HOUSE....No. 70.

Commonwealth of Massachusetts.

House of Representatives, Feb. 27, 1852.

The Committee on Banks and Banking, to which was referred the petition of the president and directors of the Taunton bank for an increase of the capital of said bank, and of Nahum Ward and others to be incorporated for banking purposes, have considered the same and

REPORT:

The Legislature, at its last session, passed an act to authorize the business of banking, known as the general or free banking law, by which any persons not less than fifty in number, and their successors may become a body corporate, for the purpose of carrying on the business of banking on the terms and conditions prescribed therein.

The essential difference between the banks organized under this law and those which have heretofore been established by special acts of the Legislature is, that instead of being authorized to print and issue at pleasure bills for circulation to the extent of 125 per centum of their capital, the banks organized under the general law are obliged to give security for their circulation, by depositing with the Commonwealth an equal amount "at a

rate not above its par value, nor above its current market value, of any of the public stocks issued or to be issued by any city or town in this Commonwealth, or by either of the states of Massachusetts, Maine, New Hampshire, Vermont, Connecticut, Rhode Island or New York, or by the United States, provided always that the stocks above specified shall be, or shall be made to be, equal" in value "to a stock of this State producing six per cent. per annum," and the bills to be circulated are to be received from the auditor of accounts, whose duty it is to cause them to be engraved and printed of such denominations and in such quantities as may be necessary, to be countersigned and registered by him, and stamped on their face, "secured by the pledge of public stocks."

It appears to your Committee, very improbable that any persons, if they can have a special act of incorporation for a bank under the old or usual form, authorising them to print and issue bills as they may find convenient, limited only to 125 per cent. of their capital, would avail of this new law with its restrictions in printing and issuing bills for circulation, and pledging stocks as security for them, and therefore that either the new law should be repealed, or no new charters of banks or increase of capital of existing banks should be granted.

The principle of the general or free banking law although new in this Commonwealth, is not an untried experiment. It has been successfully carried out for some years in the state of New York. Some defects were found from experience to exist in the original law in that state, which have been remedied by additional legislation, and though it is not to be supposed that it is now perfect, its operation is generally satisfactory, and the chartered banks as fast as their charters expire, organize under the new law instead of applying to their legislature for new charters.

In framing the act which was passed at the last session of the Legislature, the defects which experience had shown to exist in the laws of that state were carefully considered, and such improvements introduced as had been found beneficial. If additional defects in the details should hereafter be found to exist in the law, they can doubtless be remedied by legislative action whenever experience of its practical operation renders them apparent.

This law makes no change in the present basis of the currency. It requires only, that a portion of the assets of a bank formed under its provisions, shall consist of an amount of public stocks, equal to the amount of its circulation, to be held by the Commonwealth in trust for the redemption of its bills, whenever from any cause the bank fails to redeem them in specie on presentation, as all banks are now required to redeem their bills.

The only difference it could make to any prudent and safe bank, whether acting under a special charter or organized under this law, would be in regard to the income from the investment in stocks lodged with the Commonwealth, which may not yield six per cent. per annum, but if the value of the stock is such that it yields less than the legal rate of interest, it is because of its increased security or convertibility over the usual business notes discounted at six per cent., that compose the residue of the invested assets or loan of the bank. It is in times of bank panics, and when a bank fails, that the advantages of this general law will be particularly appreciated, and the benefit realized from the State holding stocks in trust for the redemption of the bills in circulation, whilst all its other property would in addition be as much liable for their redemption as it would be of an incorporated bank. It is presumed when a bank fails that its funds have been indiscreetly if not dishonestly loaned or invested. If an incorporated bank, its creditors who hold its bills must wait until the means can be collected from its debtors to pay them, which is usually a long process and of uncertain result, and the probability is that many of the holders of the bills, particularly those least able to bear the loss, unable or afraid to wait the result, would dispose of them to speculators on the best terms they could, long before the bank would be ready to redeem them. Judging from past experience, a loss of fifty per cent. to most of the holders of the bills at the time would be a favorable result, under the usual circumstances of the failure of a bank, though the bills may be ultimately paid in full. If the failure was of a bank, organized under the general law, the holders of its bills would be secured against loss: knowing that the State held stocks in trust for their full amount, equal in value to six per cent. stock of the State of Massachusetts for the redemption of the bills, they would feel that some delay of payment was the only conse-

quence, and would hold the bills, or could dispose of them at a trifling discount. It is true this would be rendering the bill holders preferred creditors, no special provision being made for depositors and other creditors of the bank, but as these latter became voluntary creditors, and not by legislative action which rendered the bills a currency to circulate as money, they would have no just cause of complaint.

