

# MAINE STATE LEGISLATURE

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# DOCUMENTS

PRINTED BY ORDER OF

## THE LEGISLATURE,

OF THE

## STATE OF MAINE,

DURING ITS SESSION

A. D. 1837.

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*AUGUSTA:*  
SMITH & ROBINSON,.....PRINTERS.

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1837.

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No 2

**MESSAGE**

OF

**GOVERNOR DUNLAP,**

TO

**BOTH BRANCHES OF THE LEGISLATURE**

OF THE

**STATE OF MAINE,**

**JANUARY, 1837.**

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**AUGUSTA :**

**SMITH & ROBINSON, PRINTERS TO THE STATE.**

**1837.**

**STATE OF MAINE.**

**HOUSE OF REPRESENTATIVES, }  
January 9, 1837. }**

Read and ordered to lie on the table, and that two thousand copies thereof be printed for the use of the members.

Attest, **CHARLES WATERHOUSE, Clerk.**

## MESSAGE.



*Gentlemen of the Senate,  
and of the House of Representatives :*

THE commencement of a political year is a period of deep interest to every people, that enjoy the protection of a Republican Government. The re-organization which necessarily takes place at this time cannot but arrest public attention. It leads the mind of the citizen to contemplate the blessings that flow in upon him from the invaluable institutions with which his liberty and happiness are identified, and impels him to acknowledge with renewed feelings of gratitude the goodness of God, upon whom we are at all times dependent, for every source of public and private prosperity.

Since the close of the last session of the Legislature, no event has occurred materially to interrupt the general prosperity of the State. Its varied and important interests have been abundantly blessed, and the wealth drawn by its hardy and industrious sons from Agriculture, Commerce, Fisheries and the Arts, has amply repaid their toil.

It affords me great pleasure on this occasion to be able to speak of the prosperous condition of the

State, and particularly in view of the resolution I have formed of retiring at the close of the political year upon which we have now entered, from the office to which the partiality of my fellow citizens has at several successive elections elevated me. For these repeated expressions of their approbation, permit me to say, I feel profoundly grateful, and I appreciate them with still deeper sensibility, from an abiding conviction of the forbearance, with which all measures emanating from the Executive have in the mean time been regarded by the people.

A Report of the Board of Internal Improvements will exhibit their operations during the past year. The surveys that have been made under their direction afford encouragement to the enterprise which has given rise to them, and cannot fail to be of ultimate benefit to the public. I cannot forbear to remark here, that from the reflection I have been able to bestow upon the subject, and from the success that has attended similar efforts in other States of the Union, I am persuaded that there is very little danger of affording too much encouragement in this or any other judicious manner, to the improvement of the dormant resources of the State.

The State, as well as our citizens individually, are rich in lands, in timber, in granite and lime quarries, in water power for manufacturing purposes, and to an equal extent at least with any

other State of the Union, in all the essentials of profitable industry, except monied capital. These advantages are profusely scattered through the State, but the greater part of them lie dormant, from the want of a money capital adequate to their improvement. Under these circumstances, the policy of lending public aid to individual enterprise, in such works of improvement as shall be of generally admitted importance, is presented to every mind, by the examples furnished by other States and the spirit of the age.

Should it be deemed expedient for the Government to aid the introduction of capital from abroad, even if done upon the credit of the State, to be applied to the construction of Rail Roads, Canals, or such other works of internal improvement, as would give a useful impetus to the industry of our citizens, together with satisfactory assurance that the advancements would be fully repaid either in money or in benefits to the whole people; such a course would doubtless be within the constitutional power of the Legislature.

The seal of popular reprobation has been placed upon the doctrine of having Internal Improvements by the National Government incorporated into the policy of the Federal Administration. This doctrine cannot receive the sanction of those who desire to see the operations of the Federal Govern-



ment restricted to the few general purposes of foreign and domestic policy, for which it was instituted. The States, and the States only, in their exercise of distinct sovereignty, are the guardians of the sectional improvements, which the interests of their respective populations designate as desirable. In most of the States, if not in all, it is a question of policy, and not of power, whether such works as have been alluded to, shall be executed at once, by directing the energies of the local government to bear upon them, or be left to wait the tardy struggle, which individual enterprise might be induced to make, for the sake of securing their advantages.

In this State I conceive it to be a question of policy exclusively, and within the decision of the Legislature, whose foresight and wisdom will without doubt, administer to it ample justice. Desirous as I am, that the people of Maine should realize the benefits, which their location and resources are susceptible of affording, I shall most cheerfully aid whatever policy may be adopted by the Legislature intended to effect so desirable a result.

