

HOUSE....No. 234.

Commonwealth of Massachusetts.

HOUSE OF REPRESENTATIVES, March 17, 1859.

The Joint Special Committee to whom was referred so much of the Governor's Message as relates to the Lands in the Back Bay, and also the Majority and the Minority Reports of the Committee on Towns upon the Petition of the Commission on said lands regarding a portion of the lands situate in the city of Roxbury,—have attended to the duties devolving upon them and submit the following

R E P O R T :

No subject calls for the attention of the legislature, at the present time, of probably greater importance, than that which your Committee have investigated. It involves, very largely, the pecuniary interest and financial policy of the Commonwealth, for years to come, and intelligent and judicious action now is of the first moment. That the Commonwealth is the absolute owner of many acres of land, constituting a property of vast value, is undeniable; and it is equally true that great skill, prudence and financial ability are necessarily required in its management, in order to realize the just expectation of its ultimate benefits, both to the metropolis and to the State itself.

Preceding legislatures, and the various commissions that have been heretofore appointed, have given attention to the subject, commensurate with its importance, and with the interests of the Commonwealth; and within the past two years, great progress has been made in all preliminary arrangements necessary to a profitable disposal of the lands.

A plan of the whole territory has been agreed upon, and definitely established; favorable contracts have been made for the filling and grading of a large portion of the land, according to this plan; and large sales of lots have been made at such rates as demonstrate that the property is not only intrinsically valuable, but that a demand has existed for it, such as will necessarily facilitate sales; and as improvements are gradually made, will continue to enhance prices, and benefit the treasury of the Commonwealth.

It will be obvious to the most casual observer, that while the State is to be a pecuniary gainer by the sale and occupancy of these lands, it is the city of Boston that is to receive, reflexively, the greatest benefits. The extension of magnificent streets, as projected by the commissioners' plan,—unequaled in America,—the elevation of private dwellings of architectural beauty,—the healthful arrangement of parks and squares,—give most sure promise, that not only elegance and taste are here to add new glory to the city, but that the metropolitan finances must be vastly augmented by the creation of new taxable property consequent upon the improvements projected solely by the State, and at the State's expense.

It is, therefore, with extreme regret that the Committee find differences of a most important character existing between the Commonwealth and the city of Boston, which are likely to affect, very injuriously, the value of these lands, unless they are speedily settled by some just and fair arrangement, containing provisions, that will make it mutually satisfactory to the prime parties in interest. It is, perhaps, not surprising that differences should exist, when the variety and complicated character of the interests involved are considered; but it is extremely desirable that an attempt at their settlement should be made which promises success. The Committee, therefore, are anxious to approach this purpose in a spirit of fairness and liberality worthy of the Commonwealth, and that may commend itself to

the people of the city of Boston, to be met with a like generous readiness to settle these differences at once and forever.

In 1856 a most important contract was entered into between the Commonwealth, the city of Boston, and the Boston Water-Power Company; and this contract was supposed to embrace all subjects of difference. The three parties mutually covenanted to perform certain stipulations, and made mutual releases to each other. Among other things the Commonwealth released to the city of Boston a certain strip of land lying at the foot of the public garden, and extending its whole length from Beacon Street to Boylston Street, and containing nearly 120,000 superficial feet. Most important questions have arisen regarding this strip of land, seriously affecting the value of the remaining territory. The city of Boston, for example, as shown by a suggestion to that effect in the late inaugural message of His Honor, Mayor Lincoln, claims the right to dispose of this land for building purposes, and thus effectually to shut out the territory of the Commonwealth from any view of Boston Common, and from any of the sanitary results of its free light and air. One may see at a glance, that such a disposition of this land must be highly injurious to a large portion of this territory, materially affect the value of the whole, and thus vastly diminish the expected receipts into the treasury of the Commonwealth. It is not too much to say that a vast revenue depends upon the just and wise arrangement of this question at an early day.

Now it is perfectly evident to the Committee, and we think it must be to any reasonable man, that the agents of the Commonwealth, in the tripartite contract referred to, did neither intend nor expect that any such use would be made of this tract of land. No other reasonable deduction can be drawn, when their acts and their duties to the Commonwealth are considered together. The Committee, therefore, are not disposed to call in question the position earnestly argued, that the city of Boston have no legal right to adopt this course.

