

SENATE.....No. 96.

Commonwealth of Massachusetts.

To the Honorable Senate and House of Representatives :

The Memorial of Nathan Crosby, Standing Justice of the Police Court of Lowell, respectfully shows,—

That I have received the report of the "Joint Special Committee upon the petition of J. A. Beard and others, praying that the Lowell Police Court may be abolished, &c., and upon the remonstrance of Elisha Huntington and others, against the same," by Hon. John A. Knowles, Chairman.

I have carefully examined the various matters and considerations therein presented, and ask to be heard touching several of those matters, in which I feel myself to be personally and officially injured. To you alone can I now legitimately appeal; and this is the first moment and opportunity, in the history of the controversy, when I could, with propriety, meet the aspersions cast upon me. In the investigations before the committee, I was not a *party*, although the committee have been pleased to speak of the counsel of the remonstrants, as the "counsel for the justice," notwithstanding his explicit avowal that he appeared as the counsel of the remonstrants. I was a *witness*; was treated *as a witness*; summoned with a *duces tecum*; carried sundry court dockets with me; was examined and cross-examined, during three sessions of the committee, under the

ordinary restriction of being confined to subjects propounded by the contending parties. Though extremely disagreeable and mortifying to me, the inquiry was spread over the whole period of my brief administration of the office, and an examination was made of every *file of papers* and *record* made by me in the criminal and civil business of the office.

Under the "orders" then before your honorable body, which authorized the committee to send for persons and papers, it was supposed the inquiries were legitimate. I beg leave to refer you to those orders. It was contemplated by those orders, that my predecessor in office, and justices of other courts in Lowell, should also give account of their official acts and receipts; but, for reasons satisfactory to the committee undoubtedly, though they do not appear, those individuals were not required to testify or be present.

I have been thus dragged before the public, and made the exponent of the entire civil magistracy of Lowell for some fourteen years, and made to explain, and answer for, all the suspicions and intimations contained in those orders. Whether it was originally intended to examine *only* into *my* official acts, or whether my examination was a satisfactory answer to all the matters alleged against all persons, the committee do not say.

I am aggrieved at the report of the testimony upon the second page. The report says: "The justice testified that he had been over a portion of the cases, and, from an estimate of the profits of the several classes, the annual profit on criminal business was \$1247."

The testimony upon this point was explicit and full. It was stated that the business of *eighteen hundred forty-six* had been examined, and estimates made in classes, and that the criminal business, for *that year*, amounted to \$1247. It was also said that the year's business included Judge Locke's part of the year, and the *interregnum*, as well as my part of the year: and a calculation was suggested for the purpose of adding to that amount a proper sum for the *interregnum*, to make up a full year's business. It was also said, that *copies* had not been

taken into the account, as the clerk-hire was to be set off against the receipts for copies.

It was not said or pretended, that the sum of \$1247 was the *annual* profit, but only for the year 1846, and *exclusive* of copies too. With the copies added, the sum of \$1247 will be increased to about the average (\$2 65 per case—see page 3,) found by the gentlemen authorized to examine the files in the office, upon an inspection of the files during the whole time I had been in the office.

The injustice of the report, in this particular, consists in stating my estimate to be the *annual* profit, when it was only for the then last year, 1846; in wholly omitting to say that *copies* were not included; and then stating upon the next page the results of the “more accurate” investigation, giving a much larger sum, with all the copies, recognizances, and the small occasional items, *included*, (and that, too, during a period of unprecedented business, according to their own showing,) as the amount, real and assumed, of a whole year’s business.

It is said, too, that the “correctness of the schedules was admitted,” although a witness was put upon the stand, who testified against their correctness.

The next matter of complaint relates to the statement of the increase of the criminal business of the court under my administration, without stating the reasons of the increase. The report cannot be read without the conviction that, for the sake of the fees, I have corruptly increased the business of the office, and have even suborned the city marshal, to accomplish it. It is said on p. 2, “that from June 1 to Dec. 1, he issued 443 warrants; 41 more in six months in 1846 than there were in the whole of the year 1845.” The causes of this increase were fully explained by the evidence, and yet that evidence is wholly omitted. I stated that I had been alarmed at the increase; that I had made inquiry of the police-officers respecting it; and I spread out the facts fully before the committee.

