

MAINE STATE LEGISLATURE

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ACTS AND RESOLVES

PASSED BY THE

THIRTY-FIFTH LEGISLATURE

OF THE

STATE OF MAINE,

A. D. 1856.

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Published by the Secretary of State, agreeably to Resolves of June 28, 1839, February 26, 1840,  
and March 16, 1842.  
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1856.

GOVERNOR WELLS' ADDRESS.

Gentlemen of the senate and house of representatives :

WE assemble together by the favor of Divine Providence from whose beneficent hand we receive all our possessions. Our hearts should expand with grateful emotions to Him for the abundant products of the earth, for exemption from pestilence and wasting disease, and especially for the blessings of a free government,—a government of the people, without kings, lords or nobles, and in which there is ample scope for every industrial pursuit incident to man.

But although our government is founded upon the principle of representation, in a more perfect form than was ever before understood by any nation ancient or modern, it cannot be preserved without constant vigilance, without honesty and sincerity of purpose, and a practical ability, which justly appreciates the true mode of conducting public affairs. If we are negligent of our political rights, and do not exercise over them a perpetual and constant care, we may find when we awake to our true condition, that it is too late, and that all is lost by our supineness and inattention.

The subject of slavery in the southern states and territories continues to engross a large share of the public mind at the north. Although we are happily relieved from the existence of slavery among us, yet many of our citizens are more engaged in examining and discussing its policy and merits, than any other question of a public nature. In our estimation slavery is a great evil, the removal of which from the entire limits of our common country would be highly gratifying to every patriotic citizen. But it is not the part of wisdom in order to remove one evil, to bring upon ourselves an avalanch of evils. The true law of progress is slow, but sure and certain, not destructive but beneficial in its operations and results. By a prudent observance and willing obedience to this law, our form of government has been preserved, and there has not been a period since its institution, when it was in a more vigorous condition, and when the American people were more powerful and abounding in all the elements of wealth and strength, than at the present moment. When the people of the United States adopted their constitution, they were thirteen feeble colonies, just come out of a long and harrassing war; they were literally poor, a large portion of their property having been spent to secure their independence. Now we have thirty-one states, extending from the St. John to the Rio Grande, and from the Atlantic to the Pacific ocean, possessing immense resources and all the means of

greatness. Nor are primitive virtue and courage and aptitude for self-defense wanting.

The different States should be bound together in perfect friendship and amity, like the members of one common family. If reproach, abuse and vituperation are bestowed upon each other, such language will in the end produce its legitimate effects, engendering hatred and ill will, and at length breaking out in destructive action.

All the colonies participated in fighting the battles of the revolution. The patriots who had hazarded their lives in defence of liberty, after the war was over, sat down together and framed the constitution. Slavery then existed in nearly every colony. Each state being sovereign and independent, was under no obligations but those of patriotism to come into the confederacy. They severally possessed the right to regulate their own domestic institutions without interference of any one, and if this independence of individual states had not been conceded, the constitution could not have been formed, and the hope of a free and enlightened government of the people, on this continent, would have expired. The slave population at that time, as at present, constituted about one-sixth part of all the inhabitants.

It was undoubtedly expected, in the early days of the republic, that slavery would not continue many years. And there have been periods when there was a prospect of the adoption of measures to accomplish its removal. But we have reason to believe that it has been retarded by the agitation of the subject in the free states. A class of persons have labored assiduously for a quarter of a century to excite the feelings and prejudices of the people against the south and its institutions. They have enlisted the sympathies of those who are ignorant of the true condition of the slaves, and organized political parties with the avowed purpose generally of acquiring power to ameliorate their condition, but without any distinct and well defined object or course of action of a practical character. The history of their efforts demonstrates the weakness and inutility of them. They have accomplished nothing worthy of their professions. They have liberated but few, if any, slaves, and have not removed slavery from a single rod of territory. Discretion would indicate a change of measures, the cultivation of charity and kindness, and a broader range of social duties towards those whose political welfare and destiny are so closely united with ours.

If the owners of slaves should be willing to emancipate them, provided they could be distributed among the people of the several states in proportion to their population, it would give one slave to every six or seven free persons. Many of the slaves would be incapable of labor through age, infirmity, and childhood, and would require support as paupers. The residue would be at liberty to seek such subsistence as their wants might demand, in the same manner as free blacks usually do. The inhabitants of the north and west would not be benefited by an accession to their population of their proportion of three and a half millions of blacks. It requires no great degree of foresight to per-

ceive, that nearly every city and town in the free states would refuse their admittance.

