

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

ACTS AND RESOLVES

4628

PASSED BY THE

TWENTY-SECOND LEGISLATURE

OF THE

S T A T E O F M A I N E ,

A . D . 1 8 4 2 .

Published by the Secretary of State, agreeably to Resolves of June 28, 1820, February 26, 1840, and
March 16, 1842.

AUGUSTA:

Wm. R. SMITH & Co., PRINTERS TO THE STATE.

1842.

Messages of Governor Fairfield.

To the Senate and House of Representatives :

About to enter upon the discharge of our respective official trusts, let us first render our devout and grateful acknowledgments to that great and good Being who has so signally blessed and prospered the state and nation during another year;—and under a just sense of the frailty of all human purpose, look to Him for aid in carrying out our resolutions of fidelity to the high obligations resting upon us—fidelity to the great principles of truth, justice, and humanity—to the cause of equal rights and liberal principles—to the duty of reflecting truly, and promoting earnestly, the opinions and interests of our constituents—and to the practical teachings of the simple truth that we are but *servants*, with no power but that which has been delegated to us by the people, and to whom, after a brief period, we must again resign it.

The subjects probably to come before you at the present session, it is believed cannot be numerous; but they are highly important, and demand, as they will undoubtedly receive, your earnest and faithful consideration.

Among them, certainly not the least important, is that of the public debt. Its amount now, exclusive of the indian and school funds, about \$1,700,000, is larger, probably, than was ever anticipated, and much larger than is consistent with the ample resources of the state, and its means to pay. No inconsiderable portion of it has arisen from three sources: the omission for several years to assess a tax for the support of government, under the delusive expectation that sufficient for the purpose would be derived from the sales of the public lands—the large amount paid under the laws bestowing a bounty on the production of wheat and corn—and for expenses incurred in resisting the attempt of a foreign power to expel us from our rightful territory. Whether these expenditures were ill advised or judicious, I need not, in this connexion, stop to inquire. The debt has been incurred, and must be provided for. A large, permanent public debt, however, is essentially adverse to the true policy, if not principles, of our government;—its gradual reduction, therefore, with a view to its early and total extinguishment, it seems to me, should be our constant aim. For the accomplishment of this purpose we can rely, in the first place, upon the repayment by the general government, of the military expenses incurred upon the frontier, in 1839, and our portion of the unpaid balance of “the Massachusetts claim,” as it is called—the amount to be derived from the timber upon the public lands, under a judicious system of sales—the collection of the large sums that have long been due

to the land department—the annual assessment of a reasonable tax—and upon the adoption of the most rigid system of economy in all our expenditures.

It is worthy of consideration also, whether the large draughts now made upon the treasury for the payment of costs in criminal prosecutions, may not with advantage be transferred to the respective counties in which they occur. To my own mind, there would be an evident propriety in the change. Should it be adopted, in addition to other advantages, it would not, perhaps, be unreasonable to believe, that the vigilance and scrutiny of the county officers, while doing justice to all interested, would effect a very considerable reduction of the aggregate amount of this portion of the public expenses.

I would also suggest the expediency of repealing the law appropriating the *per centum* now paid on bank capital, to the several towns and plantations in the state for the support of schools. It is a tax usually paid with promptness, and can be conveniently relied on by the treasurer for the payment of the interest on the public debt, and other demands upon the treasury. When divided and distributed, the amount received by the towns and plantations is but trifling; and as the deficiency thus caused in the treasury, has to be supplied by a tax on those who receive the supposed benefit, there would seem to be no good reason for objecting to a repeal—especially if we consider further, that the expense of an additional assessment and collection would be thereby avoided. If our common schools were to suffer detriment from the course suggested, however favorable in a financial point of view, it would constitute a serious objection to it. It is believed, however, they will not. An equal amount of money for the support of schools would probably be raised, by the towns and plantations, to that now raised, including the portion received of the bank tax. And this would operate no hardship, as the diminution of the state tax would correspond with the increase of the school tax.

