

MAINE STATE LEGISLATURE

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DOCUMENTS

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THE LEGISLATURE,

OF THE

STATE OF MAINE,

DURING ITS SESSION

A. D. 1835.

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1835.

FIFTEENTH LEGISLATURE.

NO. 37.

HOUSE.

STATE OF MAINE.

HOUSE OF REPRESENTATIVES, }
March 2d, 1835. }

The Select Committee of this House, to whom was referred the Memorial of the York County Commissioners, praying for an appropriation to defray the expenses incurred in building a new Gaol at Alfred, in that County, have given the subject all the consideration which its importance demands, and ask leave to

REPORT:

That having entered, as they did, upon the examination of the subject committed to them, without any knowledge of its history and without any prejudice for or against the prayer of the petition, having heard all the testimony and all the arguments which the different parties were disposed to offer, and having arrived at a result in which every member of the Committee concurred, they hope that result will commend itself to the approbation of the whole House, and particularly that of the delegation from York County.

Your Committee do not think it necessary to go into a detail of all the facts set forth in the Memorial, and all the testimony that was brought before them. It is enough to say, that in 1833, the long disturbing and vexatious question, relating to the removal of the Courts from York to Alfred, was settled in favor of such removal, with the unanimous consent of the Representatives from that County, the members from the towns of York, Kittery and Elliot, excepted. That the old gaol at Alfred, had been regarded for years, by the Sheriffs of the County, as an unsafe prison for the confinement of criminals, and in the summer season, on account of its peculiar construction and location, altogether too loathsome for the residence of any human being. County Commissioners are by law, "vested with all powers relative to the erection and repair of gaols," and it is their peculiar and imperative duty, "at the beginning of every session, to inquire into the state of the Prisons in their respective Counties, with respect to the security of such prisons from escape, the condition and accommodation of prisoners, and from time to time to take such measures as may best tend to secure them from escape and infection." The York County Commissioners, not relying alone upon their own judgment, and that of the Sheriff, took the precaution to appoint a Committee, (eight in number,) selected from different parts of the County, from different political parties, and different pursuits in life, gentlemen distinguished for their intelligence and uprightness, for the purpose of examining into the condition of the old gaol. Which Committee in October 1833, after a full examination, reported *unanimously*, in favor of erecting a new gaol at Alfred, and against the expediency of attempting to repair the old one. Thereupon, the Commissioners proceeded to adopt such measures as were necessary to cause a new gaol to be built, which was com-

pleted according to contract, and accepted on the fifteenth day of October, 1834, by Ira Cole, Esq. the Agent appointed for that purpose. It was fully proved, that the new gaol is sufficiently large, built of good and durable materials, in a workmanlike manner.

By those opposed to the prayer of the petition, it was urged, that the County Commissioners had no right to cause the gaol to be built at the expense of the County, until the Legislature had made an appropriation for that purpose. But your Committee think otherwise. It is believed, not only that they had a right, but that it was an impericous duty, imposed upon them by law, to cause the gaol to be erected, if in the exercise of their best discretion, the safety of the County required it. Not less their duty, than it would be the duty of Overseers of the Poor to furnish supplies to a pauper that fell into distress before money had been raised to meet the expenditure.

It was also urged, that the gaol cost too much. But the proof was, that the Commissioners advertised for sealed proposals, in the two public newspapers published in York County, giving reasonable notice, and they accepted the lowest offers.

It is proper to state, that the evidence introduced before your Committee, consisted of the original contracts, under seal, copies of records, duly authenticated, and the testimony of witnesses under oath. And your Committee do not doubt, that the Contractors upon the same evidence, can maintain an action against the inhabitants of York County, for the amount of their contracts, in any Court proper to try the same. If this opinion be correct, what good reason can be assigned for refusing the appropriation? It would serve only to delay the Contractors in the recovery of their just dues, subject the County to great expense, keep up excitement, heart-burnings, and

discontent among the people, without being productive of any practical good. And upon the recovery of judgment, the property of innocent individuals might be taken and sacrificed, to satisfy the same, and the County subjected to further liabilities to indemnify those individuals.

