

MAINE STATE LEGISLATURE

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ACTS AND RESOLVES

PASSED BY THE

TWENTY-NINTH LEGISLATURE

OF THE

STATE OF MAINE,

A. D. 1849.

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GOVERNOR DANA'S MESSAGES.

To the members of the senate

and house of representatives :

Time, with its silent, ceaseless tread, has again brought our state to a way-mark in her course,—the close of another political year. The operation of the simple machinery of our form of government, almost as quiet and imperceptible in its movements as time itself, without commotion, and scarcely with observation, has disrobed of authority those who exercised it, and clothed again with its responsibilities, the agent's of the people's choice. In entering anew upon the duties thus devolved upon us, of guiding the destinies of a young and growing state, of developing its resources, and elevating its character, it becomes us humbly to seek wisdom, at wisdom's eternal source. The working of the same system in our general government, has recently withdrawn power from those in whom it had rested, and transferred it to other hands—a bloodless revolution. When we see the occupant of one of the most elevated positions in the world, step down at once to the rank of a mere private citizen, unresistingly surrendering the influence, the patronage and control of the concentrated energies of this great republic, in obedience to the people's law and will, and contrast this spectacle with the struggles elsewhere, of rulers to retain their power, and of subjects to obtain their rights, we may well adopt with gratitude, but not with pride, the sentiment,—God be praised that we are not as other nations.

The incidents attending the late presidential election, furnish subjects for both congratulation and regret. For congratulation, because they clearly indicate that the most sensitive chord in the American heart, is that which throbs to the impulse of patriotism. General Taylor, by his cool discretion, and noble daring, gave success to our arms in many an unequal contest. The successful defender of his country's rights, he has been promptly crowned with his country's highest honors. Every good citizen must be gratified in the bestowal of such a reward for such services, when done without a violation, or disregard of other duties. But it is a just source of alarm, that the people should have elevated an individual to such a responsible position, in entire ignorance of his views in relation to those great principles and measures which have ever been the basis of distinct party organizations—principles and measures which the one party have urged as indispensable to the prosperity, and the other opposed as destructive to the welfare of the country. That such professedly vital interests

should have been thus left to the hazard of the doubtful development of unknown opinions, bespeaks either insincerity in the advocacy of those principles and measures, or a willingness to sacrifice the well-being of the nation to considerations of personal popularity, individual advancement, and party success.

But notwithstanding these circumstances, which we cannot but deprecate as of evil augury, still it is the duty of all, to give cordial support to his administration, so far as its measures may accord with their convictions of public policy. I doubt not that those who opposed his election will be governed by this rule, in extending a frank approval, or manly opposition. It is to be hoped that the country may not be disturbed by an attempt to abandon the commercial policy of the last administration, which has been so eminently successful in removing shackles from trade, and in giving to it increased facilities. Especially is it desirable that the present financial system of the government should be continued—that great agency, which, by its restraining and sustaining influence, has carried us with comparative safety, through a universal convulsion, political, financial and commercial, as great as the world ever witnessed.

The question of the introduction of slavery into our Mexican territory is still an open one, furnishing abundant material for agitation and irritation, and depriving the people of those territories of the benefits of civil government. In my first annual communication to the legislature, I expressed the deep feeling of the free states, that these acquisitions should continue as they were, free. Time has not in the least degree weakened, but has rather confirmed that feeling. I also assumed the position, that slavery could not be introduced there, except by the force of positive law establishing it; and endeavored to fortify that position by reference to the nature of the title which the master has to his slave—not a natural, but a mere statute, local right—a right which ceases to exist, wherever the statute ceases to have force. The same view of the subject has since been taken by the most eminent jurists in the country, and is now not controverted. Such being the case, the territories in question must forever remain free, unless surrendered to slavery by an act of congress, or by laws enacted by the people of the territories. If *they*, at the time of their transfer to our jurisdiction, had been permitted to determine the question, I have no doubt their action would have been a prohibition, instead of sanction of the institution. But if there were reasonable ground of doubt in relation to the action of the *original* population, that doubt cannot apply to the present or future. Slaveholders knowing their inability to retain their slaves in the absence of law, do not and will not venture to transfer them there; while at the same time, the recent discovery of the mineral wealth of that country is attracting thither a flood of emigration of non-slaveholders. Those territories are probably as unanimously anti-slavery in sentiment, as any state in the Union; and being so, the institution cannot exist there, unless forced upon

