

SENATE...No. 68.

Commonwealth of Massachusetts.

IN SENATE, February 26, 1860.

The Joint Standing Committee on Roads and Bridges, to whom was referred the Petitions of the inhabitants of the town of Lexington, and the selectmen of West Cambridge, on behalf of that town, praying to be relieved from the charge of contributing to the support of "Great Bridge" between the city of Cambridge and the town of Brighton,

R E P O R T :

That they have duly considered the subject referred to them and that all parties interested were represented at the hearing had thereon.

The bridge in question crosses Charles River, a navigable stream, between the city of Cambridge and the town of Brighton, and is an ancient structure formerly known as Great Bridge.

The bridge was built as a cart-bridge about the year 1656, by the town of Cambridge and several individuals belonging to other towns. Cambridge then included within its limits the

towns afterwards established as Newton, Lexington, Brighton, and West Cambridge. The bridge was of public importance to the Colony, and subsequently to the Province, arising from its proximity to Harvard College, and from the fact that it was the only avenue, except by ferry, to the town of Boston, for a large portion of the community. The general court, therefore, inasmuch as Cambridge was too poor to support the bridge, unaided, gave frequent assistance by gratuities of money, and in one instance, of land; and made provision otherwise for its support by imposing a portion of the burden upon the counties of Suffolk and Middlesex, and upon the new towns as they were successively set off from the old town. A few facts in this connection will aid the proper submission of the case.

In 1670. The bridge was made a toll-bridge, but it does not appear that Cambridge availed itself of this privilege; and in 1680 there is a record of a gratuity to the town, by the general court, for the support of the bridge.

In 1699. An Act was passed by the Province, reciting that the bridge was of great importance to the public and the college; that it had been supported by the counties of Suffolk and Middlesex, and providing that the bridge should be supported by the town of Cambridge in the proportion of two-thirds, and the town of Newton of one-third of the amount necessary.

In 1712. Lexington was established as a town, by an Order containing the following provision:—

“The Northern Precinct, when made a Township, shall bear such a part of the charge of the Great Bridge over Charles River, as shall be according to their proportion with the Town of Cambridge annually in the Province Tax, and they shall annually pay to the Treasurer of the Town of Cambridge their part of the charges aforesaid.”

In 1732. The Province granted £300 towards the expense of supporting the bridge. In 1734, it granted 1,000 acres of land to each of the towns of Cambridge, Lexington, and Newton, to enable them “to support the Great Bridge forever.”

In 1781. The general court passed an Act, reciting that by the Act of 1699, the town of Newton was subjected to one-third part of the charge of maintaining the bridge; “inasmuch that Newton then having no part of any large bridge in said town to

maintain, but the case is so altered at this time that the town of Newton is subjected to the charge of maintaining the one-half of five bridges over said Charles River, where it borders on said town, which are very expensive," then repealing the Act of 1699 so far as it applies to Newton, except that said town was holden to pay its proportion of repairs made under a subsisting agreement.

In 1807. The towns of Brighton and West Cambridge were incorporated.

Section five of the Act of incorporation of Brighton, is as follows:—

“Be it further enacted, That the said town of Brighton shall keep up and support their proportion of a bridge over Charles River, between said town and the town of Cambridge so long as said bridge may be deemed by law necessary; said proportion to be ascertained by the State valuation from time to time.”

The Act of incorporation of the town of West Cambridge contains the following provision:—

“Section 5. Be it further enacted, That the said town of West Cambridge shall be held to keep up and support their proportion of the old bridge over Charles River between the first and third parishes of Cambridge, which proportion shall be ascertained from time to time by the State valuation.”

In 1839. Upon petition of certain inhabitants of Brighton, an Act was passed, authorizing a draw to be placed in the bridge, the expense of raising the same to be on the several towns contributing to the support of the bridge.

In 1842. A portion of Charlestown was annexed to West Cambridge, by which the latter town became subjected to the support of two considerable bridges between it and the town of Medford, both of which were in the added territory.

