

SENATE....No. 137.

Commonwealth of Massachusetts.

IN SENATE, February 21, 1854.

ORDERED, That ———, with such as the House may join, be a Committee to consider what amendment is necessary in the laws concerning the taxation of the inhabitants of the several towns and cities in the Commonwealth, with power to send for persons and papers, and that they Report by Bill or otherwise.

Adopted. Committee on part of the Senate, Messrs. Aspinwall, of Norfolk, and Alvord, of Franklin.

Sent down for concurrence.

CHAS. CALHOUN, *Clerk.*

HOUSE OF REPRESENTATIVES, Feb. 22, 1854.

Concurred, and Messrs. Crafts, of Roxbury; Gorham, of Barre; Dwight, of Stockbridge; Whitney, of Cambridge, and Baker, of Marshfield, are joined on the part of the House.

WILLIAM STOWE, *Clerk.*

Commonwealth of Massachusetts.

In SENATE, April 18, 1854.

The Joint Special Committee, to whom were instructed, by an Order of the Senate, dated Feb. 21, to inquire what amendment is necessary, in the laws concerning the taxation of the inhabitants of the several towns and cities in the Commonwealth, with power to send for persons and papers, respectfully submit the following

REPORT:

The principal matter which engaged the attention of the committee, was the act passed in 1852, being chapter 301, of the statutes of that year, entitled, "An act to change the time of assessing taxes in the city of Boston," and which is in the following words:—

"Any person who shall have his residence in the city of Boston, on the first day of January, shall, on the first day of May following, be taxed in that city, notwithstanding he may have removed therefrom before the first day of May; and no person so taxed, shall be liable to assessment for his personal property in any other city or town, on the first of May, in the same year."

This act was passed for the purpose of enabling the city of Boston to tax those persons who, as it was alleged, left the city temporarily, a few days before the first of May, with the view of avoiding taxation. It was passed at the end of the session, without any inquiry as to the extent of the evil it was

framed to remedy, and, upon the exaggerated statements, in debate, made by gentlemen not assuming to be themselves cognizant of any considerable number of cases, such as they deemed to need the interposition of the legislature.

The first feature of the law which attracted the notice of the committee, was the apparent impossibility of fully putting it in force; for how, they were led to ask, was it possible for the assessors of a country town to know, upon the first of May, that upon that same first of May, a certain individual, whom they found at that time residing in their town, had been taxed by the city of Boston, as having been a resident of that city, on the first of January previous. It seemed to the committee clear, that the assessors could by no possibility have legal knowledge of this fact, and that consequently, they must either tax the individual, at the risk of a suit's being brought against the town, to recover back the tax, or else neglect to tax him, and thus, perhaps, enable him to avoid taxation, both in that town, and in the city of Boston; in the former place, because the assessors were afraid to tax him, and in the latter, because his residence in Boston, on the first of January, had escaped the knowledge of the assessors of that city.

Upon a further examination of this law, the committee were struck by the fact, that, while it was far from clear that this law was so framed as to attain the end it aimed at, since it seemed to them as easy to evade taxation in Boston, under this law, as under the law as it existed previously, it was manifest that, carried into full operation, it must work serious practical injustice to all towns, other than the city of Boston. A few supposed cases will show the manner in which the law must operate, and the unjust discrimination which it institutes against all country towns, and in favor of the city of Boston.

A leaves Boston on the first of February, and becomes a *bonâ fide* inhabitant of Chelsea. The assessors of Boston, under this law, tax him on the first of May following, and oblige him to bear a part of the burden of the city expenses for the ensuing year, notwithstanding he has for three months ceased to be an inhabitant of Boston, and to enjoy any of the privileges attaching to that character; and the town of Chelsea is not allowed to tax him, although, for three months, he has re-

sided in the town, and enjoyed all the privileges of an inhabitant, and will continue to enjoy them for twelve months longer, before Chelsea can call upon him to contribute any thing towards the public expenses of the town.

Again, A leaves Brookline, on the first day of February, and becomes, *bonâ fide*, an inhabitant of Boston ; B, on the same day, leaves Boston, and becomes, *bonâ fide*, an inhabitant of Brookline ; on the first of May following, Boston, under this law, taxes both A and B, and Brookline is forbidden to tax either.

Such are some of the inequalities produced by this law. But the committee, not satisfied with an examination into the theoretical injustice of this enactment, availed themselves of the power to send for persons and papers, with the purpose of ascertaining what had been its practical operation.

In answer to their summons, the treasurer of the principal assessor of the city of Boston, appeared before them, and produced a list of forty-two persons taxed as residents in Boston, in January 1, 1853, but, having removed thence before the first of May following. A few of these, it turned out, were, and always had considered themselves inhabitants of Boston, and had paid their taxes in that city, in 1853, as they had paid them in all previous years. But nearly all were persons living in the country the greater part of the year, but passing the winter in Boston, either in their own houses, or at boarding houses. Of this number, some twelve or fifteen appeared before the committee, in answer to their summons, and testified. From their evidence, it appeared, that they were all, with one exception, *bonâ fide* inhabitants of country towns, some of them town officers, one having represented his town in the late constitutional convention, and one or two having been candidates in their towns, for the office of representative. It further appeared that the amount taxed by the city of Boston on persons claiming to be inhabitants of other towns, but residing in Boston on the first of January, 1853, was \$25,172.70 ; of this sum, \$23,040.20 had been paid under protest, and the payment of the balance had been refused. It appeared that several parties had brought suits to recover back the sums alleged by them to have been unconstitutionally taxed under this law. It appeared that all the persons who had

been thus taxed by the city of Boston, had been also taxed in the towns of which they claimed to be inhabitants, and had paid the taxes so assessed under protest.

From the facts, as they appeared before the committee, it seems to them highly inexpedient that a law so difficult and uncertain of execution, so necessarily working injustice both to towns and to individuals, and actually producing such confusion in the assessment and collection of taxes, should stand upon the statute book. As the Supreme Judicial Court have repeatedly decided that the mere leaving Boston a few days before the first of May, unless followed by an actual change of residence and the adoption of a domicile elsewhere, does not change the inhabitancy of the person so leaving, and thus exempt him from taxation in the city of Boston, it seems to the committee that the only true and effectual remedy for the evil which gave rise to this law, lay in the proper and vigorous discharge of their duty, by the assessors of the city of Boston, under the provisions of the laws as they existed previous to 1852.

With these views, the committee unanimously agreed to report the accompanying Bill to repeal the Act of 1852.

Commonwealth of Massachusetts.

In the Year One Thousand Eight Hundred and Fifty-
Four.

AN ACT

To Repeal an Act entitled "An Act to change the time
of Assessing Taxes in the City of Boston."

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

1 SECT. 1. The act approved by the governor, on
2 the twentieth day of May, in the year one thousand
3 eight hundred and fifty-two, entitled "An Act to
4 change the time of assessing taxes in the city of Bos-
5 ton," is hereby repealed.

1 SECT. 2. This act shall take effect from and after
2 its passage.