If, therefore, the sums justly due from the general government and from individuals, be paid—our resources in land and timber be properly husbanded—the treasury be relieved from the payment of the bank tax and costs in criminal prosecutions—the most rigid economy be practised in all the departments of government—and a reasonable amount be raised by assessment, we may hope to see our state debt rapidly diminishing, and thereby avoid the odious imputation of throwing a burden upon our children justly belonging to ourselves.

No notice, thus far, has been taken of any amount to be received under the act of Congress providing for a distribution of the proceeds of the public lands, inasmuch as I cherish the the hope that, that law will not long be permitted to disfigure the statute book. Deeming it to be in violation of the constitution, dangerous as a precedent, corrupting in its influences, a delusion and a cheat in the good it proposes, a prospective burden to the tax-payer, and under all circumstances, an act little short of fatuity, I cannot refrain from recommending the

adoption of resolutions upon the subject, and instructions on your part to those who are bound to obey you, to exert their influence to procure its immediate and unconditional repeal.

A former act, to avoid the difficulties interposed by the constitution, was made to assume the form of a *deposit* of the public money with the states. The late law does not adopt even this poor disguise. It makes, ostensibly, and in fact, an absolute gift. If, therefore, it have any warrant in the constitution, it is not easy to perceive why equal authority may not be found for bestowing gratuitously any money in the treasury, from whatever sources it may have accrued. Congress is limited in its powers to those granted in the constitution. The power to give away the public money is no where to be found in that instrument. The authority "to *dispose* of, and make all needful rules and regulations respecting the territory and other property of the United States," cannot be made to include it, without doing gross violence to the plain and palpable import of the language used. To sell and dispose of land is one thing. To give away the money arising from such sale, is another and different thing. One is expressly authorized—the other is not. Nor would the case be relieved of difficulty by reference to the peculiar terms of the deeds of cession from the individual states, even if the act applied to the proceeds of the ceded lands alone. But it does not. Much the largest portion of the public lands were acquired by *purchase*, with money from the treasury, raised, mainly, by an indirect tax upon the people at large. Stripped of its disguises, the act clearly involves the power of *taxation* for the purpose of *distribution*:—and a practical confirmation of this, is exhibited in the fact, that simultaneous with the donation, was the raising of the tariff and the creation of a loan.

Its injustice and inexpediency are no less glaring than its unconstitutionality. That it creates a void in the treasury to the extent of the amount distributed, is evident. That the whole amount was needed to defray the ordinary expenses of government, has been officially shown. How then can this void be supplied but by *taxation*, direct or indirect? A loan does not *change*, but merely *postpones* the result. Providing for the deficiency by raising the tariff, draws the amount indirectly from the pockets of the consumers, and consequently, to a considerable extent, will constitute a tax on *persons* and not on *property*. The operation of the law, then, will be to give money, in which all the citizens have an equal interest, to the state governments, thereby (if it go into the state treasury) relieving property from taxation in the states, to that extent, to be paid back again to the national treasury by the citizens of the several states without reference to their property, with an additional sum equivalent to the expenses of collection, losses through delinquent officers, and the numerous contingencies to which all monetary affairs are subject. Can this be wise, just, or expedient?

But if it were clear of all these objections, how can the abstraction, *at this time*, of millions from the treasury, for gratuitous distribution,

be justified? Does not the neglected condition of the defences of the country, regarded in connexion with the existing state of our foreign relations, prompt to a more judicious and patriotic use of our means? Shall the long continued and aggravated encroachments of Great Britain upon the rights of this state, to say nothing of her high handed aggressions elsewhere, be forgotten, or the portentous aspect of the future be disregarded, while an ignominious and disgraceful scramble is going on for the contents of an already impoverished treasury? Every consideration that love of country and a just sensitiveness to national honor can suggest, forbid it. It is true that the resources of the country are abundant, and that we may rely much, in any emergency, on the strong arms, brave hearts, and indomitable energy of our people. Still, there are *preparations* which cannot be neglected, without disregarding the dictates of common prudence, to place the subject upon no higher ground. When these preparations are made, it is believed but little will be found in the treasury for gratuitous distribution.

