

MAINE STATE LEGISLATURE

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RESOLVES

OF THE

EIGHTH LEGISLATURE

OF THE

STATE OF MAINE,

PASSED AT THE SESSION

WHICH COMMENCED ON THE SECOND DAY OF JANUARY, AND ENDED
ON THE TWENTY-SIXTH DAY OF FEBRUARY, ONE THOUSAND
EIGHT HUNDRED AND TWENTY-EIGHT.

Published agreeably to the Resolve of the 20th June, 1820.

PORTLAND.

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1828.

SPEECH
OF THE
GOVERNOR OF THE STATE OF MAINE,
TO
BOTH HOUSES OF THE LEGISLATURE.



*Gentlemen of the Senate,
and of the House of Representatives :*

It is fortunate that the order of nature, which usually requires the agents of private business, once in the revolution of the seasons to revise their concerns and prepare for the demands of an advancing period, should have been imitated in our political institutions. The effect is that the wisdom of the Legislature is called to review only such brief terms of experience that the connexion between causes and consequences is easily traced, remedy can be applied to evil almost at its commencement, and the great check of responsibility is rendered in the highest possible degree effectual.

The Constitution having rendered the field of ambition tenable only for so short a term, it may, if for no other reason, be expected that the public spirit and pure motive usually carried to the threshold of office, will be preserved, that the obligations created by patriotism will not be abandoned to party, the felicity we enjoy be immolated to prejudice, or our true State policy abandoned for any purposes of inferior importance.

Looking first to the administration of this government, allow me to place these questions before you. What has been the official conduct of every public agent, each of whom is directly or indirectly amenable to you? Have the members of the Executive department been diligent, faithful, and discreet? Have the Judiciary correctly expounded the laws, and preserved inviolate the rights of jurors, parties, and witnesses? Has every citizen received from all the public functionaries the attention and respect due his wants and his character as a man, and a republican? It is believed that these questions must be answered favorably; but, if not, both officers and systems, in the way of reform, will require the corrective application of your constitutional power. It is due all the officers with whom I have been immediately associated to acknowledge a high respect for their efforts to promote the public good.

Regarding more particularly the objects of the administration of the past year, the prescriptions to the Executive by your immediate predecessors stand conspicuous. The wisdom displayed will not only command a grateful recollection hereafter, but is evidently approved at present, as is attested by the presence of so large a portion of the members of the last legislature. The proof of zeal and fidelity in the execution of what that distinguished body prescribed is to be found, if at all, in these documents, now respectfully submitted to your examination. There will be found among them the proper reports relating to two objects of internal improvement, the Kennebec and Houlton roads, which are of primary consequence, and not only demanded by existing wants, but which must gradually grow in importance and utility. They are adverted to now because all that has been done in regard to them has been simply in the way of preparation, and much is still required for the effectuation of the object.

As a responsible representative of the people, having no other opportunity of advancing the opinions I entertain, I must beg leave to refer this consideration, connected with the proposed location of the seat of government, to your serious deliberation. It relates only to the method of accomplishing the purposes which, eventually, will require of the people that exertion of liberality which seems to be imposed on those who are founding great establishments, more for the benefit of their descendants than of themselves. Debts, with individuals or States, too commonly result in the evils of insolvency, and however plausible the argument may be that future generations ought to have imposed on them, in part, the burdens of the public contributions we may think for their benefit, the human character is such that an entailment of a debt, public or private, is commonly honored at first only by its increase, which is followed by the refusal to pay it, and afterwards by disgraceful contentions.

Let us then, for providing public buildings, which at no distant period must be erected on the place you may approve, proceed with reference to our means, avoiding excessive taxation and loans, always attended with early or remote disasters. Instead of imposing our judgment on the operations of future periods, let us act on existing means with the view of transmitting benefits and not obligations and incumbrances, and of being able to say in our testaments, we leave a system and an estate, an example and a benediction, but we bequeath no restrictions on your freedom, on your discretion, or on your policy. If we shall judiciously use the capital in our public lands we can accomplish all our objects.

