

MAINE STATE LEGISLATURE

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ACTS AND RESOLVES

PASSED BY THE

TWENTY-EIGHTH LEGISLATURE

OF THE

STATE OF MAINE,

A. D. 1848.

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

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1848.

GOVERNOR DANA'S MESSAGES.

Gentlemen of the Senate and House of Representatives :

IN looking back upon the year, which is now added to the records of the past, the mind turns, with painful regret, to the melancholy event which has suddenly deprived Maine of one of her representatives in the councils of the Nation. In Governor Fairfield an honest man has fallen—a discreet and patriotic statesman has been withdrawn from his earthly field of labor and transferred to a more elevated sphere of action and expansion. No citizen of the state has shared more largely in the confidence of the people, or been longer continued in their most important public trusts.

The vacancy, occasioned by his death, I have filled by the appointment of Hon. Wyman B. S. Moor. The constitution imposes upon you the election of his successor.

During the year just closed \$169,600 of the funded debt of the state has been paid. To provide means for the payment of this debt, it was necessary for the last legislature to authorize the sale of the United States stock in the treasury, or a requisition upon the banks for a temporary loan. The latter alternative was adopted. Under the authority granted, and with my approval, the treasurer has made a requisition upon the several banks in the state for an amount equal to four per cent. of their capital stock—about \$110,000. This requisition has been promptly met. The interests of the state and of the business community will both be promoted by the early payment of this loan. The right reserved by the state to require a loan from banks, was only intended to be exercised in an emergency and for temporary purposes, and should not be regarded as a permanent aid to the operations of the treasury. Nearly one half of our funded debt falls due in 1851. If we can pass that point without resorting to increased taxation, or being forced again into the market as a borrower, our remaining debt can be paid with comparative ease, as it comes to maturity. To provide for the debt of 1851, the usual annual tax of \$200,000 will be necessary. I have reason to believe that, under a system of strict economy in expenditures, the avails of an annual tax of \$200,000, and the receipts of the land office, if successful in its operations, added to our United States stock, will be sufficient to defray, until that time, the ordinary expenses of the government, reimburse the recent loan from the banks, and redeem the funded debt due that year. The United States stock should be set apart as a fund for the payment of that debt. Perhaps you may deem it judicious to

authorize the treasurer to exchange it for that debt, if a favorable opportunity offers.

As the state tax payable this year is but \$100,000, probably the receipts of the treasury will not exceed the immediate wants of the government until January, 1849, when a tax of \$200,000 will be payable. After that time a surplus may be anticipated, and should be applied, as it shall accrue, to the payment of the debt to the banks.

For a more full exposition of our monetary affairs, I refer you to the annual report of the treasurer.

The report of the land agent, which I herewith transmit, will present to you the operations of that department for the year ending December 31, 1847. The amount paid by him, during that time, into the treasury, is \$115,000. You will undoubtedly deem it expedient to authorize further expenditures upon roads, located upon the public lands, with a view to opening them to settlement; especially upon those which are necessary for communication, between the inhabitants of the territory bordering upon the St. John, and other portions of the state. Allusion is made in the report to the limited sale of settling lands and to the depressed condition of the agricultural interests upon the St. John and its tributaries. This state of things undoubtedly results from the want of the market, which lumbering operations have usually afforded, for the agricultural products of that region.

The great depression in the price of timber in Great Britain, rendered it judicious for the state to withhold permits, and a resolve was passed to that effect in 1846. Whenever business in that country shall have resumed its accustomed activity, this necessary article will command a remunerating price; and I recommend such a modification of that restriction as will authorize the land agent to renew operations gradually, as the demand for timber may justify, without reviving the former auction system, which in a measure, induced the recent too extensive and speculative transactions, so injurious to the state and ruinous to purchasers. Under such a discretionary power, our timber may be sold for its full value, the payments more amply secured, and our lumbering operations made to facilitate and prosper settlements upon the public lands, instead of resulting chiefly to the benefit of foreigners.

In presenting to you the report of the board of education and of their secretary, I cannot but congratulate you upon their apparent success in awakening an interest in the subject to which their labors are devoted.

This organization was intended, and its efforts are directed to fix public attention upon the importance of a high standard of universal education; and to collect and diffuse the results of diversified experience, in adapting means to the great end. When the end becomes fully appreciated and the means apparent, success is sure, and philanthropy may, in a great measure, cease her mourning over ignorance, vice, and crime.

The manifest interest and favor with which every portion of the state regards the asylum for the insane, will, without any solicitation on my part, prompt your attention to its affairs, and a favorable consideration of its wants, as exhibited in the accompanying reports of the trustees and superintendent.

The amount appropriated by the last legislature for the benefit of the deaf, dumb, and blind, was far less than usual, and insufficient to carry out the benevolent policy which has been adopted toward that unfortunate portion of our fellow citizens. It is understood that an additional appropriation was intended, but accidentally omitted by the committee in the last appropriation bill of that session. This deficiency has been supplied from the contingent fund of the governor and council. The sum required the ensuing year, for this object, will be about \$6,000.

