

MAINE STATE LEGISLATURE

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THE LEGISLATURE,

OF THE

STATE OF MAINE,

DURING ITS SESSION

A. D. 1837.

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1837.

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SEVENTEENTH LEGISLATURE.

No. 23.

HOUSE.

STATE OF MAINE.

HOUSE OF REPRESENTATIVES, }
February 24, 1837. }

THE Joint Select Committee to whom was referred the petitions of Edward Kent and 486 others—of Philip Morrill and 37 others—of John Frost and 39 others—of Benjamin T. Cole and 16 others—of Henry Darling and 50 others—of William Ramsdall and 22 others—of Thomas Adams and 12 others—of Joseph C. Lovejoy and 51 others—of Charles Robbins and 9 others—of Leonard Norcross and 10 others—of Jeremiah Fowler and 22 others—of George W. Hill and 97 others—and the petition of John How, Jr. and 110 others, praying for an alteration in the present License Laws, have had the same under consideration, and ask leave to present the following

REPORT.

A proposition materially to change a system which has for years been incorporated with State legislation, and which is intimately connected with various important interests in the State, should receive more than common attention. Impressed with the importance of the subject submitted to them, the Committee have endeavored to

present as ample a view of the question, as the time and means which they had at command, would allow.

Laws granting license to sell ardent spirits, have been enacted in every State in the Union; and so far as the committee know, they are at this time, under different forms in operation in every State. The first license law of Massachusetts was passed in the year 1646, and although from that time until the present, they have been variously altered and changed, yet at this very time, the license laws of Maine are substantially what they were at first,—*they authorize the sale of ardent spirits for common use.* This is the principle that gives them character. The manner of granting the license, or the form of the law, are circumstances of little or no moment.

These laws then have been in active operation nearly two centuries, and this period seems sufficient for a full and fair trial; and what is the history of this experiment? When the law was first made, intemperance was of rare occurrence, and was designed, as appears, to prevent rather than cure the evil. From that time until the temperance reformation, as it is sometimes called, we gradually but constantly increased in the use of ardent spirits, and became more and more intemperate, until we were reproached, by some foreign writers, as a nation of drunkards. Although other causes, no doubt, were in operation, yet there are many reasons for the opinion, that these laws were the principle cause of the result. They make it lawful and reputable, for the person who has a license, to sell it, and of course not improper nor dishonorable to purchase and use it. The law also, asserts the necessity and usefulness of ardent spirits and makes provision that the whole community may be supplied; and, as if to give importance to the article, and respectability to the traffic,

it provides that the vender shall be "of sober life and conversation and of good moral character, and suitably qualified for the employment."

We shall not question that it was the design of the license laws to regulate and restrict the sale of ardent spirits, and even to prevent its abuse; but our present enquiry is not into the design, but the actual tendency of the law. This we believe has been to promote intemperance, to give it being and to continue it, down to the present time. It first assumes that, which the united testimony of Physicians, and thousands of others have proved to be false, that alcohol is necessary for common use, and then makes provisions that there shall be no deficiency, by making it the interest of a select few to keep it for sale. The mere circumstance whether few or many kept it for sale is unimportant, provided those who were licensed, kept sufficient to supply the demand. It is the inevitable tendency of the shop and bar-room to decoy men from themselves, and their self control, and our whole experience under the license laws of the State, has proved how hopeless it is that such plans should exist and men not become intemperate. If the poison was not freely offered, and offered for sale under the sanction of law—it could not, it would not be purchased.

The best test of the utility of any law, is experience, and by this rule the license law has been most satisfactorily tried; and there is no reason for supposing that the amount of ardent spirits used has been less, but rather that the consumption was much greater in consequence of the law; for the law has given character and respectability to the traffic, and has done much to fix on the minds of the public the impression that rum was necessary, and that the public good required it.

Go to the retailer and beseech him to empty his shop of the poison, and he will tell you it is his regular lawful business, that he is as much opposed to intemperance as you are, and that he always withholds the cup from the drunkard. You again appeal to his sympathy, and point him to the consequences of the traffic, on all who use the article. He again replies, that the law has determined that a certain number of retailers are necessary to the *public good*, that he has paid his fee and got his license in his pocket, and that he cannot be answerable for consequences; now it is very plain that the retailer is right, unless the law is wrong. Repeal the present law, and prohibit the sale, and then every man, who ventured to sell rum, would be obliged to do it on his own responsibility. He could not plead the statute, nor throw off the reproach upon the State.