I stated that the immense canal operations (which commenced about the time I entered the office,) and the erection of several large mills, had brought into the city great numbers of foreigners and temporary laborers; that drunkenness had greatly in-

creased; and that many persons came to Lowell, on the Sabbath, from the New City, who became the subjects of restraint and prosecution. It was said that the mayor and aldermen had instructed the city marshal to receive, daily, the reports from the watch-house, and prosecute such delinquents as he thought the peace of the city required to be prosecuted; that he had been also instructed to prosecute violations of the license laws and city ordinances. It appeared by the dockets, that, during the year 1846, after I entered the office, 200 complaints were made more than during the same period of the previous year. But it appeared that 177 of this excess were made by the city police, and mostly by the marshal; leaving only 23 of the excess to have been instituted upon the direct application of citizens to the court. It also appeared that, during the two first months of the present year, the *whole excess* had been made by the city marshal.

Upon this statement of facts, I was pressed with interrogatories to show, that I often sent for the city marshal to come to my office to make complaints. This I denied. I said I had often sent for the city marshal to come to my office to give me information of the character of the complainants wishing warrants, or to ascertain some collateral or additional facts necessary to be known, before I could determine whether a warrant should issue.

Upon this testimony, all of which is suppressed, the Legislature will imagine my grief and anxiety that the Committee should have used the following language upon page 6 of the Report:—"The city marshal testified that he had been frequently sent for to make oath to complaints, *some of which were not made out by the justice*; had refused to make oath for a search-warrant, but finally did so." To remove all mistake in this matter, I beg to annex hereto the affidavit of the city marshal:—

"I, Charles J. Adams, marshal of the city of Lowell, on oath depose and say,—that I was summoned to appear before the Committee of the Legislature upon the Lowell police court, did appear, was sworn, and did testify, upon the examination in chief for the petitioners, that I had not been sent for by the

justice to make complaints other than those I had applied for; that I had often been called to his office to inform the justice of the character of complainants then wishing warrants, or to ascertain some additional facts to satisfy the justice that a warrant ought to issue; that, in one instance, when the justice was ill at home, having examined into the facts at his office, and having occasion to go to his house to get another warrant, I laid the facts before the justice, and said that I did not think much of swearing out a complaint for a search-warrant, but the complainant being a woman, and inconvenient for her to come to his house, he said, under the circumstances, I might make the complaint, and did so; and the property was found, and thief convicted.

“Upon the cross-examination, I said that the mayor and aldermen had instructed me to receive the reports from the watch-house daily, and make such complaints thereon as the peace of the city required; that prosecutions for violations of city ordinances and license laws had also been committed to me.

“This is the substance of my testimony as given before the Committee according to my best recollection, and the facts above stated are true.

CHARLES J. ADAMS.”

“MIDDLESEX, ss. *Lowell, April 8, 1847.* Then personally appeared the said Charles J. Adams, and made oath that the foregoing statement by him subscribed is just and true.

Before me,

ROBERT B. COVERLY,

Justice of the Peace.”

I stated that I regarded the city marshal a public functionary like myself; that he was charged specially, by the city government, with the prosecutions of certain classes of offences, and that I did grant such warrants without examination of witnesses, as he called for,—not including constables or watchmen, as is alleged in the report. It is painful to me that any

extra effort, on the part of the city government and police, to preserve order and maintain the peace of the city under the state of the population and of morals during the summer and autumn of last year, should now be charged upon me as an offence—as an impeachment of my judicial integrity, and mal-administration of office.

It appeared before the Committee, that, in October, there were 88 cases; in November, 74; in December, 53; and, in January, and to February 11, (the last date referred to by your Committee,) 54. It would seem that such a decrease in the business of the court might have raised some presumptions, at least, that the great amount of business in the warm months of the year might have been explained by the extraordinary circumstances of the city demanding police vigilance, rather than by leaving an imputation upon me that it was owing to my love of fees.

