

MAINE STATE LEGISLATURE

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SIXTIETH LEGISLATURE.

SENATE.

No. 110.

The Joint Special Committee on the state of the Commonwealth, have considered the matters properly falling within their province, including certain statements of facts and principles of state policy contained in the message of the Governor, with as much attention as they have been able to give them, and ask leave to report :

The Committee cannot agree with the representations contained in the message that any considerable portion of the people of this State are wanting in substantial prosperity, or with its suggestions of future disaster arising from the causes therein enumerated.

Your Committee fear that the tendency of that part of the message which discusses the subject of taxation, both state and national, the militia, imprisonment for debt, government bonds, corporate power, freehold, and the comparisons and conclusions connected therewith, is to create discontent at home, and to lead the people to erroneously believe that they are living under unjust laws, which bear unequally upon different classes. If the effect of these teachings were to be confined to our own borders, whilst its depressing influence upon all branches of industry would be regretted, it would still be easily counteracted, when in connection with its assertions, our attention is turned to the sources of our real prosperity, which on every hand are visible to our own citizens. But when we consider its effect upon people abroad, who are less conversant with our financial soundness and means of wealth, and its tendency to prevent immigration and the investment of capital in the State, we are aware how

difficult it will be to dispel the impression which the declarations of the Chief Executive are calculated to create.

Nor do your Committee admit or believe that the people of Maine are suffering under the weight of unequal burdens, or under the operation of unequal laws. The code of statute laws under which we are now living is the result of the legislation of the sixty years which have elapsed since our separation from Massachusetts, and have been enacted under the vigilant eyes of all political parties existing during that period. Most of these laws relating to the taxation of property and the collection of debts, have been in existence during all that time. The modifications which have been made are uniformly in favor of the equality of taxation, and of the easy release of the debtor from arrest. The statute of eighteen hundred and seventy-six was passed to prevent the division of a claim into small demands for the purpose of harrassing the debtor by arrest, and section fifty-nine of chapter seventy-four of the public laws of eighteen hundred and seventy-eight, was framed for the purpose of providing for the examination of a poor debtor either before or after his arrest, at the expense of the county, if such debtor has not sufficient property not exempt from attachment wherewith to defray such expense. The exemption of property not liable to be taken for debt may amount to at least one thousand dollars.

Turning to the laws of other States, your Committee find that in thirty-one out of forty-seven States and Territories there are provisions for arrest for debt, in some form. In some few the causes of action upon which the arrest is made are more restricted than in Maine, but in a majority the facility for disclosure in this State is much in favor of the debtor. The States in which no arrest on mesne process or execution for debt is permitted, are mainly, although not entirely, in the South, where the communities are heavily burdened with local taxation, and where discriminations against class and color have been marked, and have operated most unfavorably to the black laborer, who before the war

had no recognized rights of manhood or citizenship. Nor must we forget that creditors are not all rich. A very large portion of suits in our Courts are brought by the humble and the poor to secure their rights in property or the proceeds of their labor, against the designing debtor.

For these reasons, the assertions found in the message that "thousands of our citizens have left our State during the decade to escape their burdens of debt and taxation hoping to better their chances in a new country," and that "one of the most efficient causes tending to drive citizens from the State is the law of imprisonment for debt," do not seem to the Committee to be well founded. They seem rather to be a reflection upon those who have gone to new States, allured by the cheapness and fertility of their lands or by their mineral wealth, and who were amongst our most enterprising citizens.

The Constitution provides for a general valuation to be taken once in ten years, and that "all taxes upon real estate assessed by authority of this State shall be apportioned and assessed equally, according to the just value thereof." To carry out this provision the State, at considerable expense, have just completed a valuation of real and personal property. The Commission to which this work has been entrusted have been aided by the assessors of the several cities and towns and it is presumed have performed their duties conscientiously. The State therefore has availed itself of all the means provided by law to prevent unequal taxation.

By the laws of this State certain property and persons are exempt from taxation. But it will be found upon examination that such exemption extends only to property which from its character or the purposes to which it is put, all will agree should be exempt, or to persons who, from infirmity or poverty, are unable to contribute to the public burdens. Of this description are churches, charitable institutions, public buildings, household furniture, young stock, hay, grain, and vegetables, the tools of the mechanic, and like property.

The Courts have decided that exemption of private manufacturing enterprises are not allowed by the Constitution.

