

# HOUSE...No. 161.

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## Commonwealth of Massachusetts.

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HOUSE OF REPRESENTATIVES, April 12, 1854.

The Committee on the Judiciary, to whom was referred the Order to consider the expediency of submitting inquiries to Supreme Court, in relation to the constitutionality of the Liquor Law of 1852, have considered the same, and Report that it is inexpedient to submit any inquiries in relation to said law.

For the Committee,

BENJ. POOLE.

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HOUSE OF REPRESENTATIVES, April 13, 1854.

(Mr. DENTON, of Boston, moves to strike out all after the word "Report," and insert the following:—)

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"And recommend the adoption of the following Order, and the submission of the accompanying interrogatories to the Justices of the Supreme Judicial Court."

ORDERED, That the Honorable Speaker of this House, submit the annexed inquiries to the Honorable Justices of the Supreme Judicial Court, and request their opinion thereon, as soon as convenient, for the information of this House viz.:

1st. Have the Legislature of this Commonwealth constitutional power to make the towns or municipal corporations trading corporations, by authorizing them, through their agents, to carry on trade and traffic in intoxicating liquors?

2d. Does the statute of May 22, 1852, concerning the manufacture and sale of intoxicating liquors, or any other law of this Commonwealth, require or authorize our towns and cities, in their corporate capacity as principals, to carry on the business of trade and traffic in spirituous and intoxicating liquors, by the buying and selling thereof, and to tax the people, use any money in the treasuries, or credit of their corporations, for furnishing a capital for such traffic, and to charge the treasuries of such municipal corporations with the profit and loss of such traffic?

3d. If our said municipal corporations cannot, as principals, in their own name and on their own capital, carry on the said traffic, in the manner and for the purposes aforesaid, can they, or any of their officers, appoint agents with authority to do the

same thing on their account, using the funds or credit of the corporation, and charging the treasury with the results of such traffic.

4th. If said corporations, neither by themselves or agents, can carry on such traffic, in manner aforesaid, will the appointment and certificate mentioned in section third of said statute, protect the holder thereof in doing such acts as agent in the name and behalf of the corporation, as the corporation itself could not do as principal?

5th. If such agent is not protected by his agency, is his appointment merely void, and the individual personally liable for every act of sale, as a violator of the statute?

6th. Are the restrictions and embarrassments imposed by the said statute on the exercise of the right of appeal and trial by jury, consistent with the constitution of this Commonwealth?

7th. If intoxicating liquors of foreign manufacture are imported and sold in this Commonwealth, by virtue of the constitutional laws of congress, is the legal effect of the nineteenth section of said statute, to destroy or impair the obligation of such contract of sale, and enable the purchaser to treat it as without consideration, against law, and void?

8th. As intoxicating liquors may be legally imported, held, taxed, and used, as property for the several purposes mentioned in said statute, is it competent for the legislature to authorize depredation upon it, by promising immunity, and to prohibit transfers by making any delivery a sale, and any sale a criminal offence? And how is the unalienable right of acquiring, possessing and protecting this kind of property, to be judicially asserted, and constitutionally exercised?

9th. Do the words "no action of any kind, in any court," as used in the last clause of said ninth section, include both civil and criminal process? and is the effect of that clause to make what the common law would call a tortious or felonious taking, a legal mode of acquiring this kind of property in this Commonwealth?

10th. Are the laws of this Commonwealth for the sale of personal property on execution, for the payment of debts, "acts or parts of acts, inconsistent with the provisions" of the said statute, and are they all absolutely and totally repealed thereby?

11th. If any act or part of an act is inconsistent with the provisions of the said statute, is it to be considered as being absolutely and totally repealed by the said statute, or is it to be considered as being only partially repealed, and the remainder of the act to remain in force?

12th. If any act or part of an act is inconsistent with the provisions of the said statute, is it to be considered as being absolutely and totally repealed by the said statute, or is it to be considered as being only partially repealed, and the remainder of the act to remain in force?

13th. If any act or part of an act is inconsistent with the provisions of the said statute, is it to be considered as being absolutely and totally repealed by the said statute, or is it to be considered as being only partially repealed, and the remainder of the act to remain in force?

14th. If any act or part of an act is inconsistent with the provisions of the said statute, is it to be considered as being absolutely and totally repealed by the said statute, or is it to be considered as being only partially repealed, and the remainder of the act to remain in force?

15th. If any act or part of an act is inconsistent with the provisions of the said statute, is it to be considered as being absolutely and totally repealed by the said statute, or is it to be considered as being only partially repealed, and the remainder of the act to remain in force?

16th. If any act or part of an act is inconsistent with the provisions of the said statute, is it to be considered as being absolutely and totally repealed by the said statute, or is it to be considered as being only partially repealed, and the remainder of the act to remain in force?