them by positive law of congress—a measure which the most ardent friends of slavery have never proposed. That country, therefore, is in no more danger of being overspread with slavery, than is the State of Maine; the north have no ground of fear, and the south have no hope of it. Both fear and hope might, perhaps, have reasonably existed in many minds, before the character of the population became fixed by recent free emigration, and by the absence of any effort for slave emigration; but since that, they are without foundation. If such, then, is the true position of the territory in question, congressional prohibition of slavery therein, would be no more productive of practical result, than a congressional prohibition of Mahommedanism—neither can exist there with or without prohibition; and yet the north and the south are both excited to the extreme of bitterness—the one insisting upon prohibition, and the other resisting it as just cause of disunion. The early establishment of territorial governments is desirable, not only for the protection of the exposed persons and property of our fellow-citizens, but for the purpose of allaying an agitation, which can only be productive of evil.

With this brief allusion to subjects of general interest to our state, in common with the whole Union, I invite your attention to those more directly connected with your official duties.

In all grants of land in the state, both before and since the separation, a certain portion of the granted land was reserved for the support of schools and for other public purposes. A law was passed by the last legislature, providing for the transfer of the care and management of these reservations, in places still unincorporated, from the county commissioners, to agents to be appointed for that purpose. This law, in some of its details, is imperfect. It requires the county commissioners to make immediate transfer of all moneys, claims and demands, to the state treasurer, but does not require the treasurer to enforce payment, or authorize him to transfer the demands to the agents for that purpose. A large proportion of the demands being secured by liens upon the timber cut from the lands, losses will probably ensue. The law gives no authority to the county commissioners, to reserve in their hands money for the payment of individuals who had been authorized by the district court, on the petition of the commissioners in many of the counties, to locate these reservations, and who were, when the law took effect, discharging that duty, or have since discharged it. In some counties the receipts from the reserved lands are insufficient to defray the expense of their location, but no provision is made for the deficit. In many instances, if not in all, this deficit has been paid from the general funds of the county. In other counties, the receipts from the *whole* of the reserved lands, are more than sufficient to defray these expenses, and yet the receipts from the reserved lands in some of the townships, are insufficient for that purpose; but the law does not indicate whether the deficit on a portion of the townships, may be paid from, and charged to the surplus on other townships. It was the in-

tention of each original grant, that the reservation therein should be for the benefit of the inhabitants of the township or tract in which the reservation was made; and it was the object of the recent, as well as of the former laws, to carry out this intention, by creating a distinct fund for each township or tract, from the reservations therein. But this cannot be done, if the reservations in one township are insufficient to defray the expense of location, and other townships taxed to make up the deficiency.

The timber townships contain far the most valuable reservations, while they generally hold out but small inducement to settlements. Undoubtedly the largest receipts will be from reservations in township which will remain unoccupied for centuries. I am impressed with the belief, that it will advance the general interests of education, and be far more equitable and just to the future residents of now unoccupied territory, if the products of all these reservations were gathered into a fund for general educational purposes—provision being made for the payment from that fund, of a stipulated sum to the inhabitants of any township, in commutation of their reservation, whenever they may become incorporated. In this manner, an important addition may be made to our school fund, a large portion of which would remain, for a long and indefinite period, to give aid to the cause of education throughout the state.

The act approved August tenth, eighteen hundred and forty-eight, providing for the sale of lands forfeited to the state for non-payment of taxes, requires a positive sale by the land agent, whether the amount due upon a given tract be offered for it or not. At the recent sale, held under this law, the land agent assumed the responsibility of fixing, as a minimum, the amount due for taxes, costs and interests; but in many instances that minimum was not offered, and consequently the lands were not sold. The powers of the land agent, under the law, having expired, some further legislation for the disposition of the unsold lands will be necessary.

The products of agricultural labor are undoubtedly of greater value than the combined products of all other labor in the state; and yet that pursuit attracts less of general attention than any other. From its unobtrusiveness it has allowed itself to be nearly overlooked, although *the great interest* of the state. The farmer sows his seed, watches its springing and maturity, reaps his harvest, and enjoys its fruits in quiet and contentment, asking no protection or legislation. But his interests should not be neglected because he makes no clamor in the halls of legislation. I presume it would not be doubted, that the general application of science to agriculture throughout the state, would double our agricultural products, with but a slight increase of labor. Such an addition to the productions, resources and wealth of the state, is an object worthy the highest solicitude, and should command your earnest consideration. But with our present means of education, little advance can be made towards its accomplishment.