In this connexion, it affords me pleasure to say, that the route for a Rail Road from Belfast in this State to the Canada line, has been accurately surveyed by a skilful and experienced Engineer. His Report upon the subject is herewith submitted, and cannot fail to attract your particular consideration.

The sales of the public Lands during the past year have been quite limited. A recurrence to the Report of the Land Agent, which is herewith laid before you will exhibit the present condition of that Department.

The Geological Survey of the State, for the purpose of ascertaining the nature, position, and value of the various rocks, minerals and soils to be found therein, has been commenced the past season under the direction of Dr. Charles T. Jackson, a gentleman eminently qualified by his devotion to Geological pursuits and his untiring industry and perseverance, for the important service with which he has been entrusted. His Report will be submitted for your consideration at an early day, and I cannot but express the hope, that an examination of its contents will awaken a new zeal in the prosecution of this survey, and induce you to give to it a liberal encouragement.

The annual Report of the Adjutant General is herewith communicated. By this Report it will be seen, that the numerical force of the militia of the State is forty-two thousand four hundred and sixty-eight men, being an increase from the last return of one thousand six hundred and forty one men.

The character and operations of the State Penitentiary should always be kept before the public eye.

The subject is important, if it were only on account of the charge made upon the public finances, for maintaining the Institution.

The Prison was erected in 1823. The sum expended in the purchase of the site, in the erection and repair of buildings and other operations connected with the Prison, in addition to the sum arising from the labor of the convicts, has amounted to one hundred and twenty-three thousand, four hundred and eighty-nine dollars and twelve cents. During the last ten years only, the sums paid from the Treasury on account of the Prison, if averaged upon the whole number of convicts, cannot have been less than at the rate of two dollars per week, upon each convict. A considerable portion of this expense has been laid out upon the buildings. Other calls upon the Treasury may shortly be expected for the same purpose. With all these improvements it cannot be doubted, that the buildings are highly unsuitable for the proper purposes of a Penitentiary. They seem to have been constructed with a view to inflict the greatest punishment in the shortest time, and at the least expense. That plan has been abandoned, but no corresponding change has been made in the cold, damp, unventilated cell. Even if it be conceded, that Thomaston is the most suitable location for the Prison, it is certainly a question worthy of your consideration, whether it may not be necessary to remodel the

principal building in order to effect the objects, which prison discipline is designed to accomplish.

There is however, another view of this subject, which ought not to be overlooked. When from any cause we exclude a fellow citizen from society, his right to intellectual and moral instruction remains unimpaired. The reform of an offender is among the primary objects of his confinement, and should hold a conspicuous place among the regulations of the Institution.

The whole subject is submitted to the Legislature, with the hope that to all existing evils a full and permanent remedy may be applied.

A Resolve was passed by the last Legislature, authorizing the Governor with advice of Council to appoint an Agent, whose duty it should be to superintend the erection of an Insane Hospital, agreeably to a plan of the most recent approved models for such an Institution, on the site in Augusta purchased for that purpose. In conformity to the authority vested in the Executive, the trust was confided to Reuel Williams, Esq. who has commenced the undertaking and prosecuted it thus far in the most thorough manner. The Report of the Agent is herewith laid before you.

I have been apprised by the Secretary of the

Treasury of the United States, that a portion of the public money will be deposited with this State, on information being given of certain prerequisite measures on the part of the State. I transmit herewith the letter of the Secretary upon this subject, accompanied by a copy of the Act of Congress, passed at the late session of that body, entitled "An Act to regulate the deposits of the public money." Should the portion assigned to this State be received, it must be recollected, that it is subject to the recal of the General Government, whenever the wants of the public Treasury shall require it. Whatever disposition of it therefore you may conclude to make, it is essentially necessary that our financial affairs be placed in such position, as to be enabled to restore it whenever demanded.

The accumulation by the General Government of an amount of revenues, not necessary for public expenditures, is a policy of no doubtful character. Scarcely less reprehensible would be the policy of such an accumulation, to be distributed among the States, either as gratuities or deposits. The Revenues of the Federal Government ought not to exceed its actual wants, arising from the exercise of such powers only, as have been expressly delegated to it in the Constitution. To that grade, the people of Maine by the action of their Legislature have repeatedly resolved that the Tariff of duties ought to be reduced, and to that opinion they steadfastly

adhere. If you shall suppose that a renewed expression of that sentiment would give additional strength to the efforts of our delegation in Congress to obtain a reduction of duties, I would recommend, that Resolves for that purpose should be forthwith adopted.

