

HOUSE...No. 49.

Commonwealth of Massachusetts.

HOUSE OF REPRESENTATIVES, Feb. 9, 1841.

Ordered, That the Committee on the Judiciary consider the expediency of requiring by law, "that all prosecutions for the illegal sale of ardent spirits, or for the undue indulgence in the use of them, should be prosecuted in the name of the Commonwealth, only on the complaint and at the option of the selectmen of the town in which the accused resided; and that the costs, when not paid by the accused party, should be charged to the town," agreeably to the suggestion of the Attorney General, in his annual report.

L. S. CUSHING, *Clerk.*

Commonwealth of Massachusetts.

HOUSE OF REPRESENTATIVES, Feb. 20, 1841.

The Committee on the Judiciary, who were directed by an order of the House of Feb. 9, to consider the expediency of providing by law, that all prosecutions for the illegal sale of ardent spirits, or for undue indulgence in the use of them, should be prosecuted in the name of the Commonwealth, only on the complaint and at the option of the selectmen of the town in which the accused resided, and that the costs, when not paid by the accused party, should be charged to the town, agreeably to the suggestion of the Attorney General, in his annual report, beg leave to

REPORT :

That in regard to the first part of the order of inquiry, to wit, confining prosecutions for the illegal sale of ardent spirits, to the selectmen of towns, they are of opinion that such a provision would be inexpedient. It is feared that its tendency and effect would be, to bring up this exciting question at every municipal election. It is known that there is a division of opinion in the community on this question, and the Committee believe that the constant agitation of it, in every town, at every annual election of town officers, would produce more evil than good.

The same objections do not apply, with the same force, to prosecutions for undue indulgence in the use of ardent spirits, and the Committee therefore report a bill, in conformity with

the suggestion of the Attorney General. They do not think it expedient, however, to provide that the costs of these complaints should be charged to the towns, within which the accused reside.

They also report a section which authorizes justices of the peace and police courts to impose conditional sentences. It is important that they should possess this power, which is given by the 2d section of the 139th chapter of the Revised Statutes, to all other courts. When a fine is imposed for a trifling offence, if the respondent is unable to pay it, he is imprisoned for three months—and it often happens, therefore, that the punishment is suffered in consequence of his poverty merely, and is altogether disproportioned to the offence.

By order of the Committee.

H. G. O. COLBY.

Commonwealth of Massachusetts.

In the year One Thousand Eight Hundred and Forty-one.

AN ACT

Concerning Criminal Prosecutions.

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. No complaint or prosecution shall be sus-
2 tained by or before any justice of the peace or court
3 of this Commonwealth, against any person, for the
4 offence of drunkenness or for being a common drunk-
5 ard, unless the same shall be made or instituted by
6 one of the selectmen or overseers of the poor of the
7 city or town, within which the offence shall have been
8 committed, or their consent in writing had and ob-
9 tained, before the making of such complaint; pro-
10 vided, nevertheless, that the provisions of this section
11 shall not apply to any complaints or prosecutions for
12 the said offences within the city of Boston.

1 SEC. 2. When any person shall be convicted of
2 any offence before any justice of the peace or police
3 court, punishable at their discretion, either by fine or
4 imprisonment, such justice or court may award against
5 such offender a conditional sentence, and order him to
6 pay a fine with or without costs of prosecution within
7 a limited time, to be expressed in the sentence, and in
8 default thereof, to suffer such imprisonment as is pro-
9 vided by law, and awarded by the court.