

HOUSE....

.....No. 45.

REPORT AND BILL

TO EXEMPT

Certain Articles from Attachment.

Commonwealth of Massachusetts.

HOUSE OF REPRESENTATIVES, March, 1839.

Reported by a Select Committee consisting of

Messrs. CUSHMAN, *of Bernardston,*
STEVENS *of Andover,*
HATHAWAY *of Freetown.*

Commonwealth of Massachusetts.

HOUSE OF REPRESENTATIVES, March 12th, 1839.

The Select Committee, to whom was recommitted the petition of E. Chamberlin and others, asking for an alteration of the law relating to property exempt from attachment, have had that subject under consideration, and ask leave respectfully to submit the following

R E P O R T.

Humanity has ever been a leading trait in the laws of this Commonwealth. To relieve the unfortunate debtor,—to provide for the necessities of himself and family, and thus to take from the hands of an oftentimes oppressive creditor, the power to inflict great injustice and misery, has ever been considered an object worthy the attention of a humane and christian Legislature. Hence we find a gradual and progressive amelioration of our laws, from the days of our puritan fathers, when the sanguinary code for punishing witchcraft was enforced, down to this time, when capital punishment and imprisonment for debt are confined within small limits,—ere long to be nearly if not entirely abolished. The power of man to imprison

his fellow man for no other crime but poverty, or to take on execution the absolute necessities of a poor man's family, is now, thanks to a wise and good government, nearly at an end.

As civilization and refinement advance in our land; as the rights of individual man in our government are more fully understood and acknowledged; as the pure spirit of republicanism and christianity shall more extensively prevail, so shall our laws, [a sure index of a nation's progress, become more equal, rational, and humane.

It is no less curious to the philosopher and the philanthropist, than it is instructive to the statesman who has the greatest good of his country and mankind at heart, to mark the successive stages by which our statutes have become more mild and reasonable,—more consonant to the higher and better views of human nature, which are now prevailing among us,—and more regardful of the rights and the happiness of him who is so unfortunate as to be a debtor.

On an examination of the statutes, which have, from time to time, exempted certain articles of property from attachment, deemed to be essentially necessary for the sustenance of a family, we find conclusive evidence, that the rights of humanity are more and more respected, and the power of the creditor over the comfort and liberty of the debtor and his family, much diminished.

By the statute of 1787, the first law on the subject, after the adoption of our present Constitution, we find that “wearing apparel—household furniture necessary for his family, and tools for his trade,” of a poor debtor were exempt from attachment.

By the statute of 1805 and in the succeeding years, in

addition to the foregoing, “household utensils necessary for himself, his wife and children, not exceeding \$50 in value;—bibles and school books, that may be in actual use, together with one cow and one swine,” were not attachable.

By the statute of 1809, “the uniform of officers and arms and accoutrements required by law”;—by the statute of 1813, “six sheep, not exceeding in value \$30, and two tons of hay” for the sheep and cow;—by the statute of 1817, “all stoves used expressly for warming buildings”;—by the statute of 1822, “tombs and rights of burial”;—and by the statute of 1832, “fuel of the value of \$10, designed for the use of the family,” were all exempted from attachment.

While thus increasing the quantity and amount of property not attachable, and placing the unfortunate debtor (for unfortunate indeed is that honest man who owes debts he cannot pay) in some degree independent of the creditor, no injustice is done to the latter,—for no man is *obliged*, at any time, to give a credit; and a state of society where credit shall be neither given nor received, will be relieved of many of the evils we now suffer. But, while the credit system continues, as it probably ever will, it is the duty of a wise and provident government to avoid and alleviate as many of the evils incident to it as possible.

The petition which is referred to your Committee, asks “that a law may be enacted which will protect from attachment a small quantity of meat and other provisions necessary for the every day’s use of a poor man’s family.”

On examining the statutes, your Committee are not able to find that any amount or quantity of provisions,

either meat, grain, or vegetables, is free from attachment. It is true "one swine" is not attachable; but the impression has extensively prevailed that the same swine when fattened, killed, and in the barrel, could be taken on execution. At any rate whatever may have been the decision of the supreme court on the subject, no statute provision now exists to prevent such pork from attachment.

This must have been an inadvertance when the laws were revised; because we find that a cow to furnish milk, six sheep to furnish clothing, arms for defence in time of war, and a tomb, where the poor as well as the rich, when the journey of life is ended,

"May safely rest and sweetly sleep,"

are exempt from attachment by the Revised Statutes.

It certainly could not be the design of the Legislature, while exempting so many other things from attachment, that the *meat, bread stuff or vegetables absolutely necessary for the sustenance of a poor debtor's family*, should be liable to be taken on a writ or execution. He who has seemingly a particle of humanity remaining, would not so distress the poor, the unfortunate and the innocent. But your Committee regret to state that they have heard of instances when this has been done. And what has been, may be again.

In accordance, therefore, with the long settled and firmly established policy of the laws of this Commonwealth; in obedience to an enlarged, philosophical and rational view of human nature, and human rights,—and the principles of Christianity, which should ever be the guide of the statesman as well as the citizen; and believing it to be the benevolent design of the law to protect from attachment the absolute necessities of life, of persons of small estate, including provisions as well as other things,

your Committee, therefore, unanimously recommend the passage of the accompanying bill.

Most respectfully submitted,

By order of the Committee,

HENRY W. CUSHMAN, *Chairman.*

Commonwealth of Massachusetts.

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

AN ACT

To Exempt certain articles from Attachment.

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

- 1 That provisions necessary and intended for the use
- 2 of a family, not exceeding in value the sum of fifty
- 3 dollars, shall be exempt from attachment.