HOUSE....No. 46.

Commonwealth of Massachusetts.

IN THE HOUSE OF REPRESENTATIVES, March 6th, 1840.

The Joint Special Committee to whom were referred the petition of James P. Boyce and 242 other legal voters of Lynn, and many other petitions similar in tenor or import, signed in all by 3,674 males, and 5,032 females, praying that so much of the fifth section of the seventy-fifth chapter, and first section of the seventy-sixth chapter of the Revised Statutes, as relates specially to intermarriage between white persons and negroes, mulattoes, or Indians, be erased therefrom, as being contrary to the principles of Christianity and republicanism, have considered the subject so committed to them, and ask leave to

REPORT.

The Statute provisions specified in most of the above described petitions, are as follows:

"No white person shall intermarry with a negro, Indian, or mulatto." Revised Statutes, ch. 75, sect. 5.

"And all marriages between a white person and a negro, Indian, or mulatto, shall, if solemnized within this State, be absolutely void, without any decree of divorce, or other legal process." Revised Statutes, ch. 76, sect. 1.

A part of the petitions which have come before the Committee, do not set forth the above provisions, but simply pray that the Legislature will repeal all laws of the Commonwealth which make a distinction between its citizens on account of complexion. There is no doubt that the prayer of these last named petitioners is intended in part to apply to the provisions of law above set forth; but it is proper to remark, that your Committee have no evidence that the law does in fact make distinctions between citizens *on account* of complexion. The law prohibits the intermarriage of certain races; and the circumstance of color is merely one of the evidences by which the difference of race may be ascertained. It should be added that the prayer of said last named petitioners is also understood to refer in part to the exemption of colored persons from service in the militia of this Commonwealth; but as that exemption appears to be in conformity with an act of Congress, which has the controlling power on the subject, your Committee have not thought it necessary to go into a further examination of that question, or to express an opinion thereon.

According to the theory of our government and the letter of our Constitution, the races whose intermixture is prohibited by the statutes which have been quoted, are entitled to stand as citizens upon a footing of entire civil equality, and exempted from all partial disabilities. If the prohibition in question, has sprung merely from social prejudices or from the idea of inequality, or if it is invidious or unequal in its operation, or if it is calculated to facilitate injustice, or promote licentiousness, it ought not to continue longer upon the statute book. Your Committee believe that it is liable to all these objections—that it cannot be sustained, either upon the score of principle, or of utility; and they therefore recommend its repeal. They are well aware of the strength of the social prejudice in which this law took its origin, and still finds its support; but they have yet to learn that this Legislature will deliberately, and after full examination, sanction the principle that the tastes of the majority shall be the measure of the rights of the minority, and that the spirit of caste shall be clothed with the authority of

law. The belief that God has created a degraded and embruted race, to be trodden under foot forever by superior races, is hostile to the great doctrines of natural right and civil equality, on which rest all hopes of liberty and progress for the masses of mankind. It is enough for those who hold such a belief, that the vigorous spirit of constitutional liberty, disdains to interdict the full expression and dissemination of their opinions; but it is too much for them to ask that their hatred, or fear, or disgust at their fellow men, should be carried out in legislation, and enforced by penal enactments. Admit once the principle, that the law shall favor any particular class by reason of blood, color, or connexion, rather than of personal merit, and we return at once to the starting point, from which centuries of struggle have just succeeded in raising the human mind.

Your Committee would not have thought it necessary to say a word on the point of the inequality of this law in its operation, had not that inequality been repeatedly denied, by authorities entitled to respect. The argument on that side of the question is, that there is no inequality, because no restriction is interposed against the marriage of blacks with whites, which is not also interposed against the marriage of whites with blacks. The obvious answer is, that the law must necessarily bear hardest upon the race which is lowest in social position, which is least numerous, least cultivated, least wealthy, and which has most to gain by forming ties that may connect its individuals with the intelligence, the cultivation, and the power of the stronger race. It may be noticed in this connection, that this form of oppression is not a new one. It has repeatedly been resorted to in past ages, by tyrants or bigots, who sought to separate the objects of their persecution from all those social influences which mitigate party strife and sectarian hatred. But that it was oppression, and was so meant, was never denied in any case till the present. In the histories of the reformation, we find the prohibition, by the catholic authorities, of marriages between persons professing different religions, enu-