The appropriation for the benefit of schools in the Madawaska settlement, has been nearly expended. The peculiar condition of that population strongly indicates the propriety of affording them still farther aid in their primary efforts in securing to their children the benefits of an education.

The expenses and liabilities incurred by the state to meet the requisition for troops for the Mexican service have been liquidated. It is but just that the amount thus expended should be refunded by the general government.

In my last annual message I urged upon the legislature the importance of a reorganization of the militia, and only refrain from renewing the recommendation at this time, because I am convinced from past indications, that any suggestions on that subject would be unavailing. The future will disclose whether my anticipations of outrage and violence upon the unprotected persons and property of our citizens are unfounded.

The accompanying report of the bank commissioners will exhibit to you the condition of our banks and the state of our currency.

I communicate herewith the reports of the inspectors of the state prison. In one of them your attention will be called to the evils resulting from the indiscriminate association of those who have but taken their first step in the path of crime, with the hardened, hopeless criminal. The reformation of the offender is an important, though secondary object of punishment, but under the present discipline, this object must be more than frustrated. It would seem due to humanity and the public morals that a classification of convicts should be provided for, having regard to their advancement both in age and crime, and distinguishing between such as are sentenced for life, and those who are to be restored again to society.

In connection with the subject of the state prison, I would ask your attention to that of the punishment of convicts for capital offenses. The impression has become a very general one upon the public mind, that capital punishment is practically abolished. The view taken is this, that the law is not imperative upon the executive to order an

execution ; and that no executive would voluntarily, of his own mere will, deprive a fellow being of his life. It is true, that such a power should not be exercised, except under a most clear conception of duty ; and it is important too, that that duty be apparent, not only to the executive performing it, but to the whole community, otherwise the executive power of the state presents itself to the people in a light, arbitrary, cruel and revengeful, instead of appearing as it should, the mild, constitutional guardian of the rights of all. Again, if our statute is susceptible of the two constructions which the diversity of public sentiment seems to indicate, it undoubtedly will occur, that the person discharging the duties of the executive at one time, will adopt one construction, and his successor another, thus removing that certainty of the nature and degree of punishment, which should always attach to crime. The subject is of too much importance to be left to speculation, or doubtful construction.

There is no law making it the duty of the clerks of the courts to transmit to the executive, official evidence of conviction and sentence, for capital offenses ; and without this official evidence, he is distinctly precluded from ordering an execution. This is obviously an omission, unless the framers of the statute intended it as an entire abolition of capital punishment, for they could not have designed that executions should depend upon the voluntary action of those officers.

Numerous applications have been made during the year for the exercise of executive clemency toward those convicted of crime, some of them urged by large and highly respectable portions of our fellow citizens, and appealing painfully to my sympathy. With few exceptions, I have felt impelled by a strong sense of duty to the whole public, to resist these appeals. The great object of punishment, is to deter others from crime : and its power to produce this result, lies more in its certainty than its severity. The mere possibility of a severe punishment possesses by no means the restraining influence which attaches to the certainty of one more mild. Let the conviction be produced upon the public mind, that even a mild punishment must inevitably follow crime, and but few crimes would be committed. But if to the necessary uncertainty of discovery, arrest and conviction, we add the impression that the pardoning power is easy of access—that influence, friends and sympathy can open the prison doors, we place society in a far worse state, than under a total repeal of our penal code. In most of the applications for pardon, it has been alleged that the punishment was too severe for the crime committed. It is a proper question for your investigation, whether any portion of our criminal law is characterized by cruelty or harshness ; if so, the spirit of the age demands of you its amelioration ; but if not, the executive has no right to shrink from its enforcement. It is true that human wisdom cannot frame a code of laws, which will not bear with a severity unintended, upon individual cases which may arise, strongly marked with alleviating circumstances. For such cases the pardoning power was intended and should be exercised ; but its indiscriminate or general use, for the

purpose of reviewing the verdicts of our juries, or the sentences of our courts, is entirely subversive of our whole system of criminal jurisprudence.

Assembled here as the agents of a free, sovereign and happy people, to represent their interests and provide for their welfare, we cannot but sympathise with the millions of our fellow beings, who are now struggling to wrest from despotic power, an acknowledgement of the rights and consequent blessings, which we enjoy. Your interest in their success must be heightened by a consciousness that their aspirations for freedom have been warmed into life, and quickened into action, by the benign influence of our own institutions.

We have at length illustrated by the results of successful experiment, that liberty and happiness to the governed, and strength to suppress internal commotions, or resist external aggressions, are both ends attainable under a popular government. The sentiment constantly inculcated by the friends of royalty, that our government was necessarily wanting in self-sustaining power, has been, until recently, a great obstacle to the spread of liberal institutions throughout the civilized world. But it has at length given way to admiration of the promptness, energy, and strength, which we have exhibited in defending our homes and firesides against threatened invasion; in carrying a defensive war into the heart of an enemy's country, and laying her prostrate at our feet, although protected by distance, by a pestilential climate, by superiority of numbers, by fortresses regarded as impregnable, and by physical features that bid defiance to an invading army.