There is not in the state, and probably not in New England, an institution where a practical, scientific agricultural education can be obtained. Three-fourths of our population are farmers; three-fourths of the rising generation will be farmers,—and yet there is no opportunity for one, of all this number, to obtain an education adapted to, and in aid of, his vocation. True, we have our high-schools, academies and colleges—many of them liberally endowed by the state—but they all fail to give him an appropriate education; for, instead of fitting him for his destined pursuit, and rendering it pleasing to him, his course of studies and the associations and influences around him, all tend to give him a distaste for it, and to invite to other professions and callings, where he will be far less useful to himself and the community. If, then, the object of education is to fit man for the duties of life, a large majority of our population have no opportunity for obtaining it.

In my annual message to the legislature of eighteen hundred and forty-seven, I suggested the establishment of an agricultural and teachers' seminary, under the direction of the board of education, and proposed that, when its finances would permit, the state should support, at that seminary, a small given number of scholars from each county, to be selected by their respective boards of school committees, as a reward of merit and proficiency. The chief design of this feature of my suggestion, was to give a stimulus to the interest, of both parents and children, in our public schools; but it would probably be attended with too much expense for the present condition of the treasury. An agricultural school, divested of this more expensive feature, as a model, and as a commencement of a system of agricultural schools, is an immediate want, and within our immediate means. The interest of the permanent school fund, which is still unappropriated, is more than sufficient for that purpose; and if, as I have already suggested, the proceeds of the reserved lands should be added to this fund, the interest of both combined, would, beside sustaining such a school, furnish the means for increased facilities for the education of teachers, either by the establishment of normal schools, or by prolonging the sessions of our institutes.

The policy of exempting a portion of the property of the debtor from attachment, for the double purpose of enabling him to supply the necessities of himself and family, and of furnishing him with facilities wherewith he may ultimately relieve himself from his debts, has ever been recognized by our laws, and is both humane and wise. But I am convinced that the exemption of a fixed amount of property, of such description as the debtor might select, whether personal or real, instead of the list of specific articles now exempted, would be advantageous both to debtor and creditor; because each individual debtor could then retain the property best adapted to his circumstances, and calculated to afford the most aid in accomplishing the objects for which the exemption was made. Under the present law, it may often occur, that the property retained, although the amount may be large, is of

little benefit to the debtor retaining it; whereas, if a much less value were secured to him, in precisely the property which his situation required, the ends of protection would be more nearly attained. But another important objection to our exemption of specific articles, is that no real estate is included. If the present exemption of personal property does not conflict with the rights of the creditor, the exemption of the same value, in either personal or real estate, surely could not; while, at the same time, it would be far more useful to the debtor. He is now allowed the products of a farm, tools, horses and oxen to cultivate it, but no farm; thus encouraged to obtain the implements of husbandry, but forced to use them upon the farm of another—induced to assume the relation of a tenant, while the true interests, alike of the debtor, creditor and the state, would invite him to become a freeholder.

All who have participated in preparing a state valuation, are aware of the difficulties attending the subject, resulting from the want of accurate data, on which to base their conclusions. The chief source of information, on which reliance has been had, is the valuation returns of the several cities, towns and plantations; but such is the diversity of rules, which have controlled in arriving at these valuations, that they furnish but little aid, in accomplishing the great object of equalizing the burdens of the state. It is undoubtedly true, that, in some towns, property is appraised, for the purpose of taxation, at its full value; while, at the same time, in other towns, it is appraised at less than half its value—a fact, which shows conclusively, that these returns are only calculated to misguide. As the time is approaching when a new state valuation will be necessary, it is well worthy your consideration, whether a more just and satisfactory mode of preparing it, may not be devised.

In my annual message to the legislature of eighteen hundred and forty-eight, I suggested legislation for the classification of convicts in the state prison, in such manner as would remove the young offender from association with the hardened criminal. Impressed with its important bearing upon the public morals, and the public safety, I ask your consideration of the subject.