merated and classed by the historian with those regulations which removed protestants from all public institutions and from acting as guardians to the young, deprived them of the rights of citizens, ordered that they should not be received as apprentices, &c. It was reserved for the astuteness of this day to discover, that what the common sense of mankind had for ages stigmatized as an act of persecution, was in fact no persecution or annoyance at all.

Another objection to this law is, that it is invidious, in prohibiting but a single class out of many classes of what cannot in the harshest view be considered worse than merely incongruous or ill assorted matches. Nay, there are other cases in which the Legislature would be far better justified in interfering, where yet, for reasons undoubtedly good, it does not interfere; and the question still recurs, why should this instance continue a solitary illustration of the spirit of petty legislation. The very case suggested above, of marriages between persons violently opposed in religious opinions, would seem to make matrimonial disagreements and unhappiness quite as probable as where there is merely a difference of complexion, but a perfect accord of disposition and affection. Nay, it would seem that a marriage between a native and an alien, that alien being of monarchical principles and Calmuck race, would be quite as proper a subject of prohibition, as a marriage between individuals of different races, but alike children of the Commonwealth. But there are stronger cases. Men and women in whose blood is a scrofulous or consumptive taint, may legally marry, though their offspring will in all probability be puny, diseased, and short-lived; men and women whose ancestors and connexions have been affected with frequent insanity, may intermarry, though the chances are more than equal, that the tendency to madness will thus be perpetuated from generation to generation; drunkards and debauchees are permitted to bring upon families the curse of domestic misery and infectious parental example, and still the Legislature does not dream of interfering with the free will of the selecting parties. Is it possible that

mere difference of complexion and race, is more important in reference to the marriage relation, than any or all the circumstances above enumerated? Ought not the Legislature to interfere in all these cases, if in any? Is it not an absurdity that it should interfere in any way, except to enforce the Levitical law as to kindred, and to nullify marriage contracts entered into where either of the parties is not capable of assent?

Finally, the law has a tendency to facilitate injustice, and to promote licentiousness. In this connexion, the Committee would remark, that they do not recommend a repeal in the expectation that the number of connexions, legal or illegal, between the races, will be thereupon increased. They do not think that such will be the result. Their object is, that wherever such connections are formed, the usual civil liabilities and obligations should not fail to attach to the contracting parties. Let not the father be excused from supporting his children, on the plea that they are illegitimate. Let not the children be deprived of their inheritance, because the law prohibits marriage, and takes away the efficacy of the form, if pronounced. Let not the parents of different races be at liberty to desert each other on every trifling disgust. In other words, let the civil law do all that it was ever meant to do in cases of marriage, and no more; that is to say, let it simply ratify the contract which the affections have made, and which God has therefore hallowed, in all cases except where there is a scriptural bar, or mental incompetency. Your Committee believe, that where there would be one case in which the repeal of the law would cause connexions to be formed, which otherwise would not have been formed, there would be twenty where the observance of fidelity, and the fulfilment of the civil obligations of marriage would be compelled, which would otherwise have been neglected. And this is not merely matter of speculative opinion, but it is well supported by facts, and by the experience of officers of towns and cities, who have been obliged to see their municipalities subjected to burdens which, but for this law, would not have been thrown upon them.

It has been said, that this is a statute of decency: that decency forbids marriages between whites and blacks. It may be answered in the first place, that if it was meant for a statute of decency, it has lamentably failed in its object, if, as is believed to be the case, it has promoted licentiousness by withdrawing the civil obligation from these connexions; nor is it believed that Vermont, New Hampshire, and other neighboring States which have passed no such statute, will compare disadvantageously with this Commonwealth, as it regards their state of public morals. On the abstract question, your Committee can find no authorities in the Holy Writ or elsewhere, to the point that individuals of any of the tribes of human beings created by God in his own image, may not intermarry with each other without the violation of any law, revealed or natural. Their tastes might be wounded by the apparent incongruity of such a union; as they are every day wounded, with far more cause, by the occurrence of marriages between the very young and very old, the very brutal and very refined, between rich and doting bridegrooms, and purchased, but loathing brides. But, as they have heretofore remarked, they are not disposed to erect their own tastes into a law for the rest of their fellow citizens.