The Commissioners for dividing the lands owned by Massachusetts and Maine, have suspended their proceedings, in consequence of the reasons you will perceive they have assigned. Their agency has been highly beneficial, and, on some accounts, the prosecution of it seems an object of attention. The topographical knowledge derived, inadequate with partial and distant operations, will soon be required for the forming a plan or system as to those communications destined eventually not only to connect several of our rivers with each other, but to intermingle them with the St. John, and through the St. Lawrence with the great western lakes. That system would probably be more perfect as more early arranged, by continuing the division, inasmuch as the reservation of materials, of ground, and reservoirs, would belong to its details. Its execution would, of course, await the will of the community, and the provision of the ample means it would demand.

As the topics presented are related to Executive measures, it may be well now to observe that, respecting those, the Governor and Council when required to act, have maintained a perfect harmony in feeling and rarely varied as to conclusions. With rectitude of motive men can never quarrel and will not often disagree in opinions.

Amidst the train of objects following those before noticed, we see Agriculture, Commerce, and the Arts applying a power, which although not primary and creative, is doing much to produce new and embellish old establishments. It would have been considered proper to have produced a statistical view of the results, except that it is known that an abler hand has grasped the subject, and will present a map, calculations, and reasonings, which cannot but meet the wishes and encouragement of the Legislature, as such objects have received encouragement in several of the other States, and as they must receive encouragement or fail.

What has been done and what may be done will all be directed to satisfy persons abroad, as well as at home, that here is a field for their enterprise, where equal rights, and, with some local exceptions, equality in the social condition is enjoyed, where industry finds its certain reward within the reach of the plough, where virtue gives rank, and where the highest object of philanthropy is accomplished by imparting to every mind that religious and literary instruction which prepares it for earth and heaven.

In the number of our resources is one so conspicuous that it must early attract your notice. It is that of a wild and fertile territory, embracing about six millions of acres. It is

not necessary now to attempt to show how evidently it is subject to your jurisdiction, nor to speak of its distinguished natural advantages which impart to it the capacity of sustaining some hundred thousand yeomen. Valuable, or rather invaluable, as it is, we ought without hesitation to surrender it if we cannot with justice support that claim to it which unfortunately now stands opposed under the difficulties of an ingenuity which has endeavored to obscure the line, and an opposition, which, I trust, you will dispassionately authorize to be resisted under the limitations of a cautious and prudent, yet decided policy. But, withdrawing our view, for a moment, from this unpleasant topic, permit me, if you please, to ask your attention to the tracts of the same character which are situated on this side of the disputed territory. They furnish not only an asylum for the poor, in which they subdue the wilderness and become independent yeomen in a short time; but they invite that native enterprise and talent which frame their own character and fortune unmolested by the artificial distinctions sometimes found extremely embarrassing to genuine worth.

In the portions of territory last referred to, the settlement has been rapidly advancing under the encouragement of our legal regulations, and the measures of execution which have been applied. Within the term of the existing Land Agency, while private proprietors have been subjecting a great portion of the wilderness to the support of families, the State has disposed of soil and its produce to the amount of more than seventy thousand dollars, of which a part is now on the roads and in bridges, and a part in surveys, explorations, and incidental attentions. Some additional expenditures not directly drawn from this fund and the joint sales of Massachusetts and Maine, are, as will appear, excluded from the foregoing calculation. The proceeds, however, of one hundred and sixty eight thousand acres sold under the sole authority of Maine, amounting to nearly sixty-three thousand dollars, have been placed in the control of the government. About forty thousand dollars remain in the Treasury, in the form of notes and contracts, secured by a lien on the grants. Fifty-seven thousand six hundred acres have also been granted to Academies. This, in connexion with the sales made by Massachusetts, under the terms of Separation, subject to but small deductions of expenses, must satisfy all of the importance of our Public Lands.

It is gratifying to be able to add that the habit of trespassing, which was a stain on the character of our State, and

vexatious and pernicious to all concerned, appears to have been exterminated. The suits instituted by the government have been favorably decided, justice has received no new provocations, and that harmony prevails which usually cements the common regard of the members of a virtuous society.—The actual settlers, who, when pioneers of improvement, may always claim our sympathy and support, and much indulgence, have never been concerned in the violation of the rights to the common property nor in the consequent prosecutions; and if a few persons have disgraced the class of men to whom they belong, let me pledge myself for the others that they are too honorable and too proud not to repress every thing which can demand the resistance of the law. I know them, and that they are men who, in certain emergencies, are highly capable to sustain the rights and honor of the State.

