

# MAINE STATE LEGISLATURE

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# SIXTY-FIRST LEGISLATURE.

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SENATE.

No. 57.

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## STATE OF MAINE.

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IN SENATE, February 22, 1883.

*Ordered*, That the Secretary of the Senate cause to have printed three hundred copies of the opinion of the Justices of the Supreme Judicial Court, on the construction of the following extract of the constitution of this State, to wit: "The number of representatives shall, at the several periods of making such enumeration, be fixed and apportioned among the several counties, as near as may be, according to the number of inhabitants, having regard to the relative increase of population," which opinion may be found in volume 3, Maine reports, pages 477 to 480 inclusive.

Read and passed.

C. W. TILDEN, *Secretary*.

A true copy. Attest:

C. W. TILDEN, *Secretary*.

IN THE HOUSE OF REPRESENTATIVES.

MARCH 3, 1821.

*Ordered*, That the justices of the supreme judicial court be required to give to this house, according to the provision of the constitution in this behalf, their opinion on the construction of the following extract of the constitution of this State, to wit :—"The number of representatives shall, at the several periods of making such enumeration, be fixed and apportioned among the several counties, as near as may be, according to the number of inhabitants, having regard to the relative increase of population."

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*To the Speaker of the Hon. House of Representatives of the State of Maine :*

SIR :—An order of the house of representatives has been presented to us by their committee, requiring the justices of the supreme judicial court to give to the house their opinion on the construction of the following extract of the constitution of this State, to wit :

"The number of representatives shall, at the several periods of making such enumeration, be fixed and apportioned amongst the several counties, as near as may be, according to the number of inhabitants, having regard to the relative increase of the population."

The undersigned justices of said court, in the absence of Judge Weston, whose distance from this place precludes us from receiving the aid of his views and reflections, have in compliance with the requisition thus communicated to us, given to the subject the best consideration in our power ; and

now have the honor of transmitting to the house the result of our examination and deliberations.

In order to arrive at a correct understanding of the clauses in question, it is necessary to attend to the whole section of which it forms a part; and also to examine it in connection with other provisions of the constitution.

It will aid our inquiries as to the true exposition of this clause, if we first advert to the principles upon which the representation in the senate is predicated. By article 4th, part 2d, § 2, it is provided, that on or before the fifteenth day of August next, "and at every subsequent period of ten years," the State shall be divided into senatorial districts; and the senators "shall be apportioned according to the number of inhabitants." The words "having regard to the relative increase of population," are, as it were, studiously omitted; and the reason of this omission seems apparent upon a moment's reflection. The old and comparatively thick inhabited parts of the State, bear, according to their population, a much larger proportion of the public burdens than is borne by the more recently settled and thinly inhabited parts. And as in regulating, equalizing and determining the valuation of the State, in pursuance of article 9, § 7, of the constitution, no regard is to be had to the relative increase of polls and estates; so, in apportioning the senators, no regard is to be had to the relative increase of population. For however between the periods of enumeration or valuation the polls and estates may have relatively increased, the apportionment of taxation continues unaltered and the same. But we advert to this provision of the constitution, respecting the apportionment of the senate, merely with a view of establishing and illustrating this position, that as the words "having regard to the relative increase of population" are omitted, when speaking of the apportionment of the house, they must, where inserted, have been inserted with a design.

It is also an established rule of construction, that all the words used in any instrument, and especially in so important

an instrument as a constitution, should be considered as inserted for some good purpose—as intended to have some legal and sensible operation; of course, words or sentences are not to be rejected as surplusage or of no importance if any sensible meaning to them can be discovered. If we now turn our attention to the provisions of the section that was taken, the design in inserting the words “having regard to the relative increase of population,” and the meaning intended to be conveyed by that expression, will, we apprehend, become apparent.

It was unquestionably the intention of the framers of our constitution, that each of the counties should be fairly and equally represented according to its population; but it must have been foreseen that no arrangements could produce a representation precisely proportioned to numbers. It was doubtless contemplated also, that in the advancing settlement and population of the State, some counties would increase in numbers more rapidly than others. And it was readily perceivable that, as every apportionment made by the legislature must continue five years, and may continue ten, in the intervals of successive apportionments an inequality of representation in the house of representatives would necessarily arise. The provision in the constitution on the construction of which our opinion is required, we therefore apprehend was introduced with a view to obviate, in some degree, this inequality, by anticipating its progress and guarding against its effects.

The constitution has given to the legislature the power, and made it their duty, to ascertain at certain periods the number of inhabitants in the State, and in the several counties. By means of the facts thus obtained, they can ascertain the relative increase of population in the several counties, and it is enjoined upon them in making the apportionment of representatives to “have regard to the relative increase of population,” by anticipating what will be the amount of population in a given county at the proper intermediate period, between two periods of enumeration, and allowing to such county an additional representative, if by comparison with

the ratio of increase in other counties, such anticipation will not encroach on the right to equal representation in such other counties. But this anticipated relative increase, though highly probable in event, is nevertheless contingent and uncertain in amount; depending principally on emigrations, which in the nature of things are unsteady and fluctuating. We are therefore inclined to the opinion that the power given to the legislature by the provision in question has respect only to those fractions which must necessarily exist in such general apportionments; and is to be exercised by duly estimating the relative increase of population in the several counties; and where the ratio of increase will allow, giving a just and proper effect to these fractions by converting a fraction into a total as a basis of calculation. We are the more inclined to the opinion that the "relative increase" mentioned in the constitution, regards fractions and not totals, because it is in the power of the legislature, if the relative increase should in the course of five years prove so considerable as to produce essential inequality, to new apportion the representation, and conform it to the change of population which shall in the mean time have taken place.

If it should be inquired by what precise rule this apportionment according to relative increase is to be made, we should reply that we know of none more definite than that which has already been mentioned. The constitution has prescribed none; and perhaps none could have been prescribed. It has confided the power contained in the provision in question, to the legislature, presuming that it would be exercised with sound discretion, in a spirit of justice and impartiality to the whole people, and with the sole view of insuring that equality of representation and those beneficial effects which it was intended to produce.

We will only add, that unless the expression "having regard to the relative increase of population" admits of a construction of the nature which we have endeavored to ex-

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plain and illustrate, we know not for what purpose it could have been engrafted into the constitution.

PRENTISS MELLEN,  
WILLIAM P. PREBLE.

PORTLAND, MARCH, 6, 1821.