In the foregoing, though I have not adverted to a tithe of the objections that might be urged against this law for distributing the proceeds of the public lands, enough, perhaps, has been said. I can take no view of it that does not involve its instant and utter condemnation. To my mind, it has not one redeeming feature. I would therefore not only repeat my suggestions, that resolutions for its repeal be adopted and transmitted to congress, and that the delegation from this state be also instructed in reference to it, but I would recommend further, that this state *refuse to sanction it by a reception of the moncy.*

The banking system of this state, though probably as free from imperfections as that prevailing in any state in the Union, has nevertheless, proved insufficient to prevent the failure of some banks, and the embarrassment of others. That insolvency and embarrassment have not been more frequent, and the consequent loss and injury to the public, as well as stockholders, more severe, is probably attributable, in a great measure, to the provisions of law, relating to the amount of circulation—extent of indebtedness of directors—liability of stockholders for debts of corporation—official returns under oath—and periodical inspection by commissioners. Provisions, that, as far as they go, have thus worked beneficially, it is presumed will not be readily relaxed or abandoned. On the contrary, we should inquire whether, they may not, with propriety and advantage be made still further restrictive. That the safety of the public might also be further secured, by requiring a wider specie basis for the circulation, and extending to these institutions the provisions of the bankrupt law, will hardly admit of a question. The latter, to be sure, is beyond your control, but it is to be hoped that it will not be unnoticed by congress, in the revision of this subject which is anticipated.

I would also add, that my opinions heretofore communicated to the legislature upon the subject of the currency, remain unchanged. That it would be improved by infusing into the circulation a greater propor-

tion of the precious metals, and that this may be accomplished by prohibiting the circulation of bank bills of a small denomination, I do not entertain a doubt. The only question is one of time. What period would be most propitious for such a prohibition, is a matter for the consideration of the legislature, who will, before adopting any important changes, look to the state of public sentiment, and fairly estimate the probabilities that new enactments would be rigidly enforced, or permitted to remain a dead letter upon the statute book.

For information as to the particular condition of the hospital for the insane, I must refer you to the reports of the board of directors and superintendent. The results, thus far, of the operations of this institution, it is believed, go to shed lustre upon the benevolent design which originated it, and to convince all that no expenditure of an equal amount could have been made, ensuring larger returns in the amount of human misery relieved and happiness promoted.

I must also refer you to the reports of the warden and inspectors, for information in regard to the condition and affairs of the state prison.

By the constitution, the duty is imposed upon you of making a new apportionment for the house of representatives, at the present session—and as there seems to be no doubt that the number has been changed by the voice of the people, on the question lately submitted to them, the new apportionment will, of course, conform to the reduced basis. That this duty will be performed under the influence of just and elevated views, and in a manner that can stand the severest scrutiny, I have no doubt. No outrage upon the principle of *fair and equal representation*, can ever command the approval of an intelligent and honest people.

It is expected that a new apportionment of representatives to congress, under the late census, will be made by congress at its present session. Should this be done seasonably, of which we cannot but be strongly desirous, districting anew for this state, or some other action, will become necessary on your part.

The new militia law, which went into operation on the first of the present month, involves several important changes in the system. That defects still exist, is quite probable—and that some persons complain as loudly of this, as they did of the late law, and are again contemplating changes, I am aware. But, while admitting that gross and obvious defects should be remedied, I think it is due to the importance of the subject, the difficulty of devising a satisfactory plan where such a contrariety of opinion exists, and the great pains that have been taken in framing the present law, that we should give it, in its main features, a fair trial. An efficient militia, always important, has become doubly so by the aspect of the times. But it can have no efficiency, while in a state of constant transition. Justly regarded as the right arm of our defence, the united and cheerful effort of all good citizens should be to strengthen, not to weaken it.