The importance of sustaining by a judicious policy the Agricultural interests of the State, and also of extending a liberal patronage to the great cause of education has been brought in an especial manner to the consideration of the Legislature, in my former annual communications. I have there given my views so much at large upon these subjects, that I feel reluctant to press them again upon your attention. I need only refer to the suggestions there presented, to indicate the deep interest with which I conceive these topics commend themselves at all times to Legislative favor.

Among the measures which I deem worthy of your consideration at the present session, is that of a reform, or amendment of the Judiciary system. Enterprise, skill and industry are the elements of public and private wealth, and to these principles the law should afford ample encouragement. For this purpose, there must be not only the highest protection to the acquisition and possession of property, but a strict enforcement of all legal rights between party and party. No system of laws how-

ever perfect in itself can answer the just requirements of society, unless those laws be efficiently and promptly administered. To the man of wealth, delays in the movements of the law may seem to be less injurious, but to the citizen of slender means, such delays are sometimes as fatal, as would be an absolute refusal of remedy. Wherever there exists any impediment to the full and steady administration of justice, the incitements to enterprise and effort are diminished. In every such result, the whole public as well as the individual concerned sustain an injury, and although from its nature this injury may not be so apparent, it is not on that account the less real, or the less serious. The evil arising from delay in the administration of justice is one for which no sufficient excuse can be offered. A speedy trial of a suitor's rights can create no greater charge upon the finances of the State, than a trial long postponed; while to the parties concerned, and to parties in other suits, who are waiting their successive turns, the expenses and vexations are greatly multiplied. It would be difficult to assign any good reason, why the claim of a suitor for the enforcement of what he deems his right should be delayed, through a want of tribunals, ready as well as competent to try his case. Does not such a deficiency conflict with the constitutional provision, that "justice shall be administered promptly and without delay?"

That this inconvenience is experienced to some extent among us cannot be denied. Since the organization of our Judiciary system, a great accession has been made to the business of our citizens, bringing with it a corresponding increase of labors to the Judicial Department. A full and patient investigation of every case is due to and expected by the parties. While the Courts are thus diligently employed in determining the suits earliest commenced, other cases are accumulating upon the docket. This accumulation, it is beyond the physical power of the Judges to prevent. With the growing business of the State, is it not reasonable to expect, that this evil will under the present arrangement be constantly increasing? It is not supposed that this condition of things is peculiar to our own State. But since it exists, it becomes you gentlemen, as the constituted guardians of private as well as public rights, to provide a speedy remedy.

Among the modes suggested for relieving the people from the evils which press upon them under the existing arrangement, that of increasing the number of Judges of the Supreme Judicial Court is conceded by those, who are conversant with the subject, to be indispensable. Probably the addition of one or two members to that Bench, with an exemption from trials in criminal cases under the grade of capital offences, might prove a sufficient remedy.



for the evils now resulting from the existing organization of that Court.

What changes in the organization of the Court of Common Pleas may be requisite, in order to insure to the citizens that prompt administration of justice, which sound policy and the Constitution demand, may be a question of greater difficulty. If the members of this Bench should be increased in number so as to furnish one Judge to each County, perhaps the object in view might be satisfactorily secured. Nor would such an arrangement be necessarily attended with much increase of expense; as the salaries might be graduated, according to the labors required in the several Counties.

In connexion with a reform of the Judiciary system in the particulars that have been named, it may be proper to suggest for your consideration the subject of instituting a further constitutional limitation of the Judicial tenure. I am well aware of the reverence that the citizens of every government have been instructed to cherish towards their Judiciary, and of the necessity of securing to its members in the discharge of their duties, the highest degree of independence, not inconsistent with the requisite guarantees for the rights and safety of the citizen. I am nevertheless at a loss to comprehend the consistency of those parts of the Constitution of the State, which rely upon a constant responsibility

to the people of one class of their public officers in order to secure the highest degree of integrity, with other parts of the Constitution, which are founded upon the apparently opposite principle of placing the judicial officer above all direct accountability, as the sure guarantee not only of integrity of purpose, but of that industry in the investigation of cases and application to legal study, without which the duties of the station can be but indifferently performed.

