

MAINE STATE LEGISLATURE

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ACTS AND RESOLVES

PASSED BY THE

THIRTY-NINTH LEGISLATURE

OF THE

STATE OF MAINE.

1860.

Published by the Secretary of State, agreeably to Resolves of June 23, 1820, February 26,
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GOVERNOR MORRILL'S MESSAGES.

To the House of Representatives:

On the last day of the last session of the Legislature, a bill entitled "an act to regulate the taking of fish on the coast of Maine," having finally passed both branches, was presented to me for approval at an hour too late to allow of its return, with a statement of my objections, to the branch in which it originated. The bill provides that it shall not be lawful for any person, not a resident of this State, to take fish of any description, with seines, drift nets, or trolls, within one mile of the shore of the main land, or any and all islands of the State, or upon any shoal within the jurisdiction of the State, upon which at low water, is less than twelve fathoms of water, except in a specified manner.

These provisions clearly limit, if they do not prohibit the right of citizens of other States, to fish in the sea on the coast of this State within the limits mentioned.

The right of fishing in the open sea is common to all nations; and whatever might be asserted to the exclusive use of the sea near the coast against foreign nations, no such exclusive use is understood ever to have been maintained by this State on its coast against the States of the Union; and I do not think it competent for the Legislature to exclude citizens of other States from this enjoyment of this common right to the extent provided for in the bill. I have therefore held it my duty to withhold my official approval; and I herewith return it to the branch of the Legislature in which it originated.

LOT M. MORRILL.

COUNCIL CHAMBER, }
January 5, 1860. }

To the Senate:

On the day of the final adjournment of the Legislature at its last session, an act entitled "An act to incorporate the American Telegraph Company," having finally passed both branches, was presented to me for approval.

By its provisions, the capital stock is made to represent the telegraph lines, &c., of three distinct companies, running through

all the New England States, New York, New Jersey, Pennsylvania, Maryland, Delaware, to the city of Washington, and is to be issued to the members of those single companies, who are thereby to be stockholders of this corporation, and the capital stock to be deemed to have been paid in. The corporation thus consolidated is to have power to construct, purchase and hold, use and maintain, any line of telegraph, whether wholly within, or without, or wholly beyond the limits of this state, and to transact its business, keep its office and books beyond our jurisdiction.

These provisions are unusual in that they allow lines of telegraph, wholly beyond our control, to constitute the capital stock; in that they purport to authorize the construction of lines of telegraph in other states, and in that it contemplates its right to transact business, keep its office and books beyond our jurisdiction.

It is certainly a wide departure from our uniform policy to constitute the franchise or property of a foreign corporation, capital stock paid in of a corporation in this state, affording no security to persons dealing with it.

The provision for constructing lines without the limits of the state, at best confers no authority, while it subjects the legislation of the state to the imputation of arrogating powers which do not belong to it.

The right to transact its business, keep its office and books without the jurisdiction of the state, is highly objectionable.

For these reasons I have withheld my official approval, and herewith return the bill to the branch in which it originated.

LOT M. MORRILL.

COUNCIL CHAMBER, }
January 6, 1860. }

To the Senate and House of Representatives:

I herewith transmit a communication from Charles O. Boutelle, Assistant Coast Surveyor, calling attention to the alterations in the law of 1846 relating to the survey of the coast of this State.

I invite your attention to the subject.

LOT M. MORRILL.

COUNCIL CHAMBER, }
January 16, 1860. }

To the Senate and House of Representatives:

It becomes my painful duty to inform you of the decease of Hon. George W. Ingersoll, Attorney General of this State, who expired at his residence, in Bangor, on Monday morning last. Scarcely

had he entered upon a discharge of the duties of the position assigned him by your partiality, when he became sensible of the approach of disease, which was so surely to remove him from the scene of his labors and from among his fellow men. Deeply regretting the loss of one so highly valued for his unswerving rectitude and so able to counsel in the administration of public affairs, I have to call your attention to the vacancy existing thereby and invite you to appoint a successor.

LOT M. MORRILL.

COUNCIL CHAMBER, }
March 10, 1860. }

To the Senate and House of Representatives:

Pursuant to provisions of chapter two of the revised statutes, I have, with the advice of the Council, made such alterations in the military divisions of the State as seemed to me, under the circumstances, to be necessary, and have annulled the several divisions as they existed on the 13th day of March instant, and have arranged the militia into three divisions, as follows:

1st Division to be composed of the counties of Washington, Hancock, Penobscot, Aroostook and Piscataquis.

2d Division, the counties of Waldo, Lincoln, Sagadahoc, Kennebec and Somerset.

3d Division, the counties of Androscoggin, Cumberland, York, Oxford and Franklin.

It will be your duty to elect a Major General for each of the three Divisions thus created.

LOT M. MORRILL.

COUNCIL CHAMBER, }
March 16, 1860. }

Gentlemen of the House of Representatives:

A Bill entitled "An act to incorporate the Somerset Railroad Company" having passed both branches of the Legislature is presented to me. I have attentively considered the same, and being constrained to withhold my approval, I herewith return it with a statement of my objections.

