HOUSE....No. 58.

Commonwealth of Massachusetts.

HOUSE OF REPRESENTATIVES, Feb. 27, 1843.

The Committee on the Judiciary, to whom was referred the Petition of John Hancock for a repeal or modification of the act concerning Sales by Guardians and others, passed in the year 1840, respectfully submit the following

REPORT:

The petitioner sets forth that, at the time the above-mentioned act was passed, he had six several actions pending in the Supreme Court against as many defendants, for the recovery of sundry parcels of real estate in Boston; that, instead of meeting the issue presented before the proper tribunal, the defendants covertly sought to deprive him of his existing legal rights, by an *ex-parte* legislative adjudication, so framed, as by the very title of the act, to conceal its special object; and the prayer of the petitioner is, that the retrospective provisions of the act may be so far repealed, that he may be enabled to proceed in the prosecution of his suits.

The allegations contained in this petition were regarded by the Committee as so serious and important, that the subject has received their most careful attention. Repeated hearings of the parties have been had, and the whole subject has been discussed, with learning and ability, by the counsel of the several par-

ties in interest. The conclusion at which the Committee have arrived, renders it unnecessary to report the various facts, which were proved, to the House.

It became necessary for the Committee, at the commencement of their investigation, to establish some principle in regard to the extent of their inquiries, and they accordingly determined, that they would not go into the merits of the several cases, which were pending at the time the law complained of was enacted—that they would not undertake to decide, whether the petitioner had legal or equitable claims upon the property which he was endeavoring to recover in his actions, or not. The Constitution expressly forbids the Legislature to exercise judicial power, and few persons can be found to deny that this is a wise and salutary prohibition. When actions are pending before a properly constituted judicial tribunal, it is the right of the party to have them determined by the court and jury, and if the Legislature were permitted to interpose, it would lead to the most disastrous consequences. The Constitution further declares that it is the right of every citizen to be tried "by standing laws." It was for these reasons, that the Committee refused to make any investigation into the merits or demerits of the actions then pending in court. If they were without one particle of equity, the Constitution expressly forbade the Legislature to exercise the "judicial power" of determining that question.

Having come to this determination, the petitioner was called upon to prove that the law had been passed for the purpose of affecting his cases, as he alleged in his petition. For this purpose he produced one witness and some documentary evidence. The Committee are constrained to say that the evidence produced failed to satisfy their minds of the truth of this allegation. Whatever may have been their suspicions, they felt bound to require such proof as would, if reported, satisfy the House; and, failing to find such evidence, they are compelled to report that this allegation in the petition is not satisfactorily proved. It cannot be doubted, if the fact were so, that it could be proved by a great number of witnesses; and as the burthen of proof was upon the petitioner, he can have no reason to

complain of the opinion at which the Committee have arrived, when it arises from his own neglect to furnish evidence, which was as important as it was accessible.

In ordinary cases, it would be sufficient for the Committee to rest here, and, having announced this fact, to report that the petitioner should have leave to withdraw. But, as the principle involved in this case is of great importance in legislation, and this subject has been twice presented to the Legislature, and been much discussed, the Committee consider themselves not only authorized, but bound, to express an opinion upon the subject of such legislation, by way of protest, at least.

The law of 1840, complained of by the petitioner, with whatever purpose it was framed, certainly did affect existing and vested rights; it drove parties out of court, and subjected them to costs, where actions had been rightfully commenced, according to "standing laws." There was no saving clause in the act. The omission might have been accidental, and, in the absence of any evidence, it is to be presumed. But, whether accidental or designed, it was wrong. No statute should be enacted, impairing or affecting existing rights. In other words, no law should be passed, that would have a retrospective operation, except in cases, where, from the nature of the subject, it cannot be avoided. The authors of the Revised Statutes have presented us with an admirable example, and a perfect form of enactment, for all future legislation, and it is to be regretted that it was departed from, in the case in question. The 5th section of the 146th chapter is as follows, viz:

"The repeal of the acts, herein before mentioned, shall not affect any act done, *or any right accruing or accrued or established, or any suit or proceeding, had or commenced in any civil case, before the time when such repeal shall take effect*, but the proceedings in every such case shall be conformed, when necessary, to the provisions of the Revised Statutes."

The law was passed, however, without any such proviso. The wrong, if any was committed, has been done. And for the Legislature now, after the lapse of more than two years, to add such a clause to the act, would be to do the very act of

which the petitioner complains. It is probable that rights have been acquired and have become vested under that act; and the enactment of such saving clause, thereby affecting such rights, at this time, would be but adding one wrong to another. If the fact had been proved, that the statute was passed or procured to be passed, for the purpose of cutting off the suits then pending, the Committee would have had no hesitation in reporting a bill, that would have restored the petitioner to his rights, because that would have been a fraud, both upon him and upon the Legislature; but, as he has failed in establishing that essential fact, the Committee recommend that the petitioner have leave to withdraw his petition.

Per order of the Committee,

H. G. O. COLBY, *Chairman.*