Still it is undeniable that no express restriction is put upon the land in the contract between the parties, and the city of Boston, through its authorities now maintains that none exist, either in fact or in right, but that they may dispose of the public garden, or any portion thereof, just as they may any other city property. Thus, like all propositions, there are two sides,

and as long as it is an open question, uncertainty rests upon the matter, and becomes an incubus upon the Commonwealth's interest in the lands. It is not probable that the legal rights of the parties thus at variance could be adjudicated before a considerable period of time has elapsed, while the Commonwealth desires to dispose of its property without any material delay. Thus the State is reduced to the alternative of holding on to the property till an indefinite future, which is clearly against her policy, as demonstrated by all the commissions who have investigated the subject, or of selling at reduced and merely nominal prices, thus vastly reducing the revenue which ought to be received from sales.

Again, it is clearly for the interest of the Commonwealth that building operations should commence on the lands already sold as soon as possible, and that the houses erected should be of a superior character. The Committee are fully satisfied that the purchases already made were for such intent; but all building operations are delayed, and for the sole reason, we think, of the position assumed by the city. There is a basis, then, for a well-grounded fear, that in the uncertainty as to the use which the city may make of the public garden, buildings of an inferior character may be erected, thereby lowering the value of the land, and periling the Commonwealth property to all coming time. Such a result could not be too deeply deplored, nor could it be less disastrous to the State, than to the true interests of the city.

On every account, then, it is essential that the question should be harmoniously adjusted. The Committee, therefore, heartily concur in the recommendation of his excellency, the governor, that the Commissioners of the Commonwealth be authorized to fill up the strip of land on the borders of the public garden, conveyed by the Commonwealth to the city, on condition that no dwelling-houses shall ever be erected on the public garden, which contains about twenty-two acres of land. This will set at rest the entire questions involved, and decide what was supposed to be done by the tripartite agreement. Still there is a question, as we have already stated, concerning the strip of land referred to, and the Committee think the Commonwealth will sustain them in being generous, as well as just. They therefore further recommend, that the Commissioners be authorized

to set apart and convey to the city of Boston, a portion of land containing 120,000 square feet in the Back Bay, an amount equal to the strip in question, for such educational, scientific, and municipal purposes as may be indicated by the mayor and aldermen of Boston, subject to the approval of the governor and council. At no distant day the city will require land in the locality for school-houses, engine-houses, and other public uses, as exigency may from time to time arise; and true economy and wisdom suggest that now is the appropriate time to establish a right to reserve lots suitable for these purposes.

One other matter of vital interest to the city of Boston in this connection is yet to be mentioned. By the contract of 1856, already referred to, it was stipulated that a main sewer should be built by the Commonwealth, for purposes of drainage. Already the need of this is seriously felt in the southern sections of the city; but no provision was made for carrying out this part of the contract. As the presumed devotion to the public of the strip of land on the public garden was left to the honor of the city authorities, so the building of this drain seems to have been left to the honor of the State. With a provision that determines the first, the Committee also report a provision to complete the last.

It remains only for the Committee to report upon the subject referred to them regarding the annexation to the city of Boston of a portion of the Back Bay lands now lying within the limits of Roxbury. The Committee are unanimously of opinion that the reasons given by the commission for such change of jurisdiction are cogent and substantial. Roxbury will thereby lose no property that has ever yet yielded a farthing from taxation, nor is there a single human being resident upon the territory. To make it valuable for building purposes, it will greatly need the drainage system of the metropolis,—the benefits of her gas works, and the advantages accruing from her police establishment. But more than all pure, fresh water is a *sine qua non*, and if the territory continues to be a portion of Roxbury, this can only be obtained, if at all, by the means of Artesian wells, bored through the earth to immense depths, at a great cost of labor and of money. But it is obviously the duty of the Commonwealth to secure every possible advantage, within the limits of justice, to its property now lying in two contiguous counties.

By the change of boundary lines, as suggested by the Commissioners, and determined, with slight variation, by the majority report of the Committee on Towns, referred to us, all the advantages herein enumerated are secured to purchasers of those lands,—the Cochituate water will flow freely through the streets to be formed, and the value of the property will be increased at least fourfold. The Committee cannot, therefore, hesitate to report in favor of such change of boundary lines; and in accordance with these various suggestions, they unanimously report the accompanying Bill,—which covers them all,—coupled with a provision that it shall be subjected to the popular vote for ultimate decision. Thus, while the Committee have assumed the responsibility of adjudicating between the State and the city of Boston,—endeavoring to come to a just and impartial estimate of the rights and privileges of both,—it is still left for the citizens to pass final judgment upon our well-intentioned labors, and give them vitality.