It was seen many years since that no strictness of regulations could prevent abuse or violation of the laws, yet strange as it may appear, the Legislature did not at once prohibit the traffic, but proceeded to cure the mischief by further regulations, under penalties most strict and severe. But these regulations only served to keep alive and augment the evil; and how could it have been otherwise? It is repugnant to the first perceptions of common sense, to suppose that a man, who merely obtained a license could *innocently* sell strong water, the name first given to rum in the colony laws, and that another man could be justly liable to whipping, which was ordered by one act, for selling it without license. The same be observed of our present laws; they are absurd on the face of them. The people will never be satisfied that if the taverner may rightfully vend the article by the glass, to the ruin of his neighbor, it is criminal for the retailer to do the same.

We therefore, may consider it settled, that all attempts to discriminate between the licensed and unlicensed vender as utterly futile and vain. And as long as it is considered right and proper to grant licenses, just so long intemperance will continue to fill our jails and poor houses, and penitentiaries. It is not a thing indifferent in itself, whether the traffic be licensed or not, and that may be made right or wrong by the arbitrary enactments of legislation. The trade, except for medicinal and manufacturing purposes, is morally and politically wrong; and no law or legislation can change its essential character.

Complaints are frequently made against our public officers, such as Selectmen, &c. that they license too many, and among them many unsuitable persons, and that it is only necessary to enforce the present laws. This complaint is unfounded. The blame attaches to the law and not to the public officer. We have no right to expect that selectmen, or other officers will be either wiser or better than the law. It is their duty to execute, and not to make or alter the law.

In speaking of the license laws, however, we would by no means reflect improperly upon the character of those who established them. Our fathers were men of the loftiest patriotism and the sternest moral virtue. They knew the evils and sinfulness of intemperance, and these laws were designed to secure the people against both; and had they also known that ardent spirits were entirely useless—that a license to vend them would entail on the community poverty and crime and every evil work—there are strong reasons for believing from what we know of their laws, in other analogous cases, that they would have prohibited the sale entirely.

But they were mistaken in relation to the nature of

alcohol; and assumed that it was useful and necessary, and under this mistake they undertook to regulate the traffic in the best way they could. With the present age the case is far otherwise. It is now ascertained, not only that the traffic is attended with most appalling evils to the community, but that ardent spirit is entirely useless—that it *is an unmingled evil*. This fact, and it is the basis of this report—is certain. It is made out by the strictest scrutiny into the properties of alcohol, and by the experience and observation of thousands in every situation in life, and under circumstances most favorable to an accurate judgment; and how any man, with the evidence before him which a few past years has supplied, can now question its truth, it is difficult to conceive. We are placed therefore, in relation to this subject in circumstances very different from those which existed when the laws were first made. We have some facts which they who made them did not have. And must the laws remain the same, notwithstanding we have ascertained that they are founded in error? Shall we not alter and frame them to correspond to fact? If it is found that the bar-room and grog-shop are subversive of the public good, may we not say so,—shall we not shut them up,—shall we not cover the fountain whose pestilential streams have spread through all this fair country, exhaling in their course disease and desolation, and death?

The objections then, to license laws are these—they assert or imply what is false in point of fact, viz.—that ardent spirit is useful and necessary. 2d. That all laws are necessarily of injurious tendency which directly legalize any trade or business which is in itself destructive of the peace and virtue of society. 3d. That the manner in which the traffic is regulated, is suited to give character and reputation to the trade, and of course to extend its

evils far and wide. 4. These laws oppose an insuperable obstacle to the cause of temperance; so long as these laws exist, just so long intemperance will abound.