In 1859. Nearly one-half of the original territory of West Cambridge was included within the new town of Belmont, the legislature refusing to introduce into the Act of incorporation a provision requiring said town to contribute to the support of the bridge.

These are the prominent historical facts in the case. The petitioners urge that as towns, they have their full share of public burdens which the general policy of the Commonwealth imposes upon them. That the obligation complained of is special and unusual, created many years ago under circumstances differing greatly from those which now exist. That the leading reasons for the old provision, the poverty of Cambridge, and the public importance of the bridge, no longer have effect. That no benefit whatever to them is derived from the bridge; that new roads have been opened between them and Brighton, far more convenient than the bridge road, for any use which they have occasion to make of a road to Brighton; while, on the other hand, Cambridge and Brighton have the entire advantage of the bridge, in the increase of taxable property in its neighborhood, in the convenience of its draw, and in its local use generally. That Cambridge has entire control over the bridge in the manner of its building, repairs, and management, while they are simply tributaries in the premises, without voice or power.

To this it is replied by the contestants, the city of Cambridge and the town of Brighton, that the building of the bridge was originally the act of all concerned, for the common benefit, and should rest on the common responsibility for its support. That the contestants have very heavy public burdens, far more than their share, and that in equity and fairness the petitioners should not be released. That the bridge is still of great public use for cattle droves, and for general travel. But beyond these considerations, it is chiefly urged that the prayer cannot be granted, inasmuch as an Act relieving the towns of Lexington and West Cambridge from the support of the bridge would be unconstitutional and void, as an infringement of the clause in the constitution of the United States, which prohibits a State from passing any law violating the obligation of contracts.

The Committee are of the opinion that upon the facts before them the petitioning towns should be released from the burden they have so long sustained. The necessity which imposed this charge upon them in the days of feebleness and poverty of this political community, has passed away, and it is full time this liability should be removed. The policy of the Common-

wealth in the creation of towns, clearly is, that for the general good, each town shall support its local burdens, and that adjoining towns shall bear the public charges which, by location, belong to them in common. Each town should be independent in its sphere, and not tributary to others. Upon general considerations the change requested should be made, unless the legal obstacle stands irremovably in the way.

To this technical difficulty the Committee have given careful attention. It is stated that by the acceptance of its Act of incorporation each town accepted thereby all the terms therein contained; that the provision in regard to the bridge is of the nature of a contract, over which the State has no power of repeal.

If this be correct, the rule of law would seem to be a restraint upon legislation on those subjects of a public nature, over which the legislature has heretofore exercised large discretion and power. For future guidance, it would be well to place this matter in such a position that it may have final judicial interpretation.

The Committee, however, have not regarded this legal objection as valid, for several reasons. Without considering the question that if this be a contract, who are the parties to it, it is believed that the whole difficulty is avoided by the effect of the following propositions:—

First. In the words of legal authorities, the clause in the constitution of the United States “is not intended to apply to public property, to the discharge of public duties, to the possession or exercise of public rights, nor to any changes or qualifications of these which the legislature of a State may at any time deem expedient.” (Parsons on Contracts, vol. 2, p. 511.)

“A law granting to a town the right to keep a ferry across a public river, does not amount to a contract between the State and the town, so as to preclude the legislature from revoking the grant.”

“They,” (the legislature,) “were acting too in relation to a public object, being virtually a highway across the river over another highway up and down the river. From this standing and relation of these parties, and from the subject-matter of

their action, we think that the doings of the legislature, as to this ferry, must be considered rather as public laws than as contracts. They related to public interests. They changed as those interests demanded."

"The doings between them and the legislature are in the nature of legislation rather than compact, and subject to all the legislative conditions first named, and therefore to be considered as not violated by subsequent legislative changes." (East Hartford *vs.* Hartford Bridge Co., 10 Howard, pp. 534-5.)

The Committee are of the opinion, that if no other rule of law was applicable to the present question, that set forth in the case cited would take it out of the class of contracts, and place it among the subjects proper to legislative action.