This diminution, too, would show the fallacy of fixing upon the amount of a year's receipts of an office from any particular portion of the year. During the present year to April 12, there have been 194 cases; but 72 of these have been for violations of the license law, and 6 against gambling-houses under new instructions of the city government, followed up by efforts of the citizens. Since the decision at Washington, and under its influence, this branch of the business seems to be greatly diminished. There were also, in the 194 cases, 13 for violations of one particular city ordinance concerning hackney-coaches and cabs. So that, independent of these extraordinary cases, the other business of the office amounts to 103 cases during the first 102 days of the year.

I come now to the *last*, but, by no means, the *least*, objection which I have to this report. It is said, upon the sixth page of the report, that “with regard to the change recommended in the jurisdiction of the court, your committee would state, that the peculiar relations existing between the members of the bar of Lowell and the justice of said court, render it extremely desirable that such of the members of the bar as choose to bring civil actions before some other justice than of the police court, may do so”—that is to say, because of the “peculiar

relations existing between the bar of Lowell and the court," a LAW OF THE COMMONWEALTH IS TO BE ALTERED! The LEGISLATURE are to be called in to settle a matter of *feeling*, and, perhaps only of *etiquette*, between the bar and the court of Lowell!! A law, providing for like courts and like jurisdiction in other towns of the Commonwealth, IS TO BE CHANGED for a little feeling which exists in one locality between parties who have occasion to do business together under it!

In the absence of all the testimony given upon this branch of the inquiry, you are left to imagine any variety and amount of misunderstanding and feeling between the bar and myself in relation to this office. In fact, you must suppose that no small matter could have induced the committee thus to report an alteration of law. Is it *incompetency* or *malfesance* in the discharge of the duties of the office? If so, there are constitutional ways of *changing the justice* of the court, without changing the law; and, it would seem, that "peculiar relations," growing out of incompetency or malfesance, would apply, with quite as much force, to the *criminal* as *civil* jurisdiction, unless some "peculiar" reason can be found why the collection of a small debt is of more importance to the bar than the trial of a criminal.

There was no small amount of testimony upon this point before the committee, which I now propose to offer for your consideration. It appeared in the evidence of a member of the bar of Lowell, that, upon the announcement, in Lowell, of my nomination, the bar held a meeting, and sent resolutions to me, requiring, in substance, that I should immediately withdraw my name, or they would send the resolutions to the Governor. It was testified that a committee of the bar was appointed, and had a hearing before the executive council, protesting against my appointment. It was sworn, that as soon as the appointment was made, the bar of Lowell held other meetings, and agreed to establish a civil court of their own, making one of their own number their justice, by election; that they *agreed* their court should assume *jurisdiction of Lowell cases, by naming Lowell plaintiffs* as of *Dracut*, or some town other than Lowell; and the witness said that, although it was thought

best not to "actually take a vote to that effect," yet it was the "*express understanding that the bar would take no advantage of the misdescription.*" The witness further stated, that the court was established; that the first justice held the office three months, and others had been appointed in succession. It appeared that some of the lawyers had named themselves as of Dracut; and also, that some of the well-known citizens of Lowell had been called "of Dracut" in the writs. One member of the bar testified, that he was working like a silkworm to break down the court, and that others had carried round the petitions. It appeared that there had been a change in the taxation of costs in the court; that fifty cents for an attorney's fee, twenty-five cents for taxing costs, and fifteen cents for default, has been stricken from the plaintiffs' costs—items of taxation received by the bar; as also fifty cents for trustee answer, and twelve cents for a continuance—fees received by the court. My opinions in regard to the taxation of costs had long been known in Lowell by the bar, and had been the subject of much conversation and some feeling. It appeared that the courts established by the bar tax costs at the former rates.

I regret, extremely, the necessity which has impelled me to make this statement. I regret to make public these facts. But the inquiry before the Legislature is not chargeable upon me. Certain facts were presented to the committee; a large class of inquiries "ordered," were not made. To the report of the facts of your committee, I have thus objected. I do not impugn the motives of the committee. It has been a great relief to me to learn that the committee considered it a "Lowell affair," and, therefore, left it mostly to the Lowell members of the committee, who are members of the Lowell bar, to make up the result.

All which is respectfully submitted.

N. CROSBY.