Your Committee are not only of opinion that the law giving the right to sell ardent spirits should be repealed, but that a law should be passed to prohibit the traffic in them; except so far as the arts or the practice of medicine may be concerned. The reasons for such a law are as numerous as the evils of intemperance. Such a law is required for the same reason that we make a law to prevent the sale of unwholesome meats; or the law for the removal of any nuisance; or any other laws which have for their object to secure the good people of the State in the quiet and peaceable enjoyment of their rights, and against any practice, that endangers the health and life of the citizen, or which threatens to subvert our civil rights and overthrow our free government. We would prohibit the sale of ardent spirits, because intemperance can never be suppressed without such prohibition. There is no more reason for supposing that this evil can be restrained without law, than for supposing you can restrain theft or gambling or any other crime without law.

And it seems obvious to remark,—and it is presumed that no one will question the correctness of the position—that all legislation, touching this subject, should be of a character to favor and promote temperance and suppress intemperance. That this was the design of the license laws is readily admitted; but we believe that it has been abundantly shown that this has not been either their effect or tendency. This indeed is so apparent, that it is a common remark that the license laws are the great obstacles to the progress of temperance. Now it appears equally certain that no legislation can have any tendency to pre-

vent intemperance but that which directly prohibits the sale. This will be a public expression, by the Legislature, which cannot be mistaken, and which cannot fail of exerting the most salutary influence upon the whole community.

No object is more important than life and health ; for the security of these, among other things, government is instituted. The laws of God as well as man hold human life sacred, it cannot be trifled with or jeopardized with impunity. What object is there more worthy of the Legislature, than laws to preserve the lives and health of the citizens? It is for this end we have health and quarantine laws, which, from the value and importance of the object, invest health officers with almost unlimited power; and this is right. Now when it is known, by the observation of all men, that the traffic in any article, entails, not only pauperism and crime on the community, but that in numerous cases it shortens human life and in many instances destroys it at once ; it is difficult escaping the conclusion that the government should interpose and prohibit it altogether.

The objection will doubtless be made, that if we had such a law it could not be enforced. Now admit the validity of this objection, and it proves the utter hopelessness of the case ; for no one we presume will venture the supposition, that you can accomplish against law, that which you could not effect with it.

It is sufficiently difficult to reform the manners and habits of a community, when the influence and authority of the law can be brought to aid the object, but to do this *against* the law, and against the direct and powerful interest of a numerous class of men, created by the law, is scarcely possible.

But your Committee do not admit that such a law could not be enforced ; although it is probable there would be many evasions of it. At a time when so many are interested in the subject of temperance, it is impossible that such a law should be generally disregarded. One important effect would be to render the traffic disreputable, as well as unlawful. No individual, who had any respect for his character, would continue the practice. There are many respectable dealers, who are now desirous of excluding ardent spirits from their shops, but who under the operation of the present laws, find it almost impracticable to do so ; for by breaking off they would not only loose the profits of this article, but they would sacrifice no inconsiderable portion of their business in other respects. This is known to be the fact by numerous trials.

Why should the power to execute the law be questioned in this case more than any other? This is never suggested in respect to any other law that is thought needful for the public welfare; nor is the objection well founded. But suppose the law we have in view should be sometimes violated; this would be no sufficient objection to making it; for what law is there which men keep perfectly? But we are not left to conjecture on this point. We have a law to prevent gambling in this State; now the effect of this law has not been to banish gambling from the State; but it has had the effect to prevent or greatly restrain the evil. It is considered disgraceful to keep a gambling house, and gamblers are unwilling to be known in this character; hence they seek the darkness of the night and secluded places for their purpose, and the community are generally thus saved from the pernicious influence of their example. Now suppose instead of this law prohibiting gambling, we had a statute to regulate gambling by grant-

ing licenses to open gambling shops in every part of the State ; and it would be much less demoralizing, and not more unreasonable than the rum laws ; What, your Committee ask, would be the effect of such a law? can any one doubt that gambling shops would be as common as retail shops now are ? It is in vain therefore, to object to a law that it cannot prevent the offence it prohibits. We have a law against theft, but have we no larcenies ? Yet who would be secure in his property, without the law. So it is believed that a law to prevent the sale of ardent spirits, would have the most salutary influence. It would then be as disgraceful to keep a rum shop as a gambling shop. Beside, the mere existence of such a law would exert the most salutary influence on the public mind. It would of itself go to correct public opinion in regard to the necessity of ardent spirits ; for it is not more true that the laws are an expression of public opinion, than that they influence and determine public opinion. They are as truly the cause as the effect of the popular will. It is of the nature of law, to mould the public mind to its requirements, and to fasten upon all an abiding impression of its value and necessity.