It is true that not only the State, but most of the cities and towns within the State are subject to a public indebtedness. The State debt is in large measure the result of the expenses incident to the war and the assumption of certain war indebtedness of cities and towns, whilst the municipal debts have grown up partly from the war, and in some cases from aid extended to railroads. Other States are in debt, and considering our resources and situation it will not be denied that we are both able and willing to pay what we owe. The credit of the State of Maine stands equal to that of any other State in the Union.

Nor do the Committee believe that any apprehension need be felt that the land of this country will ever be held in the hands of a few people. We have no laws of inheritance which would operate to that end; on the contrary, inasmuch as real estate descends to the children of the deceased owner in equal shares, the tendency is to divide landed properties into small parcels. And the history of the country shows that the large estates which were found in Maine and Massachusetts in early colonial times have been divided up, and are now held in farms averaging not over one hundred and fifty acres each. It is also true that great fortunes cannot be held together in this country for many generations.

Your Committee protest against the impression conveyed by this message, that the people of this State are not in a prosperous condition. If they are in debt they have ample means to pay their debts. Every branch of business except shipping, has recovered from the depression which followed the war, and is to-day exhibiting a prosperous and healthful activity. Agriculture, commerce, manufactures, and all the leading industries are steadily adding to their importance and increasing their productions. The rivers are again fast becoming sources of gain in the production of food fishes. The deep sea fisheries were never more abundant and profitable. The beautiful scenery of Maine attracts annually

large numbers from abroad. Our ice, granite, lumber, and quarries yield rich returns. The people are intelligent, prosperous and happy.

Your Committee especially regret all those expressions found in the message which tend to create class prejudice, and believe such expressions from the Executive do not tend to advance the honor and dignity of our beloved State in the estimation of our own citizens, nor to exalt it among its sister States, but rather to excite discontent with our institutions and destroy that patriotic sentiment so essential for the support of a free government.

The permanence of a representative government depends in a great measure upon the intelligence and harmony of the people, in whom all power resides. Public tranquility is necessary to public prosperity. Whatever tends to arouse distrust and prejudice in the minds of the people, weakens the ties which bind society together, and thereby endangers the Commonwealth. If by such appeals party success is promoted for the hour, it is at the expense of a sound and healthy public sentiment, which is necessary to the harmony and progress of the State. The road to fortune and honorable preferment should be open to every citizen, and success should not be counted a disgrace to any man. And your Committee cannot believe that the people of this State are jealous of any man who by industry, enterprise and courage achieves even a large fortune. This country invites all men to enter the field of honorable competition, and offers ample rewards to honest industry. Upon that field the people of this State are ready to take their part, confident of the future as they have been successful in the past.

D. N. MORTLAND,	} <i>Com. on part of Senate.</i>
L. A. EMERY,	
A. A. STROUT,	} <i>Com. on part of House.</i>
A. P. MORRILL,	
WM. FREEMAN,	
M. N. McKUSICK,	
O. G. HALL,	

MINORITY REPORT.

The undersigned, a minority of the Committee on the state of the Commonwealth, ask leave to submit the following report :

That they have not been consulted or taken any part in the preparation of the report of the majority, and having been requested to give their assent and fix their signatures to the same without having had sufficient time to fully examine the same, have declined so to do, and wishing to express their dissent, both with premises and conclusions of said majority report as far as understood by them, they would respectfully refer to the Inaugural Address of Governor Plaisted as its own sufficient vindication, which address we hereby make a part of our report, believing it will be adjudged by the plain people of this State worthy of their approbation and support.

J. R. TABER,

On part of the Senate.

F. W. RITCHIE,

THOS. S. BRIDGHAM,

On part of the House.



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 lawyers 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-

ture. 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 constitutional 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 acquiescence,—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,	}	<i>On the part of the Senate.</i>
D. N. MORTLAND,		
GEO. D. BISBEE,		

A. A. STROUT,	}	<i>On the part of the House of Representatives.</i>
O. G. HALL,		
EPHRAIM FLINT,		
L. R. KING.		

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 14, 1881.

ORDERED, That there be printed for the use of the Senate, five hundred copies *each* of the Report of the Committee of the Judiciary, on the Governor's Address, and of the Majority Report of the Committee on the State of the Commonwealth.

Amendment "A" Amend by adding the Minority Report thereof, exclusive of the Governor's Address, the same having been heretofore printed.

Read, Amendment "A" adopted, and passed.

C. W. TILDEN, *Secretary.*

A true copy—Attest:

C. W. TILDEN, *Secretary.*