The act contains an express limitation of the power of the Legislature over the corporation thereby created. Such provision is of questionable propriety in any case, and is especially objectionable in this class of corporations, whose franchise partakes, so essentially, of the delegated quality of sovereignty. The power granted to railroad corporations to interfere with, and, to a great

extent engross the public travel and business of internal communication, is exclusively the prerogative of the State. It is only upon the ground of public emergency that the power is to be granted at all ; and the Legislature is to judge of the existence and continuance of such emergency, and therefore it would seem, should never part with its power to determine, at all all times, what the public interests demand. A corporation upon which, in addition to the power to transact business common to individuals, is conferred prerogatives peculiar to the State, and which, under such powers, assumes to deal with the modes of public intercommunication, the highways of business and travel, must necessarily, in this respect, be held in subjection to the sovereign supervisory power. To the full extent of determining, at all times, what the public interests require in all questions involving its peculiar prerogatives, absolute sovereignty always resides in the State ; and however it may impart this power, for the time, for the public convenience, it can never wholly resign it. In harmony with these views are the provisions of the general statute of the State, which define the powers, duties and liabilities of corporations, and which subject acts of incorporation to the liability to be amended, altered or repealed by the Legislature. These general provisions were obviously enacted to declare the policy of the State, as to its control over all acts of incorporation, and they expressly subject them to the power of the Legislature. The provision in question is in conflict with this policy, and contains an express limitation of the general law, in the particular above mentioned.

The charter of this company contains other provisions which are repugnant to the policy and express regulations of the law of eighteen hundred and fifty-eight, entitled, "An Act to secure the safety and convenience of travelers on railroads." This act provides for a "board of railroad commissioners, with powers to determine the time and terms of connection and junction, or crossing of railroads," in cases of failure of parties interested to agree on the same. No provision is made in this charter for such connections, or crossing, and by its terms no other or further duties, liabilities or obligations than are specified therein can be imposed. Under said act said commissioners have the power to determine "the rates at which passengers and merchandise coming from one road are transported over another," on failure of the managers of said roads to agree. By the provisions of the charter, these rates are to be established by the directors of the corporation, against the intervention of said commissioners. It is further provided that, when railroads cross each other, regard shall be had to the time of crossing and junction, and that they shall pause long enough to afford opportunity to passengers to be changed from one train to the other. This charter is not subjected to this provision, but is

exempted from its operation. The act is, in a word, in many particulars, repugnant to all the essential provisions and regulations of the act of eighteen hundred and fifty-eight, enacted to secure, through the intervention of a board of commissioners, the safety and convenience of the public travel, and nullifies all the essential powers of said commissioners as respects this corporation. It is to be presumed that the Legislature do not intend to grant railroad charters containing provisions in conflict with the general policy, and laws of the State, and I have thought it not improbable that this conflict had been overlooked, as this charter seems to have been drawn, in part, from similar acts passed at a period anterior to the general provisions mentioned.

The suggestion will the more readily be pardoned when attention is called to the fact that while I have this bill before me the public emergency is supposed to demand the passage of an act entitled "An Act to promote safety of travel on railroads," now presented for approval, containing a most stringent provision, designed to restrain other railroad corporations in the exercise of powers that are clearly granted to this company; which by the terms of its charter, cannot be restrained.

LOT M. MORRILL.

COUNCIL CHAMBER, }
March 18, 1860. }

To the House of Representatives :

I have examined the bill entitled "An act relating to reviews on reports of referees," this day presented to me for approval, and being unable to give my assent thereto, I herewith return it with a statement of my objections.

The bill authorizes the court to grant reviews when judgment is founded upon report of referees in a civil action, "although other matters were included in the rule of reference." If, in such case, a review is granted, it is provided "that the depositions used before the referee may be used at the trial" in court.

The objection to this provision is, that it provides testimony for the trial of a cause in court, not subject to the ordinary rules of evidence; and makes that testimony in a court of law, which a referee, not bound by legal rules of evidence, may admit, in his discretion, as testimony before him; and in this way *exparte* depositions, not having the ordinary sanction of law, would become testimony to be considered by a court and jury.

The bill further provides that in such trial, all matters contained in the *rule of reference*, those contained in the writ and the subject of the action, and "other matters, whether contained in the writ or not, shall be included and tried."

Thus it will be seen that "other matters," which were not embraced in the action, but which, by *agreement of the parties*, were referred to an umpire mutually selected by them, and which could only have been before the referee by *agreement*, is here attempted, by force of law, to be transferred to a court of law, and to give such court jurisdiction over matters that might not otherwise come before it at all; and thus making the voluntary submission of parties to a tribunal of their own choice, the basis of the jurisdiction of a court of law.

Besides, it is obvious the parties to the reference may have *consented* to submit to this mutual umpire matters wholly incongruous; but it does not follow that, when that reference fails, or is reversed, that they should be held to have things incongenial considered by a court of law, and that without privity or consent.

Parties may, with no impropriety, by agreement, submit, to such umpire as they may choose, all matters in dispute, without regard to legal propriety, and to *avoid the courts* it is often done; but when they are brought into court, upon whatever pretext, it would seem they should be free to have their rights determined by the ordinary principles of law and evidence, and may properly object to the joinder of subjects wholly incongenial; and that no voluntary submission to an umpire selected to avoid litigation should be urged, or allowed, to abridge their rights in these respects.

LOT M. MORRILL.

COUNCIL CHAMBER, }
March 20, 1860. }