

MAINE STATE LEGISLATURE

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ACTS AND RESOLVES

PASSED BY THE

TWENTY-FOURTH LEGISLATURE

OF THE

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

A. D. 1844.

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

AUGUSTA:

W^M R. SMITH & Co., PRINTERS TO THE STATE.

1844.

Communication and Message of Gov. Kavanagh.

STATE OF MAINE.

EXECUTIVE DEPARTMENT, }
Newcastle, December 22, 1843. }

SIR:—I herewith transmit to you an official communication, in regard to “a bill, entitled an act increasing the jurisdiction of justices of the peace in civil actions, and establishing courts of trial, in each city, town and plantation in this state;” and I have to request, that you will deliver a copy of the same to each house of the legislature, within three days, after their next meeting, and that you will, at the same time, return the original bill to the house of representatives.

I have the honor to be, sir,

Your obedient servant,

EDWARD KAVANAGH.

To PHILIP C. JOHNSON, ESQ., *Secretary of State*, Augusta.

EXECUTIVE DEPARTMENT, }
Newcastle, 22d December, 1843. }

The undersigned, in the written message, which he transmitted to both houses of the legislature, on the 24th of March last, assigned the reason which then induced him to withhold his signature from “the bill, entitled an act increasing the jurisdiction of justices of the peace, in civil actions, and establishing courts of trial, in each city, town and plantation, in this state.”

Since the adjournment of the legislature, the undersigned has given, to the bill, that respectful and attentive consideration, which are alike due to the body from which it emanated, and to the important character of the measure itself, involving, as it does, an essential change, in the judicial system of this state. If, after the best examination which he has been able to give to the subject, he still feels constrained to withhold his assent, he derives satisfaction from the knowledge, that during this recess of the legislature, the whole subject has been presented to the mature reflection of the public, through the press and other channels of communication: and the legislature, which is about to convene, will come prepared to give effect to enlightened popular sentiment, and to dispose of the question, in the most satisfactory manner.

The undersigned regrets, that existing circumstances prevent him from presenting, at length, the reasons on which his objections to the

bill are founded, and that he is constrained to limit himself to merely a general enumeration.

1st. He is of opinion, that it may be well questioned, whether the mode prescribed by the bill, for the selection of the judicial officers, whose appointment is therein provided for, does not directly conflict with the provisions of the 8th section, part 1st, article 5th, of the constitution of the state. The policy of religiously abstaining from any act inhibited to the legislature by our well regulated fundamental law, is now too firmly established in popular feeling and public sense, to warrant any departure from the sound and patriotic course inculcated by the fathers of our political system. In a most important public document, which has received the sanction of our wisest statesmen, we read—"The people, not the government, possess the absolute sovereignty:—the legislature, no less than the executive, is under limitations of power:—encroachments are regarded as possible from the one, as from the other; hence in the United States, the great and essential rights of the people are secured against legislative, as well as executive ambition; they are secured, not by laws paramount to prerogative, but by constitutions paramount to laws."

2d. Admitting that no reasonable doubt should exist of the constitutionality of the various provisions, contained in this bill, the undersigned would hesitate in regard to the expediency of substituting, so suddenly, for an ancient and approved system, one so entirely novel in its features.

3d. The examination, which the undersigned has been able to give to the various clauses of the bill, has satisfied him, that many additions and alterations would be necessary in the event of its becoming a law, to give full effect to the presumed intention of the legislature by which it was passed.

Therefore, deeply impressed with a sense of the solemn official responsibility resting upon him, he returns the bill, with the foregoing objections, under the provisions of section 2d, part 3d, article 4th, of the constitution.

EDWARD KAVANAGH.