When those who are most deeply interested in negro slavery, and have reflected most upon the subject, shall desire to relieve themselves of it, they will probably adopt a gradual mode of emancipation. The relation between master and slave cannot be suddenly dissolved with safety to either, while the number of slaves is so large. They might be freed after having arrived at a certain age, and sent to Africa, the land of their origin, with habits of industry, and a degree of knowledge and civilization which they never could have obtained in their native country. If the negro race is capable of self-government, and possess the inherent power of advancement in self culture, ample scope is now presented for the exercise of it on the continent of Africa. As evidence of a highly satisfactory character that negroes do possess this power, it is already shown in the colony of Liberia, that those who have been taught in the school of slavery, can sustain a firm and stable government, and defend themselves against barbarian and hostile tribes. The increase of the colony will constantly add to its reputation, and when its commerce shall be expanded, and its flag respected, and a growing marine exist, the eyes of the colored race will be turned towards it, and there will flow into it a constant tide of emigration. No reason appears to exist why it may not surpass in vigor and wealth, and much more in a good government, the nations which have flourished on the northern coast of that continent. Some of our national vessels might be fitted and employed in carrying to that colony all who are willing to be transported thither. And the expenditure would appear to be equally legitimate, as the employment of national vessels to guard the coast. An extended line of settlement of hardy colonists, capable of bearing arms, would prove quite effective in checking the slave trade.

The southern people are subjected to the burden of slavery, they know how to treat it better than we do, and it is alike alien to patriotism, and a true sense of religious duty, to inflame the minds of southern citizens and aggravate their condition by a constant course of censure and an unnecessary interference with their affairs.

The Missouri compromise line was an arrangement between different sections; it cooled the passions and allayed the prejudices of contending parties. It had remained in force a third of a century, and its repeal gave offense to many true friends of the Union, and occasion to the uprising of a wilder spirit of abolitionism than had ever before infested the country. Men, who had been loyal to their constitutional obligations, in a moment of resentment broke away and united with vicious political associations, that threatened, for a time, to destroy the very foundations of the Republic. But whatever opinions may be entertained of the policy of that measure, it has passed, and the principle is adopted, that each territory may determine the character of its own institutions. In itself considered, this is un-

questionably most in accordance with the basis of American government and the true idea of the liberty of communities. Those who wander far from the places of their birth, lay the foundation of new states and endure all the hardships and privations of infant settlements, merit the right of making their own laws, for the government of their homes and firesides. They can appreciate their necessities and interests better than their former associates, whom they have left at a great distance behind them. All the territories wherever situate, are open to a free competition of institutions; there is no longer any line to check expressly or by implication the establishment of such legislation as is congenial to the habits of the people. And the time will probably soon come when very few will desire the restoration of that line, and an end will be put to the constant and bitter conflict of opinion arising from that subject.

The regulation of the sale of intoxicating liquors will claim the early attention of the legislature. The laws upon that subject have undergone frequent changes, and with the light of experience, a new one may be framed, which will suit the wants of the community. The liability to abuse and excess in the consumption of such liquors, calls upon society to restrain the sale as far as is consistent with the liberty of the citizen. Intemperance is a great evil, the parent of many sorrows, vices and crimes, and every legitimate and proper means should be used to prevent it. But the true foundation of temperance must be laid in education. Fines and imprisonment terrify and restrain to some extent, but they rarely reform. Every man capable of managing his affairs has the right to determine for himself what shall be eaten or drank in his own house, and any attempt by law to control him in the exercise of it, cannot be justified. But when one undertakes to act upon society, by selling liquor, the law can properly prescribe rules for his government, he then makes himself amenable to the will of others. Society, in the employment of a proper discretion, may protect itself. The use of stimulants containing the intoxicating principle, has prevailed among all nations from the earliest times, and it is not probable, that it will ever be entirely abandoned.

Whether a person will or will not use intoxicating liquors as a beverage, is a question for his own determination. One may persuade another as to what he shall do in relation to himself in morals or religion, but coercion in respect to such action is persecution. It is founded in the sentiment, that one knows what is better for his neighbor, than the neighbor knows for himself, and a unity of will must be made by compulsion. An attempt of this kind is at war with the very elements of civil liberty. The wants of the community will be satisfied with a very restricted sale, by granting licenses in each city, town and plantation, to no more sellers than will conveniently accommodate the purchasers. It is a desirable object to place the traffic in the hands of respectable citizens. Innholders by furnishing liquors to their guests and travelers alone, would stand in the same situation as the heads of families. Importers under the laws of the United States

should be allowed to sell in the original packages. And there are some classes of persons to whom sales should be prohibited, those whose habits show them unfit to be trusted with what they are sure to use improperly.

