

HOUSE No. 1898

The Commonwealth of Massachusetts.

To the Honorable House of Representatives of the Commonwealth of Massachusetts:

We, the Justices of the Supreme Judicial Court, have considered the questions, a copy of which is hereto annexed, and respectfully answer them as follows:

The interpretation of the Constitution, in that part which is embodied in the questions, is familiar. It has been stated in numerous opinions in litigated cases, as well as in answers to questions propounded by a branch of the General Court.

Taxes under our Constitution are of two kinds, taxes upon property and excise taxes. Those of the first kind must be proportional as well as reasonable. All kinds of property, unless exempted for good cause, must be taxed alike. It is not permissible to make an assessment at one rate upon real estate and at another rate upon personal property. In the Opinion of the Justices, 195 Mass. 607, the subject was fully considered, with a citation of authorities. Mr. Justice Wells, in *Cheshire v. County Commissioners*, 118 Mass. 386, 389, used this language: "That provision requires that all taxes levied under its authority be 'proportional and reasonable,' and forbids their imposition upon one class of persons or property at a different rate from that which is applied to other classes, whether that discrimination is effected directly in the assessment or indirectly through arbitrary and unequal methods of valuation. . . . No enactment respecting taxation under this clause conforms to its provisions, if it directly and necessarily tends to disproportion in the assessment." It is

obvious that the assessments proposed in these questions would be disproportional taxation. The rate upon personal property in any city or town in any year would be different from the rate of taxation upon real estate in that city or town. The taxation upon personalty would be the same throughout the State, and would be determined by the average rate upon real estate assessed for local taxation in the preceding year. This might vary from the average rate of taxation upon real estate for the current year. As the rates of local taxation upon real estate would differ greatly in different places, the rate in any place might differ widely from the average rate. The result would be that a person having an investment of ten thousand dollars in real estate would be obliged to bear a materially different part of the public burdens from one in the same city or town having an investment of the same amount in personal property. We answer the first question in the negative.

The authority to levy an excise tax does not include a right to tax the mere ownership or possession of personal property of every kind. Such a tax cannot be laid upon money in one's pocket or on deposit in a bank, or on money at interest, or on credits of any kind. This provision of the Constitution was carefully examined, and the cases arising under it were discussed in Opinions of the Justices, 196 Mass. 603, 604, 619, 621, and while upon some points there was difference of opinion among us, there was no difference of opinion in regard to the matters stated above. We answer the second question in the negative.

From what we have already stated, it follows that the third question also must be answered in the negative.

MARCUS P. KNOWLTON.
JAMES M. MORTON.
JOHN W. HAMMOND.
WILLIAM CALEB LORING.
HENRY K. BRALEY.
HENRY N. SHELDON.
ARTHUR PRENTICE RUGG.