

SENATE.....

.....No. 103.

R E P O R T

RELATING TO

PUBLIC ROADS.

Commonwealth of Massachusetts.

HOUSE OF REPRESENTATIVES, January 16, 1837.

Ordered, That the Committee on Roads and Bridges be instructed to consider the expediency of so altering and amending the forty-sixth section of the twenty-fourth chapter of the Revised Statutes, as will make the county, or Commonwealth, liable for the making of all roads, laid out by the county commissioners, for public convenience.

Sent up for concurrence.

L. S. CUSHING, *Clerk*.

IN SENATE, Jan. 16, 1837.

Concurred.

CHA'S CALHOUN, *Clerk*.

Commonwealth of Massachusetts.

IN SENATE, April 12, 1837.

The Joint Standing Committee on Roads and Bridges, to whom was committed an Order of the 19th of January, instructing them "to consider the expediency of so altering and amending the forty-sixth section of the twenty-fourth chapter of the Revised Statutes, as to make the counties or Commonwealth liable for making all roads laid out by the county commissioners for public convenience," have attended to the subject, and submit the following

REPORT:

The section of the statute to which the attention of the Committee was directed, by the order referred to them, contains the following provision: "Whenever the commissioners shall lay out and establish any highway, or shall make any alteration therein, which they shall judge to be of general use and importance to the public, they may order that a sum not exceeding one half the expense of making, as it shall be estimated by the commissioners, shall be paid out of the county treasury." It is manifest, that two classes of roads are contemplated by this provision; the one embracing those which are de-

signed for the accommodation of the public, without any great, direct or particular benefit to the towns which might be charged with the making and maintenance of them, and the other for the more immediate benefit of the towns through which they pass. It appears to the Committee to be manifestly impolitic, that a highway, designed exclusively for the accommodation of a particular town, should be built at the expense of the public, and, on the other hand, that a road in which the public at large have a greater interest than the particular town through which it passes, should be constructed wholly at the expense of such town, would be equally impolitic. It also appears, that, in almost all cases, towns must be benefited to some extent by all roads laid out within their limits, although the greater benefit may result to the public by the construction of such road. For this reason, it seems to the Committee, that there is much wisdom in the provision of the statute that charges each town with the construction of at least one half of every road laid out by the county commissioners within the limits of such towns.

It is undoubtedly true, that cases may occur, in which the public may derive greater advantage from a particular road, than the towns through which it passes; and it may be said, this consideration indicates the necessity of such a change of the law, as will impose upon the counties more than one half of the expense of the construction of such roads. But it should be remembered, that, in all cases, the damage for lands taken for roads is now paid by the county, a provision greatly tending to remove an apparent inequality in the operation of the existing law in the case supposed. It is apparent, that the circumstances attending the location of particular roads may be so various—the relative accommodation to the public and indi-

vidual towns so different, that no general provision could produce exact equality in all cases. This fact shows the wisdom of the provision, which leaves with the commissioners a discretionary power of apportioning at least one half of the expense of constructing every road, upon the county and towns through which it passes, according to the particular circumstances of each case. The Committee are, therefore, of opinion, that no change ought to be made in the existing law upon this subject.

The Committee instituted an inquiry into the practical operation of the existing law; the result of which was to confirm them in the opinion which they have expressed. In all the counties in this Commonwealth, the Committee believe, that the operation of this law is generally satisfactory, with the exception of the county of Essex. Several gentlemen from this county, together with the county commissioners, appeared before the Committee, and, from their concurrent testimony, the Committee are constrained to say, that the operation of this law, as administered by the county commissioners of this county, has been in some cases inequitable. One of the commissioners informed the Committee of several instances in which they had located roads, in which the expense charged upon individual towns, was greatly disproportionate to the benefits to be derived to such towns by the location of such roads. But the Committee were greatly surprised to learn, that in those cases in which the towns were thus subjected, in the opinion of the Commissioners, to disproportionate expense, they did not avail themselves of the provisions of the existing law, to assess upon the county any part of the expense of the construction of the roads referred to. But the Committee are of opinion, that, in this county, a judicious exercise, by the commissioners, of

the powers conferred upon them by the existing law, of assessing upon the county a portion of the expense of constructing such roads, as are of more benefit to the public than to the towns through which they pass, the great cause of complaint, which is now made against the operation of the present law, would be substantially removed. The Committee, therefore, report, that it is inexpedient to legislate on the subject referred to them.

By order of the Committee.

JOHN B. TURNER.