The public good requires that no intoxicating liquors should be allowed to be drank in the shops where they are sold. Such practices lead to breaches of the peace, and other conduct injurious to society. It does not accord with wise and consistent laws to forbid the manufacture of an article which is permitted to be sold. No doubt the legislature will enact a law, with suitable penalties, that will receive the approbation of the people, and will accomplish all that legislation can be expected to do in promoting the cause of temperance.

Although many well meaning persons have approved of the existing law on this subject, believing it to be the best instrumentality to advance a good cause, it seems to me that they have done so without a thorough examination and understanding of it, and that no rational and unprejudiced man, who has studied it attentively, can sanction its tyrannical details, and recommend it, as a rule of government, to a free people.

Ever since the organization of the state, there has been an intermediate court between justices of the peace and the supreme judicial court, until the year eighteen hundred and fifty-two, when the district court was abolished. The smallest causes may now be carried by appeal from the decision of a justice of the peace to the supreme court. Courts of final resort, where the life, liberty and property of every person may be brought into controversy, ought not to be required to engage in the investigation of causes of small magnitude. They should be exempt from the hurry and confusion of an ordinary business court. The mind wearied with painful attention in hearing a multiplicity of motions, adjusting and disposing of numerous small actions, turns with diminished vigor to the trial of larger ones.

At present all the actions to be heard and decided are in one court, and the number for trial on the dockets in the several counties is understood to be greater than usual. When so many actions stand for trial, especially in the large counties, great expense is occasioned to suitors by delay, and in the difficulty of knowing when to be prepared for trial. A party must wait term after term the slow action of the law before his turn will come. Not unfrequently witnesses are summoned and attend court at a great expense, and it is found that the court cannot sit long enough to reach the cases in which they are to testify, or that they must wait many days, and the consequence is that the actions are continued. These evils are more or less incident to all courts, but more especially to the present organization. It is the duty of the state to provide a sufficient number of courts, so that there should be no unnecessary expense or delay in the administration of justice. In my judgment, the establishment of a court of common pleas would improve the condition of the judiciary, and be a measure of utility and economy to our citizens. If another court is formed, it

will be necessary to diminish the number of the judges of the supreme court. A reduction can be made to the desired number as fast as vacancies may occur.

It is somewhat remarkable that in the changes our judiciary has gone through, the highest court for the decision of legal questions should not be formed in a strictly legal manner. By the present law, four judges are designated to decide questions of law and equity, and for the trial of capital offenses, leaving four to attend jury trials. The four last named are not precluded in express terms from acting with the former, but such is the evident implication. Three of the members so designated as a law court, may hear all questions which may come before the court, but a majority may decide them. Two judges out of eight can determine all questions of law.

By the constitution of this state, there is no subordination of one judge of the supreme judicial court to another. They all stand upon the same footing of equality; their powers are the same. The constitution does not even provide for a chief justice. The judges together constitute the judicial power of the state and a distinct department of the government. The legislature makes the laws and prescribes the jurisdiction of the court, but the justices construe and expound them. The title given to the court, "supreme judicial court," by the constitution, implies that each member of it belongs to a tribunal of final jurisdiction. No power is given to the legislature to apportion their labor. When called upon by the governor, council, senate or house of representatives, in the language of the constitution, "to give their opinions upon important questions of law and upon solemn occasions," a majority of the whole number can determine them. If those who are not embraced in the law court should insist upon uniting with those who are, and in taking part with them, who could prevent it? If the legislature may prescribe their respective duties, it might say that some of them should try one class of cases and some another; some should confine their attention to actions originating with justices of the peace, while others should examine cases of more importance. The preservation of the distinct and separate powers of the government forbids that one branch should exercise over another a supervision not contemplated by the constitution. It does not seem to fall within the province of the legislature, but belongs to the several members of the court alone to divide and arrange their labors among themselves, each one having equal authority to act as a member of a tribunal possessing final jurisdiction, whether presiding at jury trials or aiding in deciding questions of law.

No one can be insensible to the absolute necessity of an upright and intelligent administration of justice. Our judges should be uninfluenced by passion or prejudice in the discharge of their duties, looking only to what is legal and just, irrespective of the persons whose causes are brought before them. It should be the aim and endeavor of good men of all parties sedulously to exclude from our courts all partizan bias and not allow them to be moulded or influenced by par-

ty politics. All classes of citizens should have confidence in the impartiality and fidelity of both judges and jurors. And any designed, or improper omission to place the names of suitable persons upon the lists of jurors, or changing the form and jurisdiction of legal tribunals in order to give the control of them to men of peculiar views upon any particular subject, cannot, under any circumstances, be justified. Where it may appear that such acts have been done, a corrective should be applied, as far as it falls within the power of the legislature.

