

HOUSE . . . . . No. 330.

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Commonwealth of Massachusetts.

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HOUSE OF REPRESENTATIVES, March 31, 1892.

The joint committee on Probate and Insolvency, who were instructed to inquire into the expediency of repealing chapter four hundred and twenty-five of the acts of the year 1891, entitled "an act imposing a tax on collateral legacies and successions," and to whom was referred the petition of Francis Buttrick and others, praying for such repeal, report the accompanying Bill.

For the Committee,

WM. B. DURANT.

Messrs. McDONALD, FERNALD and SMITH of the Senate, and L. M. CLARK of Boston, of the House, dissenting.

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1. The act of which repeal is recommended, would seem to be unconstitutional, as a "tax on persons and estates," inasmuch as it is not "reasonable and proportional."

Const. Mass. Art. 4.

Portland Bank *v.* Apthorp, 12 Mass. 252.

Oliver *v.* Washington Mills, 11 Allen, 268.

Cheshire *v.* County Commissioners, 118 Mass. 386.

2. It appears to be equally unconstitutional as a *duty* or *excise* upon a “*commodity*,” brought into, produced, or being within the Commonwealth.

Const. Mass. Art. 4.

Bill of rights, Arts. 1 & 10.

Portland Bank *v.* Apthorp, 12 Mass. 252.

Oliver *v.* Washington Mills, 11 Allen, 268.

Commonwealth *v.* Hamilton Manuf. Co. 12 Allen, 298.

Gleason *v.* McKay, 134 Mass. 419.

O’Kane *v.* Treat, 25 Ill. 561.

Cooley Const. Limitations, \*p. 516.

State *v.* Gorman, 40 Minn. 232.

State *v.* Mann, 45 N. W. Rep. 526.

Curry *v.* Spencer, 61 N. H. 624.

In Portland Bank *v.* Apthorp, and Oliver *v.* Washington Mills, it was decided that an excise tax to be constitutional, must be *equal*, that is, it must operate alike on all persons who enjoy the same privilege or “*commodity*.”

In Curry *v.* Spencer, the Supreme Court of New Hampshire, whose state constitution is copied largely from that of Massachusetts, held that the collateral succession tax law was unconstitutional.

In view of the decision in Gleason *v.* McKay, *ante*, the right to devise property by will, or to succeed to intestate estates, would not seem to be a “*commodity*” at all; certainly not the right to receive property under a deed or limitation *inter vivos*; which is included as a subject of taxation in section 1 of chap. 425 of the Acts of the year 1891.

## Commonwealth of Massachusetts.

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In the Year One Thousand Eight Hundred and Ninety-two.

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### AN ACT

To repeal Chapter Four Hundred and Twenty-five of the Acts of the year Eighteen Hundred and Ninety-one, entitled, “An Act imposing a Tax on Collateral Legacies and Successions.”

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Chapter four hundred and twenty-  
2 five of the acts of the year eighteen hundred  
3 and ninety-one, entitled, “an act imposing a tax  
4 on collateral legacies and successions,” is hereby  
5 repealed.

1 SECT. 2. This act shall take effect upon its  
2 passage.