Many propositions and statements have been made to me in favor of a change in our system of sales and settlement of the public lands, and it has been expected that some executive representation should be made to you. I can only say that the system is simple and plain, that it is easy of execution, and that it seems to me based on the solid foundation of common sense. Plans, embracing many conditions as to improvement, residence, and other objects, making up a code of rewards and punishments to be administered executively or legislatively, have been proposed. Such schemes cannot but be subject to serious objections, and it is probable that no mode can be better than that of selling on reasonably long credits, at low prices, and in small parcels, so as to accommodate all, and, also, without unnecessary conditions. It will be always practicable to pass acts, as circumstances may require, similar to the excellent provision made during the last year, by which public debtors were permitted to pay what they owed in the construction of a very valuable road, commonly called the Mattanawcook road.

It is a common, but a very indiscreet and incorrect remark, that our public lands are not valuable to the State. A proper examination of the subject will show that merely in a fiscal calculation they are of much useful importance. It is to pronounce the State unfit for self-government, to say, that millions of acres of goodly hills and dales watered by long and boatable streams, are of no value. Whether, however, of value or not, in regard to the Treasury, they are of immense importance to use for charity and beneficence. Even the privilege of being able to give them away is worth more than, without it, would be the richest mine of gold.

There must now be more than four hundred thousand inhabitants in Maine. Situated as they are, although the general, or, as it is called, State tax is small, it is nevertheless the fact, that there is a most unusually liberal contribution paid in labor and in money towards public improvements, by the various modes and to the numerous objects prescribed by the interests of the several divisions and subdivisions of our political corporations, and by the generous and patriotic character of our citizens. The weight of this burden is borne voluntarily and with a great spirit. It is, however, heavy on the first settlers and yeomen, who are planting and tilling more for the fruits and harvests which will have ripened after their busy action shall be exhibited by them no more upon the fields, than for themselves. The whole complex moral need not be deduced, nor the many applications of such a view to our duties here be made. It is enough to say that the worthy persons alluded to, may reasonably expect all the exemption and protection you may perceive to be consistent with their duties, which, of course, cannot but be in accordance with the common welfare. It may, therefore, be presumed while they are proceeding gradually in subduing the soil, conquering the climate, and subjecting the elements to the control of industry and mind, they may be left untrammelled by unnecessary governmental arrangements and severe exactions.

To continue the impulse of the prosperity we eminently enjoy, it cannot be doubted that it is necessary to cherish a solemn and unswerving respect for the rights of all the citizens, whether they may live in cabins on the frontier, or in such large and ostentatious mansions as you can see around you.— If any one can say, I am an American citizen and have been injured by foreign power, it seems proper to make as strong an effort for correction as will not compromit the general welfare, under the means which can be applied for individual and common defence.

The Government of the State, with the exemplary moderation, always creditable and necessary, has for years refrained from the exercise of many of its rights. It has been induced to do so, as may be inferred, from its anxious desire to accommodate to the wishes of the federal administration, and its disposition to avoid collisions, inevitably unfortunate, in any result. At the same time it cannot abandon its obligations, its title deeds, and its rights. It cannot allow the citizens to be incarcerated in foreign gaols. The State would shrink most dreadfully under the shame of such a submission. For the sake of being fully informed, it has for several years solicited

the documents possessed by the general government in relation to this subject. It is with great confidence that I urge its consideration now, inasmuch as all that has been requested has been supplied agreeably to what was understood to be the wish of the last Legislature. That invaluable mass of documents, now in the Secretary's Office, and the copies of communications between myself and others contain nearly all that I can offer. The delicate nature of the subject induces me to ask a particular examination in reference to publication, if that shall be proposed; yet, there is no wish on my part that what has been written by myself shall be disposed of in one way in preference to the other. On the most thoughtful review, I find no past deviations from my existing sentiments, and am bound to sustain the most rigorous responsibility.

