

SENATE.....

.....No. 7.

REPORT OF COMMISSIONERS

ON THE

REVISION OF THE STATUTES.

*To His Excellency JOHN DAVIS, Governor of the
Commonwealth of Massachusetts.*

THE Commissioners appointed in pursuance of a Resolve of the Legislature, “to revise, collate and arrange, as well the Colonial and Provincial Statutes as all other the General Statutes of the Commonwealth which are or may be in force at the time such Commissioners may finally report their doings in the premises;” “to collate and arrange the same under appropriate chapters, titles and sections, and in all respects to execute and complete said revision in such manner as, in their opinion, will render the said General Laws most concise, plain and intelligible;”—to suggest such contradictions, omissions or imperfections as may appear in the laws so revised, and the mode in which the same may be reconciled, supplied or amended,” and “to report, from time to time, to the General Court, their progress and doings under their said commission,” do now, in execution of their said commission, so far as they have been able to complete the same, respectfully submit the following

REPORT:

The Commissioners beg leave, in the first place, to exhibit an outline of the plan of their whole work, including a general view of the part which is not yet completed, as well as of those which are now reported; together with some of the reasons which have governed them in relation to the subject.

Upon mature consideration of this important subject at the time of the appointment of the Commissioners, they were of opinion that it was highly desirable in a national point of view, that this Commonwealth should co-operate in gradually effecting, so far as should be practicable, a general conformity among the codes of the several States of the Union. With this view of the subject, they naturally directed their attention to the elaborate and valuable code lately adopted by the State of New York,—whose jurists have long held a distinguished rank throughout the country,—and the decisions of whose courts have had a corresponding weight of authority.

After an examination of that code, it was thought to be, in many respects, sufficiently well adapted to the purposes of a systematic digest of the statute law of our Commonwealth; and its general plan has accordingly been kept in view in the present revision. For the purposes of citation and reference, however, the divisions of that code were not deemed so convenient, under the different and long established practice and usage of this Commonwealth, as would be desirable in a work of this kind; and a different method, in regard to this point,

was adopted,—for the reasons which are particularly stated in the “Advertisement” prefixed to *Part Second* of the present Report; to which the Commissioners beg leave to refer.

The objects of methodical divisions in a code of law, as the Commissioners have observed in the Advertisement just referred to, are, in the first place, an orderly and convenient arrangement of the matter, for the purpose of communicating a knowledge of the laws in the most intelligible and effectual manner to the whole body of citizens, who are to be governed by them; and, secondly, to provide an easy and certain mode of citation; which last consideration, though apparently of little moment, yet, in a work of constant reference, like the laws, is, in practice, of incalculable importance.

The Commissioners, with a view to the first of the two objects here mentioned, have distributed the whole body of the statutes under four principal divisions or *Parts*; each of which parts is subdivided into *Titles*, each title into *Chapters*, and each chapter into *Sections*. The subjects of each part and title are as follows:

PART I. Of the internal administration of the Government; containing thirteen *titles*, as follows:

1. Of the jurisdiction of the Commonwealth; and the statutes and legislative proceedings.
2. Of elections, other than of militia, town and parish officers.
3. Of the assessment and collection of State taxes; and of the funds, revenue, expenditures and property of the Commonwealth; and the administration thereof.

4. Of the militia.
5. Of counties and county officers.
6. Of towns and town officers.
7. Of parishes ; and the support of public worship.
8. Of the public health.
9. Of public instruction.
10. Of highways, bridges and ferries ; and of town ways.
11. Of the regulation of trade in certain cases.
12. Of corporations ; and proprietors of common lands.
13. Of the internal police of the Commonwealth.

These thirteen titles are subdivided into fifty-eight chapters, numbered in order from 1 to 58.

PART II. Concerning the acquisition, the enjoyment and the transmission of property, real and personal : the domestic relations, and other matters connected with private rights ; containing seven titles, as follows :

1. Of real property and the alienation thereof.
2. Of title to real property by descent.
3. Of title to real property by devise.
4. Of wills, intestacies, executors and administrators.
5. Of title to real property by special provisions of law.
6. Of preventing frauds and perjuries in contracts ; and in actions founded thereon.
7. Of the domestic relations.

These seven titles are subdivided into twenty-two chapters, numbered in order from 59 to 80.

PART III. Concerning courts and judicial officers, and proceedings in *civil* cases: containing six titles, as follows:

1. Of courts and judicial officers.
2. Of actions, in general.
3. Of actions relating to real property.
4. Of proceedings in special cases.
5. Of the limitation of actions.
6. Of costs and the fees of officers.

These six titles are subdivided into forty-two chapters, numbered in order from 81 to 122.

PART IV. Concerning crimes and punishments, and proceedings in *criminal* cases: containing three titles, as follows:

1. Of crimes and the punishment thereof.
2. Of proceedings in criminal cases.
3. Of imprisonment for offences; and the government and discipline of prisons.

These three titles are subdivided into twenty-three chapters, numbered from 123 to 145; which complete the whole code.

The contents of the several chapters will be found in detail, prefixed to the respective *parts* accompanying this Report,—and to which the Commissioners ask leave to refer.

After exhibiting this general view of the present revision of the laws, the Commissioners deem it unnecessary to go into any details, in this place, respecting the amendments and changes proposed in any of the existing laws, or respecting the grounds of those amendments and changes. In order to present their views on these points the more perspicuously and precisely, and to facilitate the examination of the details of the code, they have believed that the most eligible course would be to embody their remarks on each branch of the subject in the form of *Notes*, and to subjoin them to each *chapter*; where they will accordingly be found.

It may, perhaps, be a subject of observation with the Legislature, that the Commissioners have not attempted to embody in the present revision the principles of the common law, any further than has heretofore been gradually done at different periods of our legislation. This has not been the result of inattention or accident; but the Commissioners, on consideration, came to the conclusion that the questionable utility of putting into the form of a positive and unbending text, numerous principles of the common law, which are definitely settled and well known, was not sufficient to outweigh the advantages of leaving them to be applied, by the Courts, as principles of common law, whenever the occurrence of cases should require it.

It has been remarked by distinguished American jurists, that the common law is peculiarly well fitted to the rapidly advancing state of our country, because it possesses in an eminent degree the capacity of adapting itself to the gradual progress of improvement among us; and that this accommodating principle, which pervades it, will adjust itself to every degree and species of im-

provement that may be suggested by practice, commerce, observation, study, or refinement.

From these general considerations, which it is unnecessary to follow out in detail, it has been thought expedient to leave those important principles as they at present exist, rather than to attempt to incorporate them into the inflexible text of a written code.

The Commissioners have only to add, that in consequence of the lamented death of Professor Ashmun, to whom *Part First* of the Revision was originally assigned, they are unable to present that portion of the work at this time; but they expect to submit it during the approaching session of the Legislature.

With these observations the Commissioners respectfully submit to your Excellency the result of their labors, so far as they have been completed, being Parts Second, Third and Fourth abovementioned; and they have the honor to be

With great respect,

Your Excellency's

Most obedient servants,

CHARLES JACKSON,
A. STEARNS,
JNO. PICKERING.

Boston, Dec. 31, 1834.