because it assumes that the sale of a particular article of property lawfully acquired and held, is a crime, and then only punishes the alleged offence when little, but legalizes it in large quantities, thus contravening the plainest principle of right, by punishing crime in the inverse ratio of quantity.

Because this law in effect confiscates property lawfully acquired, in the hands of the purchaser from the importer, and annuls the importation laws. Hence, if a State cannot directly prevent an article being imported and sold to its citizens in the first instance, would it not be unworthy a Legislature to adopt any evasive or cunning device to effect indirectly what the constitutional compact and the public faith due to the National Laws, prohibit being done directly.

Because, so long as the supreme law attaches to this article the right of being lawfully acquired, there can be no just distinction made as to enjoyment and use of this right, beyond its abuse and the mere regulations of police, which does not apply to all other property in the hands of the citizen.

Because, if the constitution of the United States does not prevent a State from passing any law, however arbitrary, for regulating its internal commerce between citizens, the constitution of the State protects the citizen in the enjoyment of all lawfully acquired property, and to abolish the sale of it, is in effect a law of confiscation, be-

cause the value of property depends on what it will bring, and to abolish its transfer, abolishes its value.

Because it is no answer to this objection to say that the transfer of this property is abolished only in given quantities, but allowed, unrestrained, in larger quantities; which is only saying, that if a citizen is able to acquire a great deal of property, he shall be protected in the enjoyment of its use and sale, but if he is able to acquire only a little property, he shall be punished for selling it to another, and also the individual who sold it to him.

Because the constitution in securing the right to keep and bear arms, does not more directly involve the right to purchase and sell such arms, subject to only proper police regulations, than does the provision that each citizen shall be protected in the enjoyment of property, lawfully acquired, involve the right of purchase and sale. Hence if the sale of lawfully acquired property may be forbidden to prevent its tendency to abuse in bad hands, may not the Legislature, should the Non-resistance Societies demand it, prohibit the sale of fire-arms, in small quantities, lest they should be used in self-defence.

Because this law makes another innovation upon settled principles governing the rights of property, in prescribing for what particular purposes of domestic and private use, property shall be sold, or shall not be sold. It says that any quantity of the proscribed property may be sold, provided it is to be used in arts or medicine—that none shall be sold under a given quantity, to be used for any other purpose; but that it may be sold, to any extent, and for any use, over a given quantity at a time.

We ask for the repeal of this law then, as a dangerous precedent, affecting the rights of property. We ask for that repeal, further,

Because it is a departure in principle from the uniform course of legislation upon this subject, under the constitution, which has been to regulate and not to prohibit; former laws being founded on a matter of police, to govern places of resort, preserve order, and punish actual violations of law.

Because it is a false principle in penal enactments to punish an act, not criminal in itself, on the ground that it tends to crime in another, while at the same time the law freely furnishes this tendency to crime in large quantities, and only prohibits it in smaller.

Because the law is founded on another position as false as it is unjust, viz. that the moral sense is not as strong in the poor as in the rich, and that the former cannot without restraining laws, resist temptations that may be safely presented to the latter, without injury to the common good; thus assuming the odious distinction that the Legislature must take care of the poor, by guarding them against temptation, while the rich may be safely left to take care of themselves.

Because it is a libel on humanity to assume that the poor must be restrained in appetite and the rich indulged, when in fact it is the industrious classes with small means who are trained by circumstances to self-denial and abstinence; while the rich are more exposed, from habit and means, to excess in indulgence.

Because it is a sumptuary law against appetite, always odious in any form, but especially so in this case, where instead of restraining the luxury of the wealthy, it is aimed exclusively against the appetite of the poor, and freely indulges that of the rich; thus infringing the spirit of that provision which declares that the Constitution was expressly framed "to provide for an equitable mode of making laws."

Because voluntary principle is the only safe reliance in a free government, for the support of religion and the advancement of moral causes ; and the professed object of this impossible law, viz : the suppression of appetite in a particular class, is as much beyond the reach of penal laws, as are the conscience and the internal will of man.

Because it is a law against moral agency, imposing punishment not upon any crime or offence, but upon an indulgence in appetite that may lead to crime.

Because the argument that Society has a right to prevent pauperism through intemperance its greatest source, no more justifies this law, than it would a law to punish any citizen who should keep or use the article at home ; and moreover this argument is a libel on a majority of the people, in assuming that the pauperism which is engendered by intemperance, is confined to those who cannot purchase fifteen gallons at a time, while the higher classes, who indulge at their tables and sideboards, are in no danger of becoming a public charge.

Because this law is an alarming precedent, tending to revive that series of arbitrary, bigoted and outrageous restraints upon personal freedom, domestic rights and private opinions, known as the blue-laws of the old Colonies ; and on this principle, whenever any sect in morals or dietetics happen to get a majority in the Legislature, they may pass laws to prohibit and punish all the indulgences they think proper to condemn.

Because there is obviously a dangerous tendency in the times to intemperate excess, in carrying out benevolent and noble objects of reform, which threatens to drive the sober and prudent and reflecting from all such useful as-

sociations—wherefore we conceive it is peculiarly the duty of the Legislature not to countenance a doubtful and vexed measure of reform having this tendency, and which, if persisted in, will encourage those who run into the wildest theories of moral restraint, to get up combinations and parties to force their particular creeds into the form of law.

For these, among numerous other reasons, we address ourselves to the calm good sense of the Representatives of the people. We pray them, as friends of temperance, not to endanger the healthful moral influences that were carrying forward that cause as rapidly as the condition of society would admit. We ask them not to forget that though temperance is a noble cause, Liberty and Equal laws are nobler. We assure them that this law must fail of its professed object, and will not succeed in restraining appetite which will be indulged by combinations and evasions to a greater extent than without this ineffectual attempt at restraint.

We ask them not to compel those who have uniformly sustained the moral cause of temperance and still desire its success, to rally against this measure in defence of a higher principle than temperance itself, the liberty of the citizen. Very many of the devoted, practical friends of Temperance, solemnly hold this law to be a violation of fundamental principles. They deny its right, they doubt its constitutionality, they are satisfied of its inexpediency, and that it will react, and retard the cause rather than advance it. They cannot consent to do wrong that good may possibly come. They will rather wait for moral causes to operate, than force the end they wish to accomplish, at the expense of reaction and the soundest and plainest principles of Equal Rights.

Wherefore we pray the Legislature to repeal this law, and thus remove from the Statute Book, the first act of a Sumptuary law, which has been placed there since the adoption of the Constitution.

(Signed)

HARRISON G. OTIS,

And Four Thousand Eight Hundred and Four others.