The report of the land agent will show the condition of that depart-

ment. The public lands will long continue to be regarded with deep interest, and will require the constant and vigilant supervision of the legislature. While the lands, and properly enough, are disposed of, more with a view to their early settlement by an enterprising, industrious and worthy population, which constitutes the true wealth of a state, than to any immediate pecuniary advantage; we may, and ought, to make the vast forests of timber which cover them, tributary to the wants of the treasury. A system, by which the law of demand and supply shall be properly regarded, and the timber saved from devastation and waste—by which the indulgence of favoritism on the one hand, and the success of powerful combinations to monopolize on the other, shall be prevented—which shall ensure to the state the fair value of the timber, and afford to all the citizens an equal opportunity to participate in the profits of a purchase, is what is needed. Complaints are made of the course heretofore pursued, and I deem it proper, respectfully to call your attention to the subject, not doubting that all will be done by you that justice to the state, and the convenience of the settler and other citizens, require.

Under a government like ours, having its foundation solely in the popular will, and the agents for administering it being designated for that purpose by popular suffrage, it would be but a trite remark to say that the people should be intelligent and virtuous. But if it be important that popular suffrage should be guided by intelligence and virtue, is it not of equal importance that the modes provided for its exercise should not only be wisely adapted to the purpose, but be sacredly guarded from every corrupting or perverting influence? If to the ballot box we look as one of the chief instruments for the maintenance of freedom and the preservation of our rights, how constantly and sedulously should we watch over and defend it? If a sinister blow was to be struck at our free institutions, where could it be more effectually given? Once bring discredit upon the ballot box—destroy confidence in it, deepen the suspicion that its results are founded in intrigue, bribery, corruption and falsehood, and are indicative of anything rather than the free, unbiassed, unpurchased suffrages of the people, and you strike a deadly blow at our free system of government, and do much to extinguish the glorious light which the development of that system has been shedding upon the political destiny of mankind. The pertinency of these remarks, it is believed, may be found in the scenes enacted during the year 1840—scenes that can be remembered only with shame and regret. That this state did not so deeply participate in them as many other states, is perhaps attributable, in no small degree, to our judicious election laws, and the numerous guards which a prudent and sagacious legislation had thrown around the ballot box. Enough, however, occurred even here, to show that further provisions are necessary. The fraudulent practice of transporting voters from one state to another, might be, in the election of president and vice president, effectually guarded against, by requiring the election to be had upon *the*

same day in all the states. This, it is true, is a matter beyond your control—but I submit whether it is not of sufficient importance to authorize the transmission of resolutions upon the subject to the national legislature, or at least to justify instructions to our delegation in congress. Other provisions, or amendments of existing laws relating to this subject, may be suggested by your own observation and reflection. I can assure you of my hearty co-operation, in all your efforts to prevent frauds upon the ballot box, to guard the right of suffrage, and to maintain, in every practicable way, the purity of elections.

It is with pain and mortification, that I find the boundary question still among the standing topics of the annual executive message. The president in his late communication to congress, after referring to the progress that had been made by one of his predecessors towards “negotiating a convention with a view to the final settlement of the question,” adds, that he “regrets to say that little further advancement of the object has been accomplished since last year.” That is to say, as we have good grounds to believe, a fair and reasonable proposition on the part of our government with a view to an amicable and final settlement of the question, has remained another year, *unanswered* if not *unnoticed*. If from this circumstance, as well as from the whole history of the case, you can discover any indication on the part of Great Britain other than that of a settled determination never to peaceably yield a large portion of the territory in controversy, you will be more fortunate than I have been. The course which, under this view, the general government should pursue, to my mind admits neither of doubt nor hesitancy. National honor, as well as justice to Maine, clearly indicate it—and that is, to purge the soil of this state, effectually and without delay, of every vestige of British encroachment. And then, if there is to be further *negotiation* upon this subject, let it be, on the part of Great Britain to *obtain*, what for more than a quarter of a century she has refused to *yield*. When a reasonable expectation can no longer be entertained, that, the general government will adopt this, or some equally efficacious course, if Maine is true to herself, she will take possession of the whole territory, and if need be, use all the means which God and nature have placed in her hands to maintain it. The consideration of the whole subject is with you, who, I have no doubt, will approve yourselves faithful guardians of the honor and interests of the state.