In the same communication, I alluded to the general impression upon the public mind, that capital punishment was practically abolished, by making the duty of ordering an execution a mere discretionary one; and to the impropriety of enforcing the death penalty, while such an impression existed. The just inference from the inaction of the legislature upon these suggestions, is, that it did not desire its enforcement. But I have been unable to discover the grounds upon which such a construction of the law rests, and am forced to the conclusion, that the duty of ordering an execution is imperative upon the executive, unless the power of commutation of punishment is interposed. When the year had nearly expired, which must necessarily have intervened between the sentence and execution of Valorus P. Coolidge, I communicated to the council my construction of the law, proposing at

the same time, for reasons set forth in that communication, the commutation of his punishment. The council adopted a report, sustaining that construction, and recommending commutation. I herewith transmit the communication and report, for the purpose of distinctly presenting the action of the executive department to the legislature, that your silence may sanction the view taken of the imperative character of the law, or your disapproval reverse it, and thus remove all doubt upon the subject.

The recent amendment of the constitution, providing for the meeting of the legislature at the present time, was induced by the belief that it would diminish the expenses of the government, by shortening the sessions; but the result has proved this hope entirely unfounded. The change has imposed a heavy and unnecessary burthen upon the members of the legislature, and all who have legislative business to transact, by requiring their attendance, at a time when the private engagements of all classes are most pressing; and it has failed to secure any corresponding public benefit. When a wrong step has been taken, wisdom dictates that it be retraced.

By the law of the last legislature, for the reorganization of the militia, the salary of the adjutant general was reduced from seven hundred to two hundred dollars, at the time when new and onerous duties were imposed. This reduction resulted, unintentionally, from the efforts of the opponents of the general law, to defeat it by amendment. Although the reduced salary was an entirely inadequate remuneration for his services, the incumbent of the office, desirous of being instrumental in reducing chaos to order, in that department of the government, continued to discharge its duties, trusting to another legislature for the restoration of his salary. I trust that objection will not be made, to such an act of mere justice.

As the circulation of our banks is now comparatively small, and as we may reasonably anticipate an influx of the precious metals for some time to come, the present is a favorable opportunity for prospective measures, calculated to retain specie in more general circulation, and make it, to some extent at least, the basis of our paper issues. Speculative and financial skill may enrich itself, though it often reaps ruin from expansions and contractions; but the great want of productive industry, next to skill in the art of production, is a uniform measure of the value of its productions; and the chief, though secret mode of depriving it of its reward, is the enlargement of that measure to-day; and its diminution to-morrow. The question of what the amount of our circulating medium shall be, whether large or small, is of very little moment, compared with the question, how shall we insure that it be as large next year, when the promise to pay becomes due, as it is this year, when that promise is made. It is true, that even with a pure specie currency, perfect uniformity cannot be attained; but it is equally true, that the farther we depart from a specie currency, so much farther we depart from uniformity. I withhold, however, any extended re-

marks upon this subject, believing they will be unavailing. I am convinced, from the result of past efforts, that the prejudices of the people of the state are in favor of continuing our exclusive paper currency, on account of its supposed greater convenience, and because they have not yet perceived that the fluctuations necessarily attending it, are the chief cause of the depression of prices, stagnation in business, and frequent bankruptcy, with which they are periodically visited. The almost uniformly liberal and honorable management of our banks has tended to avert public attention from the consequences of radical defects in their organization; and while those consequences are unperceived, an effort to remove those defects must be hopeless.

The wing of the insane hospital, which for some time has been in progress of construction, was completed early in the past year, and is now nearly filled with patients. Although the expenditure for this object has exceeded the original estimates, yet the fact that it has been far less than for the main building (the capacity of both being taken into consideration) indicates that contracts have been made and the appropriations expended with due regard to economy. It is obvious that a similar construction on the opposite extreme of the building will be required within the time necessary for its economical erection, unless the liberal policy of the state towards that unfortunate class is abandoned. Such a retrograde movement I cannot anticipate, and therefore recommend an appropriation sufficient to procure within the present year the necessary materials. By thus preparing before the work is commenced, much expense and inconvenience may be avoided.

It is unquestionably the fixed wish and intention of the people that our public debt be paid as it matures; to provide for this the annual assessment of a tax of two hundred thousand dollars will be required until that object is accomplished.

The reports of the heads of the departments and institutions of the state, will exhibit the ability and fidelity with which the various trusts and duties have been discharged; and I refer you to them for the details of their operations.