It may be objected that, we have already tried in numerous cases, to stay the progress of intemperance, by enforcing the law, but that it is found by long experience to be wholly ineffectual. This objection arises from a strange misapprehension of our license laws. The fact, we reply, is not true. We have no law against selling rum—we never had a law the most perfect observance of which would have secured this community against intemperance. All our laws, as before observed, authorize the sale and use of the article. The difficulty is not, that the law has not been enforced; but it is, that when executed

it has no tendency to prevent the evil. And we do not complain of the present laws merely that they are imperfect, but that they are radically bad,—that they are founded on principles totally deceptive and false. The present laws are sufficiently strict and severe, not however, against selling rum, but only against unlicensed venders. They proceed upon the supposition that if men and their families are ruined by the retail shops—if our prisons are filled with felons, and our poor-houses with paupers, it is no great matter, if only it be done according to law.

The truth is, the license laws do not, even as a rule of action, prescribe temperance. In this particular they are an anomaly. All good and wholesome laws, *prescribe* at least, what is right and forbid what is wrong. They raise the standard high, and caution and warn and forbid; and all who observe them are secure; if their penalty fall on any, it is through their own folly in disregarding the law. Not so with the rum laws, in their spirit and letter, whether executed or not executed, whether obeyed or disobeyed, their only effect is to destroy. The path they mark out, is not the path of truth and safety, of virtue and happiness; but it is the highway of deception and anger and tears and wretchedness and blood—it is covered in its whole extent, by the mangled and dying, and with the carcasses of dead men,—it leads to ruin and its steps take hold on the grave.

It may also be objected that the Legislature have no constitutional right to enact a prohibitory law—that it would be oppressive and an encroachment on the rights of the citizens.

The history of our State Government is but the history of measures and expedients, having for their object the security and happiness of the whole people. But no law can be enacted for their objects, which does not in some

form or other operate as a restraint upon every man in society. We will take only one example. The law of the road is perfectly arbitrary, for there is no reason in the case itself, why a traveller when he meets another, should turn to the right rather than to the left; and yet who denies either the constitutionality or utility of the law? And there are many other statutes which operate to restrain the citizen, in certain actions, which in themselves are not necessarily wrong, but which, unrestrained, might prove detrimental to the interests of the State at large.

But it is too late to deny the right of the Legislature on this subject. It has already in numerous cases legislated on the sale of ardent spirits, and their acts have received the sanction of the highest judicial authorities. What are the present laws but a prohibition of the traffic to all who do not first obtain a license? It is only necessary to extend the prohibition to every citizen and the whole object is at once obtained. And it appears evident to the Committee that if we have any law on the subject it should be absolutely prohibitory. The trade is a public evil or it is not, if it is, it is the right and duty of the Legislature to stay it at once, if it is not an evil, it should be equally free to all.

But the trade in ardent spirits is a public business carried on in the market places; and if it is found by experience that this business is necessarily ruinous to individuals, and a great public nuisance, there can be no question, that it clearly comes within the right of the Legislature to suppress it. We would not prohibit the sale of ardent spirits, because it is inconsistent with our religious and moral obligations—although doubtless this is the fact—but because the traffic is inconsistent with our obligations

as citizens of the State, and subversive of our social rights and civil institutions.

But we have yet to learn what authority it is, that would be violated by an act to prohibit the sale of ardent spirits, not surely the State Constitution, for that has no provision that can be so construed as to limit the Legislature in this matter. Nor the Federal Constitution; unless it is supposed the power to collect a revenue is of this character. But what if Congress, under this provision of the Federal Constitution, does authorize the importation of rum or brandy into the State of Maine, and the collection of a duty on the same; how is this inconsistent with the right of the State to prohibit its sale here? The merchant is not obliged to import the article, and if he does, he must take the chance of being able to vend it. Indeed, it would be a most extraordinary fact, if in the grants made to the Congress of the U. S. the people of the several States had not reserved sufficient power to provide for their own internal quiet and security;—not sufficient to regulate or prohibit any traffic which might destroy the peace and endanger the lives of the citizens. But it is not necessary to pursue this enquiry, since the measures proposed by your Committee, are not justly liable to this objection.

