

SENATE....No. 62.

Commonwealth of Massachusetts.

IN SENATE, March 11, 1839.

Ordered, That the Committee on the Judiciary consider the expediency of making any alterations of the law in relation to the taking of depositions to perpetuate evidence.

Attest,

CHARLES CALHOUN, *Clerk*.

Commonwealth of Massachusetts.

In SENATE, March 26, 1839.

The Committee on the Judiciary who were instructed, by the foregoing order, to consider the expediency of making any alterations of the law in relation to the taking of depositions to perpetuate evidence, have considered the same, and report the accompanying bill.

GEO. MOREY,

For the Committee.

Commonwealth of Massachusetts.

In the Year One Thousand Eight Hundred and Thirty-Nine.

AN ACT

Concerning the taking of Depositions to Perpetuate Testimony.

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

1 SEC. 1. When any person shall be desirous to per-
2 petuate the testimony of any witness, he shall make
3 a statement or petition in writing, in the manner pro-
4 vided in the thirty-fourth section of the ninety-fourth
5 chapter of the Revised Statutes, and shall deliver the
6 same to two justices of the peace, one of whom shall
7 be either a justice of the court of common pleas, a
8 judge or register of probate, or a master in chancery,
9 requesting them to take the deposition of said witness.

1 SEC. 2. If, at the time and place appointed for
2 taking such deposition, the said witness or any per-
3 son interested therein, shall appear and object, the
4 said justices shall not proceed to take the same, un-
5 less, on hearing the parties, it shall be made satisfac-
6 torily to appear, that such testimony may be material
7 to the petitioner, and is not sought for the purpose of
8 discovery, or of using the same in any suit then pend-
9 ing, or thereafter to be brought against said witness,
10 and that the petitioner is in danger of losing the same
11 before it can be taken in any suit, wherein his right,
12 title, interest, or claim can be tried; and in all cases
13 the petitioner, his agent, or attorney, shall, at the re-
14 quest of such witness, or any person interested in said
15 deposition, be examined on oath.

1 SEC. 3. Whenever, in the opinion of said justices,
2 there is no sufficient provision already made by law
3 for giving notice to parties, adversely interested, to ap-
4 pear at the taking of such testimony, said justices
5 shall cause such reasonable notice to be given, as to
6 them shall seem proper.

1 SEC. 4. All acts and parts of acts, inconsistent
2 with the provisions hereof, are hereby repealed.