SIXTIETH LEGISLATURE.

SENATE. No. 101.

Report of the Committee on the Judiciary on a portion of the Governor's Address.

The Committee on the Judiciary to which was referred so much of the Governor's address, as relates to the courts, and the constitutional provision for requiring the opinion of the Court on certain occasions, have had the same under consideration, and ask leave to report as follows:

The Governor in his address makes two declarations that have seemed to the Committee to require consideration and report. The Committee understand the Governor to declare in effect that the constitutional provision in question, in his opinion, is wrong in principle and dangerous in practice; and to further declare that the opinions thus obtained from the Court, have no force as decisions, but are only to be taken for what they are worth as opinions, and to be followed or disregarded at will by the Executive or Legislature.

The Committee are unable to assent to either of these propositions.

The provision in question, is section 3, article VI, of the Constitution, as follows:

"They, (the Justices of the Supreme Judicial Court) shall be obliged to give their opinion upon important questions of law, and upon solemn occasions when required by the Governor, Council, Senate, or House of Representatives."

Long before the adoption of the Constitution the word "opinion" when used in reference to law or courts, had acquired in England and America, a distinct technical meaning. The word must have been used in that sense, in the above section of the Constitution. This rule of interpretation is universal, applicable to constitutions as well as statutes and contracts. This anciently settled meaning of the word "opinion," through centuries of legal literature, makes it nearly, if not quite synonymous with the word "decision." It is the exposition of the decision. It has in law all the force of the word "decision." Webster's dictionary gives the following legal definition of the word "opinion": "In law, the formal decision of a judge, umpire, counselor or other party officially called upon to consider and decide upon a dispute or difficulty."

It seems improbable that the people in inserting that provision in the fundamental law, in the very organic law of the State's existence, intended the opinion thus formally asked, upon important questions and solemn occasions, should have no more force than the opinion of a neighbor, or the advice of a friend, to be adopted if agreeable, or rejected if disagreeable. There would seem to be no occasion for a constitutional provision to enable either department to obtain such opinions or advice from such person as each might have confidence in, or from the Attorney General. If the formal opinion of the Judges, when formally asked, was to have no more force than the opinion of any lawyer, there could be no good reason why they should be constitutionally commanded to give it. There are able and honest lawers at the Bar, as well as on the Bench.

It is not the opinion of the persons who chance to be on the bench at the time, that is contemplated; it is the opinion of the justices, as justices. It is not neighborly advice, nor individual opinion, that is called for by the constitution.

"They shall be obliged to give their opinion," is the language. It is "opinion," not "opinions." It is the sum of their judgments; the result of, not personal, but official deliberation and action. It is not the voices of several respectable gentlemen, and good lawyers. It is the voice of the judiciary, a co-equal branch of the government, and charged with the duty of interpreting the laws, and speaking authoritatively, by virtue and command of that same constitution, by virtue and command of which the Executive and Legislature speak.

This is no violation of the principle of the equality of the three departments. All official acts of the Executive or of the Legislature, done by virtue and command of the constitution, are to be respected and obeyed. The official acts of the judiciary, done by virtue and command of the constitution, are entitled to equal respect, if the equal dignity and authority of the three departments are to be preserved.

It was not the purpose, nor has it been the effect of this provision to permit any interference by the Court in matters of administration or legislation, but rather to enable a learned and honored Court to point out the path of constitutional duty and power, to the department asking its aid. It was to secure harmony of interpretation as to constitutional law and rights, and prevent unseemly conflicts between the Executive and Legislature, the Senate and House, or the Governor and Council. It was to prevent wrongs, instead of leaving them to be committed, and then redressed. By means of this lamp set by the founders of our commonwealth, the Executive and the Legislature can see the bounds of their power and duty as fixed by the people, and avoid encroachment on the rights of each other, or the rights of the people.

It has served its purpose well. It came to us from the mother State, in whose constitution it has stood for a cen-

tury. All through that century in both States, are instances where some department was in doubt, not as to expediency, but as to constitutional right, and asked for light from the contitutional interpreters of the law. When that light has been received, governors, legislatures, courts and people, have moved peacefully and prosperously on in the roads thus made plain.

Conflicts of authority and consequent shocks to the Commonwealth have under this Constitution been happily avoided in both States, until that sad instance in our own history when an Executive arrogated to itself the judicial power of declaring to be unconstitutional laws passed solely to give effect to the will of the people, and then undertook to disobey those laws and defy that will. The instant failure of that attempt and the peaceful issue of that conflict illustrate the wisdom of our fathers in providing for a speedy solution of all such questions of authority.

While amendments have been made or suggested to many other parts of the constitutions of the two States of Maine and Massachusetts, this section has stood unassailed, without suggestion of amendment, until that made in the Address of the present Governor. This long stability amidst change,—this long acquiescenee,—this not infrequent exercise, through four generations of freemen, attest its value, and the high regard in which it is held by the people. The people have never asked its repeal, nor have they ever refused to give it full effect.

The people expect that each officer is anxious to faithfully perform his constitutional and legal duty. They realize that conflicts of opinion may arise among officers as to the limits and extent of that duty. They have provided an authoritative interpreter of that duty. They have provided for a speedy interpretation before any wrong is done. They surely expect all their officers, Executive, Legislative and

Judicial to heed that interpretation, "to the end that this may be a government of laws and not of men."

L. A. EMERY,
D. N. MORTLAND,
GEO. D. BISBEE,
} *On the part of the Senate.*

A. A. STROUT,
O. G. HALL,
EPHRAIM FLINT,
L. R. KING.
} *On the part of the House of Representatives.*

I concur with the Committee in their conclusion of law, and believe legislation in the premises inexpedient.

J. B. HUTCHINSON.

MEMORANDUM. J. C. Talbot and M. N. McKusick of the House Committee, were absent at the time of the consideration of this report.

STATE OF MAINE.

In SENATE, March 12, 1881.

Reported by Mr. EMERY, from the Committee on the Judiciary, laid on the table to be printed under the Joint Rules.

C. W. TILDEN, *Secretary.*