For the Committee.

ISAAC F. SHEPARD.

Commonwealth of Massachusetts.

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

AN ACT

In relation to the Back Bay and the Public Garden in the City of Boston.

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

1 SECT. 1. The boundary line between the cities
2 of Boston and Roxbury is hereby altered and estab-
3 lished, as follows: Beginning at a point where the
4 present boundary line between the two cities inter-
5 sects the easterly side of Avenue Number Six, as laid
6 down on the plan, accompanying the third annual
7 report of the commissioners on Boston harbor and
8 back bay, dated October thirty, eighteen hundred and
9 fifty-four; thence running by the said easterly side of
10 said Avenue Number Six, to the present boundary
11 line, near the Mill Dam; and all that portion of land,

12 flats or channels, easterly of the line hereby estab-
13 lished, is hereby annexed to, and made a part of, said
14 city of Boston in the county of Suffolk: *provided*,
15 that this act shall not affect the present apportionment
16 for the choice of senators and representatives to the
17 general court and of councillor.

1 SECT. 2. The commissioners on the back bay are
2 hereby authorized and required to fill up and com-
3 plete, at the expense of the Commonwealth, so much
4 of the street next west of the public garden, called
5 Arlington street, as remains to be completed at the
6 time of the passage of this act, so that the said street
7 shall be of the full width of eighty feet; and also the
8 strip of land easterly of said street, which was re-
9 leased by the Commonwealth to the city of Boston by
10 indenture, dated December eleventh, eighteen hundred
11 and fifty-six; and no buildings shall hereafter be
12 erected between Arlington and Charles streets, except
13 such as are expedient for horticultural purposes: *pro-*
14 *vided*, that nothing herein contained shall render it
15 unlawful to erect a city hall on the public garden.

1 SECT. 3. The commissioners on the back bay are
2 hereby authorized and required to convey to the city
3 of Boston, under suitable limitations and restrictions,
4 a portion of the land or flats in the back bay, belong-
5 ing to the Commonwealth, not exceeding one hundred
6 and twenty thousand superficial feet, for such educa-
7 tional, scientific, or municipal purposes as may be
8 indicated by the board of aldermen of the city of
9 Boston, with the approval of the mayor, and subject

10 to the approval of the governor and council of the
11 Commonwealth.

1 SECT. 4. The commissioners on the back bay are
2 authorized to construct all that part of the main sewer
3 extending from Tremont street in Boston to Charles
4 River, which is to be built by the Commonwealth, in
5 accordance with the tripartite indenture between the
6 Commonwealth and the city of Boston and the Bos-
7 ton Water-Power Company, dated December eleventh,
8 eighteen hundred and fifty-six.

1 SECT. 5. The board of aldermen of the city of
2 Boston shall notify and warn the legal voters of the
3 said city to meet in their respective wards, on some
4 day within thirty days from the date of the passage of
5 this act, for the purpose of giving their votes, "yes,"
6 or "no," in answer to the question "are you in favor
7 of accepting an act of the legislature of eighteen
8 hundred and fifty-nine, entitled 'An Act in relation
9 to the back bay and the public garden in the city of
10 Boston;'" and the votes shall be received, sorted and
11 counted, and declaration made thereof in the same
12 manner as votes at other elections; and the mayor
13 and aldermen shall transmit to the secretary of the
14 Commonwealth, within seven days after said meetings,
15 a true return of the votes in the affirmative and nega-
16 tive; and if it shall appear that a majority of the
17 votes are in favor of the acceptance of this act, then
18 it shall be considered as binding in all its provisions,
19 alike upon the Commonwealth of Massachusetts and
20 the city of Boston, and shall have full force and effect;
21 but if a majority of the votes are against the accept-

22 ance of this act, then it shall be null and void, and
23 the secretary shall give public notice accordingly.

1 SECT. 6. The preceding section, authorizing and
2 directing the submission of this act to the legal voters
3 of Boston, shall take effect from and after the passage
4 of this act.