Amidst the views urged, has been a primary one of that nature, requiring its being submitted to you for correction, if desired. It is in relation to the undefined and perhaps undefinable line of rights between States' and United States' authority, along which construction is constantly urging disputed claims, and, in general, has much the advantage in interruptions upon the States. The Executive of the Union has been considered as disposed to submit the question of the boundary of Maine, with a perfectly friendly intent, but without regarding her as a party, to the umpirage of a foreign authority. The submission itself admits the possibility of an unjust and disastrous decision. While it is not presumed to cast a shadow of suspicion on the integrity with which that authority may be exercised, nor upon the motives of any person whomsoever, it has, nevertheless, been deemed a suitable precaution to urge the following propositions. It cannot be arrogance which asserts them as materials of a monument of the rights of our employers, which will become firm by time, when properly combined and cemented by your reflections. If any feeling has been displayed on my part, it has been indulged with a view of eliciting results which it was believed would be salutary and acceptable. At the same time there has been no intention to abandon those prudential considerations entirely consistent with a free assertion of what it might be supposed the people, through their Representatives, would eventually approve and sustain.

At the period of forming the treaty of 1783, Massachusetts and the other colonies were independent of each other, as to territorial rights. The United States, as such, did not exist.

Although the Colonies constituted common Agents to form that treaty, the territorial rights secured did not, by virtue of that instrument, accrue to the nation, but were merely ac-

knowledged and confirmed by it to the existing individual corporations according to pre-existing grants, crown lands only being excepted.

When the Union of the States was framed, in that happy arrangement we are still permitted to witness, and which created a general guardianship, without extinguishing a particular independence, the compact left Massachusetts the proprietor, as one party, in severalty of all her soil. She held it fully, with undiminished interest, and has conceded her jurisdictional control only by that magnanimous act, usually called the Separation, which received validity from the concurrence of Congress.

The Union having no right to cede the territory, the treaty making power, as only a constituent part, cannot exercise a function beyond the grasp of the delegated power over the whole, nor, indirectly, by an umpire, do what it could not accomplish without ; that is, consent to the alienation, or the possibility of an alienation of territory, which I will show is solemnly acknowledged, through the President, to be ours.

It has therefore, been believed to be due this State to advance the doctrine that the submission of its boundary to an umpire, unknown to herself, and upon terms not confided to her consideration, will leave her at liberty to act upon the result as to the country and herself may be dictated by the most just and patriotic inclinations. Yet if it be true that the fifth article of the Treaty of Ghent has involved much of federal authority beyond the limits which many eminent statesmen have contended to be the true ones, as the treaty exists, the delicacy of the case, in relation to public faith, ought to have some influence upon our assertion of our claim, although an entire concession cannot be expected. It ought to be distinctly understood that there is a perfect harmony of sentiment with the federal administration in a most essential particular, in regard to which the language of Mr. Clay, the Secretary of State, is calculated to be highly satisfactory. It is as follows:—"The Government of the United States is fully convinced that the right to the territory is with us and not with Great Britain. The convictions of Maine are not stronger in respect to the validity of our title, than are those which are entertained by the President."

Whatever may be the character of the proposed umpirage, it seems necessary to adopt some rule of procedure as to the duties to be discharged before its results shall be known, and I cannot but hope to learn from you, in some way, what measures you will consider to be proper, if such acts as that of the arrest and incarceration of Baker shall be repeated. There will be no wish to go beyond your direction, nor to fall

short of it ; and, thus far, while the object has been to give no assent to injustice, there has been a steady view to your contemplated consultations and probable commands. It was an arrest which the testimony seems to me to condemn ; yet it cannot but be hoped that the neighboring government will place right the hasty acts of unthinking agents, and that we, expecting that generous conduct which springs from the character of an Englishman, should not suddenly and unnecessarily engage with him in contentions. While we were acquiescing in the abeyance of our rights, as connected only with property, the call for interposition was not imperative, but, when unauthorized power was applied to the persons of our citizens along the Aroostook and in other places, it seemed proper to ascertain the facts, in order to submit them to your consideration and to that of Massachusetts and the Nation, both of which will feel an interest, not only in the protection of our fellow citizens in Maine, but in the other relations of the subject. A letter was therefore sent to the Lieutenant Governor of New Brunswick containing a request that he would cause information of the facts relating to the arrest of Baker, to be returned. While in his reply he acknowledged, in favorable terms, the amicable disposition professed by this government, so far as on the occasion it was represented, he declined to make the explanations requested, excepting to those with whom he is directed to correspond, or under whose orders he is placed.