If it is again objected that there is something stronger and more to be depended on than human law; even the spread of just sentiments and upright principles; it may be replied that this is more specious than sound. For suppose it is true, what does it avail in the present case? The question is not the value of just sentiment and upright principles, nor their efficiency in controlling the actions of those who possess these virtues; but it is how men are to be controlled in the absence of these principles? On what else can we safely depend but the law, to restrain

the vicious and unprincipled? But the objection before us, proves too much, it proves that we should depend in all other cases upon just sentiments and upright principles. Theft and robbery should be restrained in the same way; and society should be left to the enlightened consciences of its members for security against injuries of every kind.

Another objects that we must trust to public opinion to restrain the traffic. But this is equally visionary with the other. For public opinion is doubtless now fixed against highway robbery, but repeal the law against this crime, and how long could a man travel and be safe? The truth is, laws must be framed for men as they are; and so long as they are the creatures of passion and appetite, you never will effectually succeed in restraining the perverse and selfish, except by superadding to the dictates of reason, the sanctions and authority of law.

The question of an essential alteration in the license laws, has been canvassed for several years by the people of the State; and petitions to this effect have been again and again preferred to the Legislature; and your Committee are of opinion that the time has arrived when it is proper to act upon the subject; they therefore offer the annexed Bill.

All which is respectfully submitted.

DAVID C. MAGOUN,
LUTHER SEVERANCE,
JOSIAH STAPLES,
TRISTRAM REDMAN,
JAMES APPLETON,
DANIEL CLARK,
WILLIAM D. SEWALL,
E. HOLMES,
MOSES HIGGINS,
JOSIAH EATON,
EBEN. KNOWLTON,

} Committee.

STATE OF MAINE.

IN THE YEAR OF OUR LORD ONE THOUSAND EIGHT HUNDRED
AND THIRTY-SEVEN.

AN ACT to regulate the sale of Brandy, Rum
or any strong liquors.

SECT. 1. *Be it enacted by the Senate and
House of Representatives in Legislature as-
sembled,* That no person shall be allowed to sell
brandy, rum or any strong liquors, in a less quan-
tity than twenty-eight gallons, and that delivered
and carried away all at one time—except Physi-
cians and Apothecaries, who may sell the same
for medicinal or manufacturing purposes, and if
any person except the individuals aforesaid, and
for the purposes named, shall at any time sell
any spirituous liquors, or any mixed liquors part
of which is spirituous, in a less quantity than
twenty-eight gallons as aforesaid, he shall for-
feit and pay for each and every offence, the sum
of twenty dollars, to be recovered by action of
debt, or upon complaint before any Justice of

17 the Peace within the same County where said
18 offence was committed.

SECT. 2. *Be it further enacted,* That prosecutions for the penalty mentioned in the first section of this Act may be commenced by any person or persons, or in the name of the inhabitants of any town, plantation, or city where said offence was committed; and the whole of said penalty, which may be received by virtue of the provisions of this Act shall be paid over by the individual, or individuals who may recover the same, to the Treasurer of the town, city or plantation in which said offence may have been committed, to be appropriated towards the support of the poor of said town, city, or plantation.

SECT. 3. *Be it further enacted,* That whenever any individual shall refuse, or be unable to pay the penalty aforesaid, which may be recovered against him by virtue of the provisions of this Act, then and in such case, he shall be liable to be imprisoned for the term of thirty days, within the County goal situated in the County within which such offence shall have been committed, and it shall be the duty of the Justice

10 aforesaid, to issue his execution or mittimus ac-
 11 cordingly.

SECT. 4. *Be it further enacted*, That this
 2 Act shall take effect, and be in force from and
 3 after the first day of September, one-thousand
 4 eight-hundred and thirty-seven, and all Acts, or
 5 parts of Acts inconsistent with the provisions of
 6 this Act, be, and the same hereby are repealed.

STATE OF MAINE.

HOUSE OF REPRESENTATIVES, }
February 24, 1837. }

Read, laid on the table, and 1000 copies thereof, ordered
to be printed for the use of the Legislature.

(Extract from the Journal.)

Attest: **CHARLES WATERHOUSE, Clerk.**