Wherever freedom had a friend, his eyes have been turned towards us with mingled hope and fear. The events of the last two years have dispelled his fears and enabled him to assert with confidence, that liberty is not weakness—that a government based upon an enlightened popular will may maintain its rights, its dignity and power.

Our institutions have been for years the political light of the world: a light which is now fast dispelling, by its increased intensity, that darkness which envelops and protects the royal prerogatives of thrones and crowns. But there are those among us, many of them honest and sincere, who would dissolve our Union, because in some of the confederated states, an institution is permitted, which they regard as inconsistent with man's equality of rights—who would blot out from the political firmament this bright luminary, because they discover one dark spot upon its disc—who, failing to reach and at once suppress the limited slavery in our own land, would destroy the quiet but resistless influence which is inducing man, wherever he exists, first to aspire and then to rise to the dignity of man. Although the number of those who openly talk of disunion is now small, yet animosities and prejudices are assiduously cultivated and taking deep root, which, if cherished, must inevitably produce that result. The tendency of the times is wrong—a tendency to underrate the blessings of the Union—to forget that if true to ourselves, our mission is to emancipate the world. Men coolly count the value of the Union, its profits and its

loss. But it should be remembered that those who framed it, intended that it should be perpetual, and therefore provided no means for its peaceful dissolution—that the bands which unite us can only be dissolved in blood—that the first step from the Union is in civil war, its path anarchy, and its necessary end, most deplorable despotism. Shall we thus practically renounce the doctrine our fathers asserted—that man is capable of self-government—draw down with our own hands the standard they raised for universal freedom, basely desert those who are doing battle valiantly under its ample folds, and leave the millions of our race without a hope of permanent relief from the cruel dynasties which oppress them?

The question of the extension of slavery into our Mexican territory, is the immediate occasion for increased disloyalty to the Union and for consequent increased anxiety among its friends. I have an unshaken confidence that under the influence of the wisdom, prudence and patriotism of the country, this question may be adjusted without doing violence to the interests or feelings of any section; but if its settlement be surrendered to the direction of rashness and passion, I can see no end but disunion.

In recalling the brilliant events of the war which Mexican injustice and assumption forced upon us, we cannot be insensible to the fate of thousands of our fellow-citizens, who have offered up their lives to their country, in asserting her rights and defending her flag. Although Maine was precluded by distance from the seat of war, from furnishing her full quota of troops, yet her sons have not withheld their blood from the general offering. The erection of a monument upon the public grounds, to the memory of those who have fallen, would be but a deserved tribute to their valor and patriotism, and an act calculated in some degree to assuage the grief of the friends who mourn their loss. I trust the suggestion may meet your favorable consideration.

It will be regarded by every good citizen as a source of patriotic pride, that our government has been able to sustain the necessarily heavy burthen of a foreign war, with a credit unimpaired and to manage its immense fiscal operations without disturbing the monetary affairs of the business community. Impartial history will record the unavoidable necessity of this war and the vast importance of our conquests; while at the same time it does ample justice to the wisdom and forecast which directed, and the valor and skill which executed its unparalleled achievements.

The recent commercial crisis in Europe produced a severe shock here, and the necessary uncertainty which must attend commercial transactions, during the present political confusion, has continued and increased the pecuniary pressure and derangement. The unexampled tendency of the precious metals to this country during the past year, led many to anticipate an inflation of the currency and prices, and a general revulsion as the ultimate consequence. If, while we were importing so largely both money and merchandise, the increased revenue of the government had been permitted, as under our former

revenue laws, to form a basis for an increased paper circulation, this anticipation would have been fearfully realized : but under our present system for the collection and safe-keeping of the public money, a large portion of our surplus specie was withdrawn from the banks and from circulation, thus restraining, instead of stimulating, the tendency to over issues and a redundant currency. Peculiarly exposed as we were, I cannot but ascribe our escape from the general bankruptcy which has overspread England, and in a measure the Continent, to the healthful and corrective influence of the Independent Treasury.

Thankful for the mercies of the past, and trusting in a kind Providence for the future, in entering upon the duties of a new political year, I commend you to the guidance of Him whose wisdom never errs.

JOHN W. DANA.

COUNCIL CHAMBER, }
Augusta, May, 1848. }



To the Senate and House of Representatives :

Vacancies exist in the office of major-general in the first, second, seventh and ninth divisions of the militia of Maine, to the filling of which your attention is requested.

JOHN W. DANA.

COUNCIL CHAMBER, }
June 19, 1848. }



To the Senate and House of Representatives :

I herewith transmit copies of reports of the executive council, in relation to the returns of votes upon the amendments of the constitution proposed by the resolves entitled "resolves providing for an amendment of the constitution in relation to pledging the credit of the state, and creating a state debt," and by the resolves entitled "resolves providing for an amendment of the constitution in relation to the election of governor, senators and members of the house of representatives."

I also transmit copies of resolves of the legislatures of Alabama, Ohio, Tennessee, Connecticut, Texas, Rhode Island, Georgia and Maryland, together with a communication from the New Jersey Historical Society.

JOHN W. DANA.

COUNCIL CHAMBER, }
1848. }