OPINIONS OF THE JUSTICES OF THE SUPREME JUDICIAL COURT UPON THE QUESTION OF MONEY BILLS

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Opinions of the justices of the Supreme Judicial Court upon the question of money bills by Various

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VARIOUS

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OPINION OF THE JUSTICES

OF THE

Massachusetts

SUPREME JUDICIAL COURT

UPON THE QUESTION OF

MONEY BILLS

REFERRED TO THEM BY
ORDERS OF THE SENATE AND HOUSE OF REPRESENTATIVES
OF THE COMMONWEALTH OF MASSACHUSETTS
AT THE GENERAL COURT OF 1878

BOSTON
PRESS OF RAND, AVERY AND COMPANY
PRINTERS TO THE COMMONWEALTH
1879

To the Honorable the Senate of the Commonwealth of Massachusetts:[1]

On the nineteenth day of April last the Honorable Senate adopted an order, which was transmitted on the next day to the Justices of the Supreme Judicial Court, requesting their opinion upon the following questions:

"First, Can the Senate, under the provisions of chapter 1, section 3, article 7, of the Constitution, originate a bill or resolve appropriating money from the Treasury of the Commonwealth?

"Second, Can the Senate, under said provisions, originate a bill or resolve, in any way involving, directly or indirectly, the expenditure of money from the Treasury, or imposing any burden or charge thereon?"

On the twenty-second day of April the Honorable House of Representatives adopted an order, which was on the next day transmitted to the Justices of the Supreme Judicial Court, requiring their opinion upon this question:

"Is the power to originate a bill appropriating money from the State Treasury limited by the Constitution to the House of Representatives, or does it reside in both branches of the Legislature?"

On the third day of May the Justices of the Supreme Judicial Court, having taken these questions into consideration, addressed a communication to the Honorable Senate, and a like communication to the Honorable House of Representatives, respectfully asking to be furnished with

[1] A duplicate of this opinion was addressed to the Honorable the House of Representatives.

copies of any pending bills or resolves, upon which the questions propounded by that House to which the communication was addressed had arisen, as well as with any precedents from the journals or documents of the General Court, before or since the adoption of the Constitution of the Commonwealth, which that House might be pleased to communicate; and informing each House of the communication so made by the Justices to the other House.

In answer to these communications, the Justices received from the presiding officers of the two Houses copies of a resolve and of a bill.

By the resolve, after reciting that Thomas Cahill, formerly of Boston, had been arrested in Ireland, at the instance of officers acting in behalf of this Commonwealth, on the charge of having committed a murder here, and had been by them brought to this Commonwealth, and imprisoned for a long time, and then released without trial, and thereby had suffered greatly in body and mind, and had been put to large expense, and obliged to return to Ireland without any decision by the courts as to his guilt or innocence, it was "Resolved, That the sum of one thousand dollars be paid to Thomas Cahill, and the same is hereby appropriated; said sum to be placed in the hands and at the disposal of the Governor, to be by him paid to said Cahill in such manner as in his judgment will best secure to said Cahill the full benefit of the money."

The bill purports to enact that "there is hereby appropriated, to be paid from the ordinary revenue, unless otherwise ordered, a sum not exceeding thirteen thousand two hundred and seventy-seven dollars, in addition to the amount heretofore appropriated, for the support of the State Reform School for Boys at Westborough."

The Justices were informed that both the resolve and the bill originated and were passed in the Senate; that the House of Representatives refused to entertain them, on the ground that each was a money bill, within the provision of chapter 1, section 3, article 7, of the Constitution of the Commonwealth, and therefore could not originate in the Senate; and new ones in the same words were introduced in the House.

The Justices have received from the President of the Senate his opinion upon the question, printed by order of the Senate, and referring to the opinion delivered by the Honorable Robert C. Pitman (now one of the Justices of the Superior Court) as President of the Senate in 1869, and from the Speaker of the House of Representatives his opinion upon the same question, referring to the opinions delivered by his predecessor, the Honorable Harvey Jewell, in 1868 and 1869.

The Senate appointed a special committee on the communication from the Justices (consisting of the President of the Senate and two other senators) with instructions to search for precedents; and the House of Representatives appointed a like committee (consisting of the Speaker and the chairmen of the standing Committees on Finance and on the Judiciary) to confer with the Senate, or any committee thereof, upon the communication from the Justices. Upon the report and recommendation of these committees, the two Houses, on the tenth day of May, passed the following order:

"Ordered, That the opinions of the four Justices of the Supreme Judicial Court, delivered in the Senate February 22, 1781, and now in the archives of the Commonwealth, with the lists of bills levying taxes, and bills and resolves appropriating money, which originated in the Senate between 1780 and 1790, together with the precedents extracted from the records of the General Court prior to 1780 — which lists and precedents have been collected under the direction of the Senate committee, to which a communication of the Honorable Justices of the Supreme Judicial Court was referred — be printed, and that copies thereof be transmitted to the Justices."

Copies of the report of each committee, and of this order, with the opinions, lists, and precedents therein mentioned, have accordingly been transmitted to the Justices.

These papers having been received by the Justices only three days before the final prorogation of the Legislature, and while they were holding terms of court in various counties, it was impracticable for them to consult together

and submit opinions to the two Houses at the same session. Under these circumstances, the Justices have felt, that before transmitting their opinions, in accordance with what they understand to have been the expectation of both Houses, and with the usage in similar cases,[1] to the President of the Senate and the Speaker of the House of Representatives during the recess of the Legislature, a due sense of the honor conferred upon them by requiring their opinions upon a matter of this nature, on which there has been frequent difference of opinion between the two Houses for ten years past, demanded of the Justices a thorough investigation of the subject, and a somewhat extended statement of the grounds of their conclusion.

The Justices of the Supreme Judicial Court, having now fully considered the questions upon which their opinions have been required by the Honorable Senate and the Honorable House of Representatives respectively, and the precedents communicated to them by the joint order of the two Houses, and other precedents and authorities on the subject, respectfully submit the following opinion:

The Constitution of the Commonwealth provides as follows: "All money bills shall originate in the House of Representatives; but the Senate may propose or concur with amendments, as on other bills."[2]

The questions proposed by the two Houses, although differing in form, appear to us to present substantially one and the same question; namely, whether a bill which appropriates money from the treasury of the Commonwealth, and does not provide for levying such money upon the people, by tax or otherwise, is a money bill, which must, by this provision of the Constitution, originate in the House of Representatives.

Upon first taking up this question, some of us had doubts whether it was one upon which we could properly express an opinion. Although a consideration of the precedents dispelled those doubts, it has seemed to us proper, in order to show that, in undertaking to define the constitutional authority of a branch of the Legisla-

[1] 9 Cushing's Reports, 606.

[2] Chap. 1, sect. 3, art. 7.