It must be known to you that, in addition to the means above mentioned, Mr. Daveis was appointed to obtain the information which all have appeared to consider desirable. From what has transpired there is no doubt in my mind of the intention of the government of New Brunswick to extend its jurisdiction, and to confirm it, if possible, over the whole disputed territory.

I cannot but profess to you the disposition on my own part, subject to your direction, to offer some difficulties against such a course ; but it is not to be doubted, that the United States' government and that of Great Britain, will perceive, on being furnished the facts, that the government of New Brunswick has advanced beyond the line of tenable ground, and seems not to have listened to those recommendations of mutual forbearance, which have been rung so loud that we did not notice its invasions.

Another of the objects of the mission of Mr. Daveis was to obtain the release of Mr. Baker, whose arrest was thought to be not only cognizable by the United States, but by the particular State of which he is a citizen. His confinement in the gaol at Fredericton was an act of power which, considering the nature of the facts as far as developed, required early

attention, and the course pursued was accordingly adopted, not, however, without a careful examination of principles and precedents. If you shall think the measure as involving any excess in the exertion of State power, it would seem to be desirable not to allow it to pass without the expression of your dissent, which would be received, on my part, with the utmost respect and deference.

The Minister Plenipotentiary of his Britannic Majesty has communicated to Mr. Clay, what are called by the former "sufficient proofs of the decided resolution of his Majesty's Lieutenant Governor of New Brunswick to maintain the disputed territory in the same state in which his Excellency received it after the conclusion of the treaty of Ghent." It certainly would not be desirable to put his Majesty's Lieutenant Governor's decided resolution to the test on this point, but it may be imperatively required to determine how far the treaty of Ghent and previous actual jurisdiction may sanction his authoritative approaches beyond the terms of that treaty, without a reasonable expostulation, not however to be followed by any unnecessary resort to forcible resistance.

It is not to be anticipated that the deplorable event of a war with Great Britain may not occur again. If that melancholy result of human frailty shall be produced, the situation of Maine will require great resolution and activity. The concentration of the British forces with the view of dividing the Union, by an occupation of New York, will not be attempted again, but the seaboard and the interior frontier of Maine will be the one a line of maritime invasion, and the other of excursions and incursions according to the emergencies relating to our defence. The effort will be probably to cut off this State, or at least for this we ought to be prepared, so as not to admit any repetition here of such scenes as occurred during the last war. It would appear to be proper to solicit of the general government the erection of some strong fortresses on our interior frontier. Its own disposition, and the obvious utility of works so situated, in anticipation of others where the country is better guarded, would, it may be hoped, assure, to a representation of this nature, a favorable reception.

Owing to the Union a faithful adherence and liberal support, there is at the same time due our constituents a manly assertion of their rights. You will not fail, therefore, to revert to the subject of the debt of the United States on account of the services of the Militia employed during the late war. Its payment is of less consequence than the acknowledgment of its justice, and the encouragement of that Militia

through a recognition of their merits, and may, surely, with a proper self respect, be presented to the attention of a Congress, too proud, magnanimous and intelligent to be sordid or prejudiced. The claim is truly that of citizen soldiers of the United States, driven into action by its measures, engaged in its service, exposed to its enemy, and employed for its benefit. Had it not been that an odium against the Executive of Massachusetts prevented, the claim would probably have been allowed long since, and the virtuous and faithful soldier who has paid back his wages in his taxes would have been indemnified. But let it be remembered that the acts of the Executive, as an official agent, cannot in policy or equity affect the claim of the citizen who obeys a national enactment and aids to effect a national object.

If this were a merely pecuniary concern, it would be derogatory and unpleasant on one side to urge, and on the other to refuse payment ; but while the difference between the parties grows only out of a mutual desire to maintain constitutional opinions, honestly entertained, there will, certainly, with high minded men, always be preserved the most friendly dispositions. It is not believed unsafe to predict that within a few years the claim will be satisfactorily adjusted through the magnanimity and justice of Congress.