As controlling this principle, a decision by the supreme court of Maine, (6 Greenleaf, 112,) is chiefly relied upon by the contestants. This case was one where the legislature, in the Act dividing the town of Bowdoinham and incorporating a part of it into a new town by the name of Richmond, enacted that "the said town of Richmond shall be held to support their proportion of all paupers now supported in whole or in part by Bowdoinham." Two years after an Act was passed exonerating Richmond from this liability in future. This latter Act was declared unconstitutional, as impairing the obligation of contracts.

The Committee regard this decision as not necessarily conflicting with the general principle. The case related to existing liability, temporary and limited in its character, and affecting persons then in being. It is analogous to the condition named in the Act releasing the town of Newton, holding the town to a contract to repair then subsisting, and cannot fairly be construed so as to create a perpetual imposition upon a town in a matter peculiarly within legislative control.

Secondly. The Committee cannot see any legislative intention, in any of the Acts passed with reference to the bridge, to vest any property or right in any of the towns interested, but merely to provide for the support of the bridge by *such mode of taxation* as the case seemed to require. The bridge is over

navigable waters, and therefore entirely within the jurisdiction of the legislature, and of no other authority. The Commonwealth may, if it see fit, assume the support of the bridge, or may by law impose it upon a town and neighboring counties, (13 Pick. 62); or under its general policy require the towns within which are its *termini*, to support it. This power has been so exercised as that several towns are required to bear the burden. Still, the legislature could have no intention to divest itself of its power to impose, modify or withdraw the burden in any of the modes which in its wisdom the course of legislation upon public property for a public purpose might seem to require.

Thirdly. There is another rule of law which, as it seems to the Committee, places the question beyond doubt as so its being in the nature of contract, or of public law. This principle is that which in the interpretation of statutes, requires that all statutes *in pari materia*, relating to the same subject, shall be considered together, and this whether repealed or unrepealed. "It is an established rule of law that all acts *in pari materia* are to be taken together as if they were one law. And they are directed to be compared in the construction of statutes, because they are considered as founded upon one system and having one object in view." *Dwarris on Statutes*, p. 569. 3 Mass. p. 21. Applying then this principle to the present case, the inference is inevitable, that the legislature in its several acts with reference to this subject intended, that whenever a town upon which the support of the bridge rested, and which would not be holden under the general policy to contribute to the same, should by the increase of its peculiar public burdens be entitled to relief, it should at such time be released. Newton was thus released as has been shown, and this precedent fully discloses the legislative intention. The qualification as to a town being holden under the general policy, is mentioned in this view. By comparing the provisions in the Acts of incorporation of Brighton and West Cambridge, passed at the same time, it appears that Brighton is holden "so long as said bridge may be deemed by law necessary;" while West Cambridge is charged with the support in general terms only. Brighton has a terminus of the bridge within its limits; West Cambridge is

an outside town. In the one case it would appear that a permanent, in the other a temporary charge was provided for. But be this as it may, it seems to the Committee that the conclusion is not to be avoided, that by the several acts of the legislature, the clear intention was to impose this burden upon the petitioning towns with an implied condition of its repealability, and that the legislature may by law, as it should in justice, interfere for their relief.

The Committee accordingly report the accompanying Bill.

For the Committee,

I. N. LUCE, *Chairman.*

Commonwealth of Massachusetts.

In the Year One Thousand Eight Hundred and Sixty.

AN ACT

In relation to the Towns of Lexington and West
Cambridge.

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

1 The towns of Lexington and West Cambridge are
2 hereby released and exempted from all obligation to
3 pay any portion of any charge that may hereafter
4 arise from rebuilding, repairing, or in any way sup-
5 porting or maintaining the bridge over Charles River
6 between the city of Cambridge and the town of
7 Brighton, formerly known as the Great Bridge; any
8 thing in the acts incorporating said towns, and in any
9 other act in relation to said bridge or the support
10 thereof, to the contrary notwithstanding.