But on the other hand, if doubts should be entertained as to the correctness of this opinion, it becomes a question worthy of consideration, whether it be not just, proper, and expedient to make the appropriation. The new gaol is a convenient and safe prison, situated in the Shire town where the Courts are established. The County are liable to *need* the use of it every day in the year, and they are by law obliged to provide such a building at their own expense. The old gaol is grossly insufficient and unsuitable for the purposes for which it was built. Four criminals have broken through it at different times, as the gaoler testified, since 1831. If it were true, that the new gaol had been built wholly by individual enterprise, without any direction whatever from the County Commissioners, and if, at this session of the Legislature, the Commissioners from that County, had presented an estimate of its value, and the same evidence as to the wants of the County, and requested an appropriation to enable them to purchase that building, no good reason has suggested itself to your Committee, why it should be withheld.

As evidence that the County of York, ought not to pay for the new gaol, your Committee were referred to a Resolve of the Legislature, passed February 7th, 1834, authorizing the several towns in that County, to ascertain by a vote at their annual meetings in March or April following, whether those towns were "in favor of building a new County Jail at Alfred, at the expense of the County, and to make return of the result, to the County Commissioners within ten days." And they were also referred to the

result of the balloting upon that question; from which it appears that *forty two* only, voted in the affirmative, and *two thousand four hundred and eighty four* in the negative. It is difficult to perceive, either the precise object or wisdom of that Resolve. Long before any of the towns in the County, had expressed an opinion in their corporate capacity under that Resolve, and more than thirty days before its passage, the County Commissioners had accepted proposals for building the gaol. The contract had been reduced to writing by their Agent, appointed for the purpose, and interchangeably signed, sealed and delivered. The Contractors had in part executed the contract, the faith of the County was pledged, and there was no agreement that either party might rescind the contract without the consent of the other. It is believed that the Resolve together with the balloting under it, cannot amount to any thing more than a disapproval, (by a majority of the persons voting,) of the doings of the Commissioners, in causing a new gaol to be built. It cannot affect the legal liabilities of the County. The Resolve did not provide that the County Commissioners should in any event, (whatever might be the result of the balloting,) stay proceedings, and prevent the execution of the contract. It did not provide that the County of York should be exonerated from their obligation to keep and maintain a convenient and safe gaol, even if a great majority of its inhabitants should be unwilling to pay the expense of building a new one.

Upon a full examination of the subject, your Committee are satisfied that the Commissioners have proceeded cautiously, prudently, discreetly, and in accordance with the provisions of the law. They recommend the passage of a Resolve, which is herewith submitted.

REUEL WASHBURN, *Per Order.*

STATE OF MAINE.

RESOLVE respecting the Gaol in the County of
York.

Resolved, That the County Commissioners of the County of York be, and they are hereby authorized to borrow in behalf of said County, seven thousand dollars for the purpose of discharging their contract of the eleventh of January, 1834, for building a Gaol in Alfred; the sum so borrowed to be reimbursed in three equal annual instalments; and they are authorized and required to add one third part of said sum, including the interest, to the ordinary expenditures of each of the years 1835, 1836 and 1837, and assess the same with the other county taxes.



STATE OF MAINE.

**HOUSE OF REPRESENTATIVES, }
March 2, 1835.**

The Committee of this House, consisting of Messrs. Washburn of Livermore, Cobb of New Gloucester, Weeks of Jefferson, Benson of Winthrop, Steward of Anson, Gove of Corinth, Vose of Castine, Sabine of Eastport, and Curtis of Freedom, reported a statement of facts, and the foregoing Resolve, which was read once, and assigned for a second reading on Wednesday next, and eight hundred copies, together with the Report of the Committee, ordered to be printed for the use of the Legislature.

(Extract from Journal.)

Attest,

JAMES L. CHILD, CLERK.