The Committee believe that the general law would operate favorably, in tending to keep the amount of paper circulation more uniform; that the banks organized under it would not be tempted to avail of every opportunity to push their circulation to its utmost extent; being required to obtain the bills from the Commonwealth and to deposit security for them, they would take as nearly as possible, such an amount as their business would warrant them reasonably to expect to keep uniformly in circulation. There is no doubt that the amount available for the accommodation by discounts or loans to the customers of such banks, as compared with chartered banks, would be diminished to the extent of the funds invested in stocks pledged for the circulation, and it is therefore natural that those who share largely in the discounts of banks should be loud and strong in denouncing this law; but how few are the numbers of those who directly participate in the accommodation of banks, compared with the whole people who have a deep interest in the security of the circulation. The experience of past years should not be forgotten. It should be remembered that if our banking institutions are now in a sound and prosperous condition, they have not always been so. The present system of specially chartered banks is the same that existed in 1838. There are few more efficient restrictions or safeguards established by law than there were then, when the losses of the community by bank failures were so widely diffused, and the necessity of some practical remedy against the future recurrence of them was so deeply felt and realized. Is it not because the evil was so deeply felt and realized at that time, that our banks are now in so prosperous and sound condition? The laws remain essentially the same; the system of banking is unchanged; what security is there that past experience will not be forgotten; that the same condition of things will not return, if we do not make such changes in our banking laws as will secure the public

against the recurrence of such evils? It is believed that the general or free banking law does offer such security to the public in regard to the currency, if the duty of the Commonwealth as the trustee of the stock pledged for the security of the circulation is honestly and rigidly enforced. It is not probable that new banks would be immediately organized under it, for a majority of the committee are of the opinion that very little if any more bank capital is needed at present, and have no doubt that when it is needed banks will be established under this law as they have been in other states. The amount of bank capital was largely increased at the last session of the Legislature, and all the bank charters have now nearly twenty years to run; the general banking law does not in any way affect them, except so far as banks organized under it may come in competition with them for a share in the banking business of the State. The committee believe that no time could be more favorable than the present for adopting the law as the settled policy of the Commonwealth, so far as one Legislature can do so; it makes no changes in the established system, nor does it introduce any new principles that militate against it; but the committee believe that banks will be organized under it, as the wants of the community may demand more banking capital, when it is once understood to be the settled policy of the State. If its operation is found to be beneficial, its restrictions and provisions can be gradually applied to the chartered banks, so that by the time their present charters expire, if not long before, there will be but one system of banks and of banking organized in the Commonwealth.

The general principles of the free banking law originated and were first established in the great state of New York. It has since been adopted in many of the other states of the Union; and it may with great propriety be considered as *the American system of banking and currency*. A majority of the committee are of the opinion that it will commend itself more and more to the public as its provisions and restrictions and its practical operation becomes better known. It has been so in other states where it has been adopted. Its opponents during the last session of the Legislature must be now well satisfied that their principal argument against it—viz., that it rendered the business of banking too common—was not well founded.

The committee have thus far considered the relation of the banks to the public in the performance of their duty to furnish a currency for the people. With regard to their duty as furnishing banking facilities for the convenience of business, the committee wish to be understood, that they do not consider the increase of banking capital or of the number of well managed banks as an evil: on the contrary, they consider as beneficial any *permanent* addition to the banking funds of the Commonwealth, believing that those funds are generally used to facilitate the business operations of the community, which are developing the resources of the State and contributing to the welfare and prosperity of all classes of our citizens,—the mechanic and the farmer as well as the trader—furnishing to the industrious and the prudent the means of obtaining not only the conveniences and comforts of life, but the simple luxuries and refinements which adorn the homes throughout the Commonwealth to an extent that is known in no other land.

The committee believe a generous and liberal policy towards the banks, at the same time that they are held to a strict compliance with the provisions of law, is of great benefit, by the inducement and encouragement which it offers to foreign capital to seek investment in this Commonwealth. No inconsiderable amount of stock of the banks in this State is now owned out of the State, and large amounts of the stock of banks that have been established under the free banking law in New York are owned by our citizens.

Believing that the currency is sufficiently protected under the general banking law, and that capital may be safely left to take care of itself without special legislative aid; that the vital principle of the law is restrictive only so far as may be necessary to render the currency secure; and free and general, so far as it refers to the employment of capital and banking, the committee recommend that the law passed at the last session of the General Court should be sanctioned by this Legislature as the settled policy of the Commonwealth, and that the various petitioners for increase of banking capital by special acts have leave to withdraw; and therefore *they report on the petition of the president and directors of the Taunton bank for an increase of its capital stock, and on the petition of Nahum Ward and others to*

be incorporated for banking purposes, that *the petitioners have leave to withdraw.*

MOSES WOOD,
JNO. B. ALLEY,
ELBRIDGE G. MORTON,
MOSES DAVENPORT,
G. W. COWDREY,
S. HOOPER.