

MAINE STATE LEGISLATURE

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DOCUMENTS

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THE LEGISLATURE

OF THE

STATE OF MAINE,

DURING ITS SESSIONS

A. D. 1842.

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1842.

TWENTY-SECOND LEGISLATURE.

NO. 46]

[SENATE.

REPORT AND RESOLVE

RELATING TO THE

RIGHT OF PETITION.

[WM. R. SMITH & Co.....Printers to the State.]

STATE OF MAINE.

THE joint select committee to which was referred sundry petitions on the subject of the right of petition, and the rule of the House of Representatives, in relation to petitions concerning slavery, have had the same under consideration, and ask leave to

REPORT:

That the first amendment of the constitution of the United States declares, that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, *and to petition the government for a redress of grievances.*" The right of petition is secured in this article of the constitution in as broad and ample a manner as any other right, that is recognized by this solemn charter of our privileges. Separate the different parts of this article, and it declares in express terms, that Congress shall make no law abridging the right of the people "to petition the government for a redress of grievances." The

language is general, and not confined to particular persons or subjects—it refers to “*the right of the people,*” individually and collectively—it embraces all matters that any one of “the people” may consider a grievance. It may not be inappropriate or unimportant to remark, that in the original draft of the constitution as reported by the convention, and afterwards adopted, this expression, so cherished by every republican, “the right of the people,” is not to be found; and one of the objections most successfully urged against its adoption was that it did not contain a recognition of the rights of the people; and it was only by a pledge that this omission should be supplied by amendment that its adoption was obtained. At the earliest opportunity this deficit was supplied by this, and several other articles, in which the right of the people to keep and bear arms—to be secure in their persons and property—the right of trial by jury; and more than all, by the acknowledgment and declaration, that “the enumeration in the constitution of certain rights shall not be construed to deny or disparage others retained by the people.” The sturdy assertors of the rights of the people—the republicans of the days of the formation of the constitution—had not forgotten that their ancestors were indebted to the right of petition for magna charta, and for the bill of rights, the only security for liberty which they possessed. The exercise of the right of the people

to assemble to consult upon, and to petition government for a redress of their grievances, is the only mode, in a republican government, by which they can directly address the constituted authorities. Their wishes may be expressed through the press, or by their representatives. But the freedom of the press may be perverted, or their representatives may betray their trust; but so long as the free voice of the people can be heard in their petitions, the language of liberty will be uttered in tones that must be heard by those who might be disposed to usurp authority not given to them, or who would pervert the powers of government to their own selfish purposes.

The right of petition carries with it the corresponding obligation of the right to a respectful hearing. For Congress, or any other constituted authority, to acknowledge the right of petition, and then to deny the petitioner a respectful hearing, would be only a mockery. For all practical purposes, and our rights are not abstractions, it might as well be denied altogether. No constituted authority, in this land of freedom, whether legislative or executive, is invested with an arbitrary power. Persons elected to office are only the appointed trustees of the people for a specific time, and cannot exercise the power entrusted to them according to their will and pleasure, but according to the charter which gives them their authority. That

charter is the constitution. That constitution is not a mere enumeration of abstract rights—it must have a living, active spirit infused into it by the practical construction, which its provisions should receive. If this is not so, the rights secured to the people are useless for all practical purposes, and the power they delegate is not a limited but an arbitrary power. Congress then might say, we acknowledge your right to petition us is secured to you expressly by the constitution; but show us the right secured to you by the constitution that we are obliged to give you a hearing upon your petitions. This, it is evident, would defeat the very object for which the right of petition was granted. By this construction the arbitrary will of the persons exercising the powers of the constituted authority is substituted for the recorded rule of the constitution. This is not the true construction. The powers of Congress are limited not only by the natural laws of justice; but they are controlled by the express provisions of the constitution.

If the rights secured are abused, by perverting them to an improper purpose, there may be a power to correct the abuse. And if insulting and offensive language is used, in a petition to Congress, it may be rejected, after it has been read, without commitment or a hearing upon it. This arises from another principle. The principle of self-defence may extend to a collective body of men as

well as to its individual members. The same article, and in the same connection, that the constitution recognizes the right of petition, also recognizes the right of the people to assemble themselves together. But this would imply that the assembly should be for a lawful purpose, and not for treasonable designs. There are exceptions to the rule, which only prove its existence without limiting or controlling its operation. If a petition is respectful in its language towards Congress, it matters not what the grievance complained of may be, or who the petitioners are, the petition should be received, and the petitioners are entitled to a respectful hearing. This is the true spirit of the rule of the constitution, or the rule itself, and all other rights secured by the constitution may, by construction, be made void and of no effect.

It is respectfully considered by your committee, that the rule adopted by the House of Representatives of the United States, by which all petitions relating to the subject of slavery are laid upon the table without a reference and without a hearing, is an infringement of the right of petition, as secured by the article of the constitution, quoted at the beginning of this report. The committee do not propose to discuss the subject of the abolition of slavery. It has no connection with the right of petition only as it has been connected with it by the action of Congress, in adopting the rule referred to

by the House of Representatives. If the discussion of the subject in Congress is offensive to individual members, or even to a majority of the members, it is no reason why, because they have the power without the right, they should violate an express provision of the constitution; a provision important for the security of individual liberty and a free form of government. It is no answer to say that this rule is adopted to exclude petitions which ask of Congress what Congress, without a change of the constitution, has no power to grant, because the initiatory steps for a change of the constitution must be taken by Congress; and this is as proper a subject of petition as any other. Nor is it an answer to defend the rule on the ground of expediency, for expediency cannot be set up to control a constitutional right.

It is not that we fear that Congress designs to invade the liberty of the people, that we speak thus freely of the right of petition, and of the rule of the House of Representatives. We may be jealous of the slightest infringement of a provision of the constitution, without distrusting the patriotism of those who differ from us in opinion; and even without believing that those who aided in establishing the rule referred to, intended to abridge a constitutional right. It may be considered a mark of confidence when we ask for the rescinding of a rule, which we believe infringes a constitutional

right, of those persons who have aided in adopting it. At least, it is yet in their power, and may be for their interests, and for the interests of our common country, to show by their acts that they are deserving of confidence.

The committee ask leave to report a resolve, which is herewith submitted.

JOHN OTIS, *Chairman.*

STATE OF MAINE.

RESOLVE relating to the right of petition.

RESOLVED, That the right of petition is secured
2 to the people of the United States by the con-
3 stitution in the most full and ample manner ; and
4 that the corresponding right to a respectful hear-
5 ing is necessarily implied in the right of petition.

RESOLVED, That the rule of the house of rep-
2 resentatives requiring all petitions to Congress
3 relating to the subject of Slavery to be laid upon
4 the table without being read, or referred, and
5 without a hearing, is an infringement of the
6 right of petition, and ought to be abolished.

RESOLVED, That Senators and Representatives
2 in Congress are sworn to maintain the constitu-
3 tion, and we forbear to instruct them upon their
4 constitutional duties, which by their oath they
5 are bound to discharge.

STATE OF MAINE.

IN SENATE, March 11, 1842.

ORDERED, That 300 copies of the foregoing Report and Resolve, be printed for the use of the Legislature.

[Extract from the Journal.]

Attest,

JERE HASKELL, *Secretary.*