

Appendix.

Governor's Annual Message.

To the Senate
and House of Representatives.

Assembling
again for the discharge of the high
trusts delegated to us by our fellow citizens,
let us, while gratefully remembering past
favours, look to the Dispenser of all good
for a continuance of blessings, and for that
wisdom, prudence and energy which should
ever characterize the course of public servants.

In proceeding to the discharge of the
duty enjoined by the Constitution of giving
the Legislature information of the condition
of the State, and recommending to their
consideration such measures as may be
judged expedient, permit me in the first
place to call your attention to the

2. condition of our finances, referring you however, for particular and detailed information upon the subject, to the Report of the Treasurer.

It will be perceived that there has been a considerable augmentation within the year, of the State debt. This, as you must be aware, has arisen from the extraordinary occurrences upon our northeastern frontier, and was provided for in the very liberal appropriations of the last Legislature. Whether the expensured was a judicious and profitable one, regarding the whole affair, as a matter of mere dollars and cents, is a consideration that, I presume, will be disposed to entertain. The honour as well as interests of the State was involved; and the promptness, spirit and unanimity with which the case was met by the Legislature and by the people, was such, to say the least, as to command a warm and generous support, approval throughout the Union; and may I not add, can never cause a regret in the bosom of any rightminded and truehearted citizen.

A large portion of the expences incurred in the border difficulties during the last year, will undoubtedly be refunded by the General Government; provision for which I trust will be made at the present session of

Congress. This sum, together with about ninety thousand dollars, the proportion belonging to this State, of "the Massachusetts claim" which it is believed, has been allowed by the accounting officers of government, and is now awaiting an appropriation by Congress, will reduce the State debt to a small amount, and leave our financial affairs in an easy condition.

Though the difficulties in the way of procuring the State loan to be taken up abroad, have proved to be insurmountable, without paying an extravagant rate of interest; which I am persuaded would not have met the approval, the Treasurer, nevertheless, informs me that he has been able, by means of loans from the Banks and individuals of our own State, to pay promptly the interest on the public debt and to provide generally for the necessities of the Treasury, with the exception of monies due to the towns and the temporary loans of the Banks. That something however, should now be done to defray the expenses of government and to answer the legitimate calls upon the Treasury, besides borrowing, is manifest. Longer to depend upon this recourse, would be as inconsistent with the true dignity of the State, as it would be impolitic in regard to ourselves, and unjust to those that are to succede us. I have therefore, no hesitation in recommending a renewal

of the State tax. This was suspended at a time when extravagant notions prevailed in regard to the value of anticipated income of the public lands, and is now generally admitted to have been a mistaken and unwise policy. Let us repair the error so far as we can. Let a State tax now be assessed for an amount sufficient, at least, to defray the expenses of government, and to pay the interest on the State debt, after it shall have been reduced as before suggested.

I am aware that an objection may be, as it heretofore has been, urged, that great changes have taken place since the valuation of 1830, and that therefore a tax based upon that valuation would be unequal and unjust. A proposition for a tax may always be met with objections of this sort, in a young and rapidly growing State, and subject, as all property is to constant fluctuation and change. Precise and perfect equality is at no time attainable. If you approach as near it as is practicable under existing circumstances, it is all that can reasonably be required of you. Our constituents, I am persuaded, will submit to it cheerfully. If they are too just to be unwilling to support a government instituted by themselves, and administered for their benefit, so are they too patriotic not

to be willing to submit to far greater sacrifices than the assessment of this tax, unequal to some extent though it might be, when the good of the State requires it. Besides, is it worthy of consideration, that if a tax based upon the last valuation would operate more favorably to one portion of the State than to others, it would be the younger and newly settled portion; and this class of our population it has always been the policy of the State to foster and encourage. And still further, may not some offset for this inequality be found in the excess of representation in Legislature which the older portions of the State enjoy over the younger.

The difficulty presented in this case, will very naturally suggest the expediency of avoiding it in future, by causing the valuation to be taken oftener than the periods now fixed by law. Once in five years, instead of ten, it seems to me, would be preferable, while the State is rapidly advancing in wealth and population.

The appropriation for the Insane Hospital made at the last session of the Legislature being exhausted, the work has consequently been suspended. The cost of finishing the south wing and the centre, agreeable to the apparent design of the last Legislature, is estimated by the Superintendent, at five thousand four hun-

dred dollars — and for finishing the north wing, three thousand six hundred dollars. If an appropriation be made for either object; an other appropriation, perhaps, will be needed to furnish suitably the part thus completed, and to defray the expenses incident to getting the institution into operation. In this event, also, it will be necessary to make some provisions for the appointment of officers, and to adopt some permanent system of government for the institution.

The omission to make an appropriation at the last session for a continuance of the geological survey of the State, I trust may be regarded rather as a temporary suspension of the survey, than a final abandonment of it. Aside from the public benefits anticipated from so trifling an expenditure, it would seem to be but just to those portions of the State thus far neglected, that the survey should, at some time, be resumed. The time of recommencement is not very important, and should of course be determined by the condition of the Treasury.

On the subject of the Militia, I do not propose to make any suggestions in addition to those contained in my message of January last. My views, then fully expressed, remain unchanged. Permit me, however, to refer you to some valuable suggestions upon this subject in the accompanying Report of the Adjutant

General.

In regard also to the important interests of agriculture and education, I would respectfully refer you to my communication to the Legislature of last year, having nothing new to add upon these subjects.