In closing this my last annual message to the legislature, permit me, through you, to express to the people of the state, my thanks for the distinguished marks of confidence with which they have favored me; for the lenient spirit in which they have judged me; and for the kindness and courtesy which political friends and opponents have alike uniformly extended to me.

JOHN W. DANA,

COUNCIL CHAMBER, }
Augusta, May 14, 1849. }

*To the president of the senate,
and speaker of the house of representatives :*

I herewith transmit to you the report of Mons. Vattemare, the agent of Maine, for literary and scientific exchanges.

It affords me pleasure, also, to announce to you his return to our capitol, after an absence of two years, which has been devoted, in other States of the Union, to the promotion of the great object to which he has dedicated his life and fortune. When his system shall have fully developed itself, by uniting in a social and intellectual brotherhood, all the nations of the earth, his name, by being associated with that system, will have acquired an immortality which the most exalted rank and station well may envy.

For such an enlarged philanthropist, it is unnecessary for me to ask of the legislature of Maine a cordial reception and co-operation; but if aught were needed to inspire them, it would be found in the consideration, that he is the medium of kindly offices towards us from France, our ever steadfast friend, and now our sister republic.

JOHN W. DANA.

COUNCIL CHAMBER, }
May 18, 1849. }

To the president of the senate :

My attention was called yesterday to the following message and accompanying resolves, communicated to the council during my absence by the secretary of the senate :

“I am instructed by the senate to present the resolves in relation to the introduction and extension of slavery in newly acquired territory, to the governor for his approval and signature.”

The resolves alluded to contain a legitimate expression of the opinion of the legislature,—that congressional prohibition is necessary to preclude slavery from California and New Mexico. Although not concurring in this opinion I should have cheerfully complied with the request therein contained, to transmit them to the governors of the several states of the Union, if they had been presented in the ordinary manner. But the message attending them, is a new feature in our forms of legislation, and requires notice as an interference on the part of one branch of the government, with the rights and duties of another.

It is the constitutional duty of the executive to approve and sign or return with his objections, to the house wherein they originated, “every bill and resolution having the force of law.” If the resolves in question were of this character, it required no formal vote of the senate to impose upon me that duty, for a higher—a constitutional obligation

rested upon me. But the senate could not have considered the resolve as coming under that constitutional provision—could not have intended their vote ordering the message, merely as an admonition to the executive to perform a constitutional duty, because they did not allow him a constitutional alternative, to approve and sign or *return with his objections*.

The message then was intended as a request to the executive to concur, where there was no necessity for concurrence, in opinions diametrically opposed to those he had officially expressed—to approve, where there was no obligation to act, resolutions which had their origin in the avowed object of expressing opinions counter to his own. If after the passage of those resolves the senate had received a message from the executive requesting a reconsideration of their vote and an adoption of his opinions, it would have been received, and justly, as an insulting outrage upon that body; and it requires more discrimination than I possess to discover a difference in the character of such a message and the message in question. The message of the senate was ordered with the full understanding that it must result in a submissive retraction of opinions deliberately formed and publicly and officially expressed by the executive, or in a refusal and unpleasant collision. Did the senate expect the former? or desire the latter? A restriction of each department of the government to its own legitimate sphere of action, is essential to the proper discharge of the duties of all; and a gentlemanly tolerance of diverse opinion is absolutely necessary to secure that courtesy which should ever characterize all intercourse between them. Such a restriction I have ever imposed upon myself—such tolerance I have ever extended and should be happy to receive. The resolves are herewith returned without my “approval and signature,” for the reasons indicated in the foregoing.

JOHN W. DANA.

COUNCIL CHAMBER, }
July 17, 1849. }

To the senate and house of representatives :

I herewith transmit a communication from Zachary Taylor, president of the United States, in reply to the invitation extended him, at the request of the legislature, to visit the capitol of this state.

JOHN W. DANA.

COUNCIL CHAMBER, }
August 1, 1849. }

To the senate and house of representatives :

I herewith transmit a sword, taken from the Mexicans in the late war, by lieutenant T. H. Crosby, a citizen of Maine, and the accompanying communication, from honorable P. M. Foster, detailing the circumstances of its capture.

I doubt not the legislature will be proud to receive and provide for the preservation of this trophy of war, as an appropriate evidence of the skill and bravery of its captor, which must reflect honor on the state.

JOHN W. DANA.

COUNCIL CHAMBER, }
August 14, 1849. }