An act was passed by the last legislature requiring persons, who had been naturalized, to exhibit their naturalization papers, three months at least before the day of election, to entitle them to vote. When an alien becomes an American citizen, he is such fully and effectually in all respects. He is entitled to all the rights and privileges of citizenship. No particular duty can be required of him that is not required of other citizens. And laws should be uniform in their operation, capable of affecting all classes alike, and those which are made exclusively for some and cannot in any event apply to others, are not the laws contemplated by the constitution. The essence and nature of a law in a free government is a rule of action for all the people. It is such only that the legislature can enact. If the legislature has power to provide, that all the electors in the state should furnish evidence of their right to vote, three months before election, the act in question is not of that general character and must therefore be invalid.

The constitution of this state requires a residence of three months next preceding any election, to entitle a person to vote for state officers. Can the legislature add another prerequisite to the constitution, and say that the electors should do other acts at certain prescribed times before election? If it can, then the constitution may be so far changed as to add new qualifications by statute to the elective franchise.

The law requiring the names of voters to be entered upon the lists, authorizes it to be done down to the time of voting. If it precluded a person from exhibiting evidence at the polls of his right to vote, and from having his name then put upon the lists, it would appear to be a requirement additional to the constitution, and not within the power of the legislature.

The act under consideration is amenable to both of the foregoing objections, and in my judgment is unconstitutional.

The act of the same legislature, forbidding the courts of the state from exercising jurisdiction in relation to naturalization, may not be liable to the charge of being unconstitutional, but it is extremely illiberal, and bears with unnecessary severity upon persons of foreign birth. The exercise of this jurisdiction by the state courts has been coeval with the organization of the government. Under this law, those who desire to become citizens must be subjected to increased expense and trouble, and travel a great distance with their witnesses to reach the courts of the United States.

The true policy of our state is to encourage the introduction of foreign labor. At the last census Maine had a population of five hundred and eighty-three thousand, one hundred and sixty-nine. Of these persons only thirty-one thousand eight hundred and twenty-five were born in foreign countries. Every full grown person, who is able and willing to labor, adds very much to the riches of a state. And the census shows that no just ground of apprehension can be entertained from the amount of foreign population. Our experience teaches that it soon amalgamates with our native population, and after a few years cannot be distinguished from it. It is not creditable to us, who in tracing our ancestry for two or three generations find them to be persons born in foreign lands, to awaken prejudices against foreigners. This country was made for the down-trodden and oppressed of all nations. By liberal laws we have invited foreigners to our shores, and there are hardships enough incident to their exile from their native homes, without the imposition of new and onerous regulations, causing unnecessary disquiet and vexation in their efforts to avail themselves of the benefit of those laws.

There is another act passed by the last legislature, which must tend to continue the irritation already existing on the subject of slavery. Its purport is to prevent any one holding office under this state from aiding in the apprehension of fugitive slaves. This law would probably have no practical effect, for a fugitive slave has never been retaken in this state, and if one should come hither, the expense of following him at so great a distance would be very likely to deter an owner from the pursuit. But in any event, all such laws are objectionable. They indicate a disposition to escape from our constitutional obligations. We ought not to expect to enjoy all that is agreeable in our national relations, while we repudiate what is uncongenial to our tastes. We should never give our consent to a law, which is not required by strong necessity, when it is directly calculated to create an animosity between the inhabitants of different states.

The strength of a republic consists in the integrity and intelligence of its people. In their hands are all the powers of government. If they are vicious and ignorant, they cannot long retain their liberty. It is the duty of the legislature to promote the education of the great body of the people. It is true, that towns and districts exercise a watchful care over the schools within their limits, and we must look to them as the immediate and constantly active guardians of education. The legislature can increase their means, and enable them to impart instruction in a more perfect and thorough manner, and to a greater extent. The instruction of teachers appears to be a measure of direct practical benefit. The increase of knowledge on their part enables them to communicate more abundantly to others, and thus the way is prepared for a broader field of information.

The legislature is moreover bound by the constitution suitably to endow literary institutions of a higher grade than common schools. If those who engage in the various and ordinary occupations of life,

could receive a liberal education, such as may be obtained in our colleges, it would not only be beneficial to them personally, but would greatly increase their ability for usefulness.