The exploration and survey under the general government, which has been in progress for the two last years, is understood to have nearly reached its close; and, it is believed, will add another confirmation of our title, which no ingenuity can avoid, nor effrontery deny.

This survey, however long its completion may be delayed, Great Britain in no way participating in it, and being instituted for the satisfaction of our own government, cannot justify a single day's delay on the part of Great Britain to agree upon a joint commission to run the line according to the treaty of 1783, and thus put this long vexed question forever at rest.

The extension of the military road to some point on the St. John, has become indispensable; and it is to be hoped that an early appropriation will be made by congress for that object. It is gratifying to perceive, that on this point, the opinion of the secretary of war is coincident with that entertained here.

I have long entertained the opinion that a change in the time of the meeting of the legislature from winter to summer would be attended with many advantages. In summer, the sessions would probably be shorter—more business would be accomplished in the same time—the expenses would be considerably diminished—and the convenience and comfort of the members greatly promoted. I would therefore recommend, that the question of an amendment of the constitution in this respect be submitted to the people.

If, in omitting to notice several topics, and to make certain recommendations, the anticipations and wishes of any shall be disappointed, I trust a palliating circumstance may be found in the amount of our indebtedness, and the condition of the treasury. However interesting, particular subjects are to large classes of citizens; and however judicious many appropriations of money might be generally regarded under other circumstances; at present, the emphatic call of the public voice for a course of severe economy, would seem to require their postponement to a more favorable period. And in this connexion permit me respectfully to add, that the indications of public sentiment seem to be no less unequivocal in regard to a session contracted to the shortest possible period consistent with a proper attention to the public business. And as a circumstance highly favorable to this end, may be mentioned, the late revision of all the statutes by commissioners eminent for their qualifications, and the subsequent re-examination and adoption of them by the legislature, at a session devoted to that object. It is not to be presumed, therefore, that much time will be occupied at the present session in amending existing laws. Their republication also, in a condensed and cheap form, and general distribution among the people, would seem to render any alteration, unwise and impolitic, not called for by a strong necessity.

JOHN FAIRFIELD,

COUNCIL CHAMBER, }
January 7, 1842. }

To the Senate and House of Representatives:

Agreeably to the request of the several states from which they emanate, I herewith lay before you the following papers, viz: resolutions adopted by the legislature of Massachusetts “relating to the re-eligibility of the president of the United States, and to the limitation of the office to a single term”—resolves “concerning the public lands”—and others relative to a protective tariff—report and resolutions of the legislature of Vermont “on the north eastern boundary question”—in favor of “designating the same day throughout the United States for the choice

of electors of president and vice president'—also in favor of restricting the eligibility of the president of the United States to a single term—resolutions of the general assembly of the state of Connecticut upon the same subject—report and resolutions of the house of delegates of Virginia in regard to fugitives from justice, and a copy of the correspondence between the governors of New York and Virginia upon that subject, and a report and resolutions of the house of delegates of Maryland upon the same subject.

JOHN FAIRFIELD.

COUNCIL CHAMBER, }
January 25, 1842. }

To the Senate:

In compliance with a resolve of the senate of the 15th instant, I have to communicate, that, in pursuance of a resolve of the legislature approved March 11, 1834, and an order of council of September 23, 1834, the land agent, on the 24th of November of the same year, selected and set apart twenty townships for the benefit of primary schools. Four of the townships have been lotted for sale and settlement under the law of 1838, and a part of the lots sold. The sum of \$17,520,92, the proceeds of the sales of timber and land, have been collected and paid into the treasury.

JOHN FAIRFIELD.