Your Committee will reply to one other objection before closing their report. It seems to be admitted by many, that the law was a foolish one in its first enactment, but it is suggested, that a repeal at this time would do harm, as it would be received as evidence that the Legislature were disposed to look with particular favor on unions of this character. Your Committee do not perceive the propriety of assuming that the people will draw from the repeal an inference not warranted by the facts. The repeal implies merely, that the Legislature do not choose, or do not feel that they ought, to put any particular race of citizens under peculiar disabilities; and it is doing injustice to the intelligence and fairness of the people, to suppose that this can be tortured into a disposition to give such citizens any peculiar encouragements. The absurdity of such

a supposition, may be thus illustrated. The people of this State long since abolished the compulsory support of public worship; but was it ever contended that they thereby expressed an opinion against the support of public worship? Again, among the colonial statutes of Massachusetts Bay, was one which, after reciting that "it is against rule to seek to draw away the affections of young maidens, under pretence of purpose of marriage, before their parents have given way and allowance in that respect," and that "it is a common practice in divers places, for young men irregularly and disorderly to watch all advantages for their evil purposes, to insinuate into the affections of young maidens, by coming to them in places and seasons unknown to their parents for such ends, whereby much evil hath grown up to the dishonor of God, and damage of parties," goes on to provide penalties of fine and imprisonment against all such as shall "endeavor, directly or indirectly, to draw away the affection of any maid in this jurisdiction, under promise of marriage, before he hath obtained liberty and allowance from her parents, or governors, or, in absence of such, from the nearest magistrate." No law of this description is now to be found on the statute book of Massachusetts; but would any person whose opinion was entitled to deference, hazard the expression of an opinion that by failing to re-enact that law, Massachusetts has virtually sanctioned and approved the practice of "drawing away the affections of maidens," without first obtaining liberty and allowance from their parents, governors, or the nearest magistrate? There is no need of a labored argument to repel so shallow an inference.

There is another view of the subject which has had weight in the minds of your Committee. This law is the last relic of the old Slave Code of Massachusetts, and is the only legislative recognition to be found in our statute book, of inequality among the different races of our citizens. It stands in direct and odious contrast with all our principles and our practice in other particulars. It gives the lie to the sentiments which we have heretofore expressed to Congress and to the world, on the subject

of slavery; for by denying to our colored fellow-citizens any of the privileges and immunities of freemen, we virtually assert their inequality, and justify that theory of negro slavery which represents it as a state of necessary tutelage and guardianship. Never were unjustifiable disgust and contempt more significantly expressed than by the enactment of a law which says by implication, that the most honest, intelligent and high-minded negro citizen is more loathsome and less fit for association, than the vilest and most depraved white citizen.

In the history of legislation on this subject, it will not, perhaps, be irrelevant to remark, that some years since, in the House of Representatives, an attempt was made to new model the marriage-law of this Commonwealth; and after a full discussion, that part of the old law which contained the clauses under consideration, was modified by striking out said clauses, by a large majority. The whole bill, however, was finally lost, and the subject has not since received much public attention till within a year or two.

Your Committee ask leave to report the annexed bill.

All which is respectfully submitted.

For the Committee.

GEORGE T. DAVIS, *Chairman.*

Commonwealth of Massachusetts.

In the Year One Thousand Eight Hundred and Forty.

AN ACT

Relating to marriages between individuals of certain races.

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

So much of the fifth section of the seventy-fifth chapter, and of the first section of the seventy-sixth chapter of the Revised Statutes, as relates to marriages between white persons and negroes, indians, and mulattoes, is hereby repealed.