Under the favoring auspices of the union, Maine must ever be a great commercial state. Her long line of sea coast, with numerous safe and commodious harbors, invites commerce to her shores. The building of a greater number of ships than any other state of the Union, the merchant service upon the ocean, the fisheries, and the mechanic arts, engage the attention and furnish employment to a large number of persons. But three hundred thousand, at least, of our whole population are directly supported by agriculture; and all are dependent for subsistence on those who cultivate the earth. The improved culture of every farm adds to the real wealth of the state. The distribution of a well written treatise on agricultural chemistry, to the several towns and plantations, it is believed, would prove a judicious expenditure; and every encouragement, dictated by a wise legislation, should be given to actual settlers upon the lands of the state.

The report of the land agent will show the condition of the land office, and the present state of the public lands. It is believed by me to be the true policy of the state, not to sell any timber lands, unless it is in want of the money, and not to give credit upon the sales. It is better to sell them at a less price for immediate payment, than a larger one on credit, with the hazard of loss in the end, or great delay and expense in collecting the debts. Many difficulties would be avoided in the administration of the affairs of the land office, if the powers of the agent were limited to its immediate duties, and the sale of settling lands only; and commissioners, chosen by the legislature, or appointed by the governor and council, could superintend the sales of timber lands, and give the necessary deeds, upon the payment of the purchase money into the treasury. This course would appear best calculated to prevent favoritism, and inspire public confidence in that department of the government. Such sales could be made at public auction, after due notice, and in such quantities as would suit the wants of purchasers.

The treasurer's report will furnish the necessary information in relation to the finances of the state. I have had no opportunity to examine either that or the report of the land agent. It may be necessary for the legislature to make further provision for the keeping of the money of the state, when there shall be a large accumulation, not needed for immediate disbursement. If deposits are made in banks, the amount in any one should depend upon its capital, and when they pay interest on them, it should be received by the state.

It is gratifying to learn that the reform school is in a flourishing condition, and that it meets the just expectations of the public. The old system and mode of treatment of boys of tender age, who had violated the laws, when their minds were immature, and judgments unformed, by confining them in jails and prisons, at a time they most

needed kindness and the peculiar care incident to children, has at length yielded to a more enlightened and rational treatment.

In this school the boys are instructed in the usual branches of knowledge commonly taught in other schools; they learn some useful trade and work upon the farm, while their religious and moral culture is not neglected. They also acquire habits of industry, so necessary to be possessed by every person who desires to obtain the means of subsistence and to live happily. A love of labor, without which no one can accomplish much, must be implanted in early life by diligent training. The object of this school is to reform those who are inclined to go astray, and prepare them for the active duties of society. It is much less expensive to teach the young and erring to walk in the paths of virtue and fit them for usefulness, than to allow them to grow up in vice and crime, and then punish them for their misconduct. The difference in value to the state between a good and bad citizen, cannot be estimated by money.

This institution is really deserving the care of the legislature, and there can be no doubt will receive it. It is now nearly full, and some measures must be taken to furnish further accommodations, unless a part of the least vicious are allowed to be returned to their parents before the expiration of their sentence.

The trustees should be permitted to exercise their discretion as to the time those sent to the school should remain. If some such reduction does not take place, it will become necessary to enlarge the accommodations at the present location, or establish another school in some other part of the state. The present number, which is about two hundred, in the school, may seem large, but when we estimate the whole number of male minors in the state that are old enough to commit offenses, the per cent. will be found very small. The care, protection and instruction of the young and inexperienced, is not only a duty dictated by the highest benevolence, but the security and safety of the community demand its exercise on the part of the government.

While our republic, from the nature of its organization, is unfitted to be a military one, nor is such the purpose or desire of our people, yet we should at all times be prepared to defend ourselves against internal commotions and foreign aggressions. It is our true policy to cultivate peace with all nations. But we have no reason to expect that wars will cease, while the disposition of men remains as it is, and we should be wanting in a proper care of ourselves, if we should neglect the ordinary precautions of protection. It may be sufficient if a knowledge of military tactics is possessed by a portion of the community, who would be able, in a short time, to communicate the necessary information to those who might be needed to act in defense of their country. This object may be accomplished by extending the favor of the state, more fully than the laws have done, to volunteer companies, and encouraging the formation of a greater number of them, and a higher proficiency in military discipline. Such men will form a body of soldiery possessing practically, the art of war, and from them

others unskilled can receive instruction, when called into the public service.

As we are the agents of the people, who have confided to us important trusts, it will doubtless be gratifying to every member of the government to discharge them in such a manner as to meet the approbation of those from whom he has derived his authority.

It will afford me the highest satisfaction to co-operate with you in making such laws as will most effectually promote the true interests of the state.