In the science of free government, responsibility to the people should be a standing ordinance. It should pervade alike every part of the political compact. It protects a government against itself, and is the bulwark in which human rights are to find their strongest defence. The spirit of the age inculcates uniformity in the application of the great principles of responsibility and obedience to the popular will. And whether there has or has not been any thing in the past history and experience of the people of this State under their Constitution, to render obnoxious that feature of it relating to the Judiciary, which places this Department in a state, next to that of entire independence of popular suffrages; the apprehension of future possibilities and a regard for consistency in the provisions of our Constitution may of themselves be sufficient considerations, to warrant the Legislature in submitting to the people, such a proposition for a change of the Judicial tenure, as will enable them to express fully

their wishes upon the subject. It is but appealing to the true source of all political power, and to a tribunal that never ought to be regarded with distrust by an American citizen.

The subject of the North Eastern Boundary of the State, which for several years past has been rendered deeply interesting to our constituents, from the claim set up in relation to it by the British Government, remains yet unsettled ; and I regret to say, that I have received no information to warrant the opinion, that a speedy adjustment is expected.

This claim by the British Government grew out of an implied but unequivocal admission by her own authorities, that the territory in dispute belonged to Maine. In the negotiation of the Treaty of Ghent, the Commissioners on the part of Great Britain requested "such a VARIATION of the line of Frontier, as might secure a direct communication between Quebec and Halifax." This request was an obvious concession, that without such variation the requested territory would not belong to that Government. To this request the Commissioners on the part of the United States replied that the Federal Government had no power to cede away any portion of the domain of one of the States of the Union. Resort was then had to ingenuity, and this resulted, not in asserting a claim to the desired territory, but in declaring, that there was "much

doubt whether it does not already belong to Great Britain.” Upon this expression of a doubt, the whole superstructure of the controversy has been raised.

A claim to territory then began to be made. This claim was at first indeterminate, for it indicated no line of boundary, and referred to no documents or reasonings by which it was to be sustained. Is it not then safe to conclude, that this claim originated from a mere effort of invention? It contravenes the Treaty of Boundaries, and in sustaining it, its supporters have substituted argument and ingenuity, for truth and justice.

It must be conceded, that our people and their State Government have exercised a most liberal forbearance upon the subject, considering the series of years it has been agitated, and the successive incidental circumstances calculated to excite and aggravate popular feeling. Our soil and our sovereignty have been invaded. Over a portion of domain of incalculable value, owned jointly by this and our parent Commonwealth, an attempt has been made to establish an adverse claim. The jurisdiction of the State has been rendered inoperative, either for the protection or redress of our injured inhabitants. Under color of authority from a foreign Government our unoffending citizens in time of peace have been forced from their rightful homes

and dragged beyond the limits of the State. Trials for imaginary crimes have been instituted against them, and upon our brethren, guilty of no offence, and charged with no wrong, the indignities of a foreign Jail have been imposed. Our political system has lodged in the first instance the power and the duty of protection, with the Federal Government. To that Government we have appealed, but relief has not come. Our lands are sequestered, our sovereignty is insulted and our injured citizens are unredressed. In this state of things, is it not due to our own self-respect as well as to the cause of justice, that the State of Maine should insist on being immediately placed by the Government of the United States, into the possession of the invaluable rights, from which she has been so long excluded ?

The operations and condition of the Treasury will be exhibited in the annual Report from that Department, which will shortly be laid before you. During the past year, the receipts including a balance on hand from the preceding year, amounted to two hundred and thirty-one thousand, nine hundred and nineteen dollars and sixty cents; and the disbursements to two hundred and six thousand, nine hundred and twenty two dollars and seventy-nine cents, leaving a balance in the Treasury on the thirty-first day of December last, of twenty-four thousand, nine hundred and ninety-six dollars and

eighty-one cents. The funded debt due from the State is One hundred and thirty five thousand dollars; and the public securities now in possession of the Land Agent amount to three hundred and forty thousand, six hundred and eighty-two dollars and eighty-four cents. The revulsion in the money affairs of the Country has lessened the demand for public lands and retarded the collection of debts due upon the sales of former years. By the operation of these causes, the receipts into the Treasury from the Land Department have fallen short of the estimated sum. In other respects, the affairs of the Treasury have been attended with all the prosperity which was anticipated for it, by the Legislature and the people.

I received a communication in the month of October last, from the Hon. Ether Shepley, resigning his seat in the Senate of the United States. As a full representation of the State in that body was considered desirable, a temporary appointment was made by the Executive. The appointment now devolves upon the Legislature.

In conclusion, gentlemen, permit me to assure you, of a ready concurrence in every constitutional measure, calculated to advance the welfare of our constituents.

**ROBERT P. DUNLAP.**

COUNCIL CHAMBER, }  
January, 1837. }