COUNCIL CHAMBER, }
January 25, 1842. }

To the Senate and House of Representatives:

Agreeably to the request of the governor of the state of Georgia, I herewith lay before you a report and resolutions adopted by the legislature of that State, principally in relation to the proceedings of the extra session of the 27th congress. I also transmit resolutions of the general assembly of the state of Alabama, in relation to the proceeds of the public lands.

JOHN FAIRFIELD.

COUNCIL CHAMBER, }
January 27, 1842. }

To the Senate and House of Representatives:

The inspectors of the state prison having made their annual report, the same is herewith laid before you.

JOHN FAIRFIELD.

COUNCIL CHAMBER, }
January 29, 1842. }

To the Senate and House of Representatives :

I herewith lay before you the accounts of the proceedings of the common council of the city of Alexandria, agreeably to a request therein contained, upon the subject of a retrocession of the city and county of Alexandria to the state of Virginia.

JOHN FAIRFIELD.

COUNCIL CHAMBER, }
January 31, 1842. }

To the Senate and House of Representatives :

A memorial of the directors of the New York Lyceum has been received, in which they express a desire to obtain " authentic copies of the laws, ordinances and documents, of the several states and principal cities of the Union, together with the journals or proceedings of the several legislative and municipal bodies, so far as the same may be attainable." Having no authority thus to dispose of the laws, legislative journals, &c. of this state, the memorial, together with the second annual report of said institution, and a letter from its president to my immediate predecessor in office, are herewith transmitted for your consideration.

JOHN FAIRFIELD.

COUNCIL CHAMBER, }
February 1, 1842. }

To the Senate and House of Representatives :

I have received from the adjutant general a communication relative to the new militia law, a copy of which, I have thought proper to lay before you, believing, that it contains many suggestions worthy of your serious consideration.

However judicious the proposed reduction of the militia may be, I am constrained to believe, that a more favorable time should be selected for carrying it into effect. The disbanding of so many companies and the reorganization of new ones, as the law contemplates, will be a work of time, requiring also, more accurate information on the part of those charged with this duty, than is now possessed.

Such a radical change, and the consequent dismissal of half the number, or perhaps a still larger proportion of the officers now in commission, cannot fail, I think, seriously to impair the present efficiency of our militia, however the experiment may prove in its final results.

No change in the system, which does not tend *directly* to improve and invigorate it, can be advisable, while the boundary question remains unsettled, and new causes of difficulty with Great Britain are daily multiplying.

I would therefore recommend such amendments of the law as shall obviate the difficulties suggested.

JOHN FAIRFIELD.

COUNCIL CHAMBER, }
February 4, 1842. }

To the Senate and House of Representatives :

Agreeably to the request of the governor of the state of South Carolina, I herewith lay before you a report and resolutions of the legislature of that state, in relation to the act of congress, appropriating the proceeds of the public lands.

JOHN FAIRFIELD.

COUNCIL CHAMBER, }
February 12, 1842. }

To the Senate and House of Representatives :

Agreeably to the request of the governor of the state of South Carolina, I herewith lay before you, a copy of a report and resolutions of the legislature of that state in relation to the controversy between the states of New York and Virginia touching the question of fugitives from justice ; together with a copy of an act relating to the same subject.

JOHN FAIRFIELD.

COUNCIL CHAMBER, }
February 21, 1842. }

To the Senate and House of Representatives :

Agreeably to the request of the governor of the state of New Jersey, I lay before you a copy of a preamble and resolution adopted by the legislature of that state upon the subject of a protective tariff.

JOHN FAIRFIELD.

COUNCIL CHAMBER, }
February 22, 1842. }

To the Senate and House of Representatives :

Major General Charles N. Bodfish of the 8th division of the militia, having, at his own request, been honorably discharged, a vacancy has occurred in that office, to the filling of which, I would respectfully call your attention.

JOHN FAIRFIELD.

COUNCIL CHAMBER, }
February 28, 1842. }