It will be perceived that it will not be safe, under our system, to discourage the Militia in consequence of the offences of their officers, because the command of Public Spirit should, and will direct, and has been obeyed in spite of all difficulties ; but Public Spirit cannot be sustained without governmental patronage. There could not be a more pernicious course by the United States, than to impute the sins of any man or party, and to attach the consequences of them to patriotic yeomen who have served in their cause.

Those men liable at any time to be called upon to expose their lives for the safety of all, require an annual legislative review of their condition, and every reasonable measure calculated to give them animation and vigor. Quartered as they are at large in every dwelling, for domestic security, easily concentrated for war, yet, having a common interest, requiring a common cause for the disturbance of peace, they ought to be, as they are, willing to endure much toil and trouble as a necessary security of the rank they enjoy, and the noble privileges they participate. That the Militia laws are susceptible of improvement, is not to be denied, but it may be said that there has been more fault in the complaints against them than in the system itself.

There are now more than forty thousand men belonging to the Militia, divided into five hundred and seventy companies.

The arms and stores in the Arsenal amount in value to at least one hundred and fifty thousand dollars, the number of arms having been recently increased by a large supply from the United States. The administration of a department thus important and extensive, while it might be less arduous with some further provision for clerical aid in the office of the Adjutant and Quarter Master General, would still be embarrassed by a difficulty which seriously affects the troops, the omission of a code of rules and regulations, settling questions of rank and a great multiplicity of other objects, agreeably to the mode pursued by the United States. The deficiency can either be supplied through the Legislature, or by Executive prerogative. It is believed that the valuable testimonial consisting in a commission of the State through the suffrages of the officers or soldiers, would be valued more highly in proportion as the responsibility of those thus commissioned shall be increased. In that proportion is the commission the ostensible evidence of the capacity and efficiency of him who holds it. I shall therefore venture to suggest, with great deference, the expediency of requiring, on sentence of conviction of some small classes of military offences, the liability to costs under the direction of the Court.

It has been usual on occasions similar to this to advert to the character of our laws and to their practical results. A careful comparison of the laws of the other States with our own, would have induced some comment on portions of our code, if the leading State question had not required a large draught upon your patience. It will, therefore, only be urged now, that if our lawyers would throw all the precious maxims they can gather, into the treasury, at times when they can leave execution for improvement, and clients for the State, and if we would learn from the practical operations of our sister republics, we should be induced, probably, to consider as expedient a very few changes in our statutes. The subject has been noticed now principally with a view of soliciting your attention to some enlarged means, at least for one year, for supplying the State Library with the adjudications of other States, of nearly all of which the legislative acts have been procured. It may, however, be observed that whatever may be our laws, if there shall not be a faithful administration of them, legislation will be inadequate to its objects. As to that administration and the effects of it, when you shall examine, you will find, if my information has been correct, that the monstrous folly of litigation and of suits, which consume property annually like a conflagration has been diminished, and that convictions from crimes have not been as numerous as formerly.

Many of the measures adopted by the Federal Government seriously affect the welfare of our constituents. It is undoubtedly a principle of that Government to cherish not only the rights and interests of individuals, considered as units in the nation, but those of the States. It seems to be impossible to determine all the cases in which the whole body politic of any of these States, in representing its interests should be considered as advancing into federal territory, or, in other words, to settle the precise line where the State may go without intrusion. Hence a difficulty as to recent transactions relative to our Boundary. But we may at least advise with our Senators and Representatives, and if you shall find any thing in history or contemplation particularly interesting here, as to our commerce, or other objects affected, or to be affected by national regulation, your combined wisdom will be relied upon to state to Congress or the proper authority of the Union or to the agents of this State employed at Washington, all that your sense of the nature of the case may dictate. It would not, probably, be a surprising remark, if, in a future age, it shall be said by history, that the States, in the particulars above referred to, had suffered through their own negligence, that, trusting to that benevolence which intends to apply the national power to good purposes, they should have found those objects they contemplate for the common welfare, sometimes projected by venality and occupied by lawless ambition, the tariff of duties as may be prescribed and regulated, occasionally conformed to a local interest, and the policy adopted, as having led to the result which will draw forth reproaches as to consolidation of power in this confederacy.

ENOCH LINCOLN.

COUNCIL CHAMBER, }
Portland, January 3, 1828. }