I feel constrained to repeat a former recommendation in regard to an additional Judge to the Supreme Judicial Court. The experience of another year has only tended to fortify and confirm the reasons then advanced.

The Commissioners appointed to revise the laws of the State, have, with the termination of the year, brought their arduous and important labours to a close. Their Report, which is before you, will undoubtedly receive that careful and laborious attention which its magnitude and deep interest to the State require.

The duty of practicing a rigid economy at all times, is obvious; but especially is it incumbent on us in the present exhausted condition of the Treasury — and when the necessary supplies, for the present at least, must probably be obtained by a resort to taxation.

The Act of March 21, 1835, restraining the emission and circulation of bank bills of a small denomination was suspended for the period of two years by an Act passed March 8, 1838. The term of suspension being soon to expire, the subject will require your further consideration at the

present session.

The subject of the currency is one of general and absorbing interest, and indeed may be said to affect, more or less, the business and interest of every man in the community. And however we may differ as to the best means of securing a sound currency, all will agree, that an unsound or unstable one, is a curse to any country in which it exists. How it has been in our own country, we all know from bitter experience. The wonderfully rapid transactions from abundant plenty to extreme scarcity, that we have so frequently witnessed, producing a corresponding change in the value and prices of property, while they astound those who are uninitiated in the mysteries of banking, are ruinous to the regular business and pursuits of all. And what else can rationally be expected? When bank bills constitute the currency of a country, and it rests in the decision of a few individuals, who are actuated by like motives and passions, and governed by like interests with other men, whether money shall be plenty or scarce, it would be unreasonable to expect to be exempt from the constant and not ruinous fluctuations. I would not be unjust to banks any more than I would to individuals. If they have rights, let them be scrupulously respected. If they are under obligations let their performance

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be rigidly exacted. Without therefore seeking
to destroy, I would contend for such a regula-
tion and control of them as to prevent, if
possible, a recurrence of the evils alluded to.
They should not have the power, as they now
have, incidentally, by the natural operation
and effect of banking, to exclude all
specie from circulation and to force an
entire, and often a depreciated, paper
currency upon the community. A portion,
at least, of the currency should be beyond
their control and emphatically in the hands
of the people. Then notwithstanding a sud-
den contraction of loans and a reaction
of their circulation by the banks, the com-
munity will not be left destitute of a circ-
ulating medium, nor the streams of business
nearly dried up. One mode of effecting this,
to some extent at least, is to prohibit
the issue and circulation of bank bills of
a small denomination. When these are
withdrawn, the channels of circulation
immediately become filled with silver
and gold; and the circulation once estab-
lished, constitutes and becomes permanent
from the very nature of the case and
the necessities of business. So far as my
knowledge extends, this was the operation
of the restraining law of 1835, and was
only interrupted by the suspension of
specie payments by the banks. Prior to
that event there was no want of silver.
The small bills disappeared and their
places was supplied with specie, by

a process so gentle that the change was scarcely perceptible while going on, and affecting no interests in the community, not even those of the banks themselves, but for good. That such would be the effect again, under similar circumstances, I have no doubt. With these views, therefore, I cannot hesitate to recommend a new attempt, now or hereafter, as may be deemed best, to effect the design of the law alluded to. No laws, however, can be effectually executed unless sustained by public opinion, especially one of this character. Whether therefore the present, is one is not, the best time to attempt its revival — whether it should, at first, embrace so many bills of a small denomination — or whether all its provisions are judiciously adapted to the end proposed, are questions which your own experience, and knowledge you bring with you from all parts of the State, of the views and wishes of the people, will enable you to decide satisfactorily.

In general I have not deemed it expedient in my communications to the Legislature, to discuss political questions, however important they might be, when they have no direct connection with the business legitimately coming before you - and it is without an intended departure from this rule, that I allude, by way of fortifying the views just expressed, to the prospect that an important change

is about to be effected in the financial operations of the General Government, and consequently, though indirectly, in the currency of the country. "The Independent Treasury system," judging from the elections and other strong indications, after an opposition, able, long continued and fierce, seems, happily, to have received the approbation of the people, and is probably about to be adopted as the established policy of the country. This contemplates, by a gradual change from the present system, a payment of all dues to the National Government in silver and gold. The disbursements of the government being also to be made in the same currency, will infuse a larger portion of the precious metals into the circulating medium, and thus affords essential aid to those States disposed to restrain the issue and circulation of small bills, in carrying into effect laws enacted for that purpose. If, in addition to this, we consider, that our own banks will undoubtedly adhere to their honorable and commendable policy of maintaining specie payments, there can be no reason to doubt, that specie may be easily and abundantly obtained by the people to supply the place of small bills.

The long pending question in

relation to our northeastern boundary question is still open and unadjusted, though we have reason, perhaps, for believing that it has made some advances during the past year. We have had a renewed expression of opinion on the part of the General Government that the territory in dispute is a part of the State of Maine - an indication of a determination to discharge, in good faith, the duty of that government to this State, of maintaining the integrity of its territory - and a national sanction of the military demonstrations made by this State in February and March last. It is also well understood now by all parties, that, however patient and forbearing Maine will be while honest and earnest attempts are being made to run the line and definitively settle the question, she will not submit longer to be deprived of her territory by such a system of vexatious and unjustifiable procrastination as has heretofore been practised; and that the question must be settled speedily, in some way or other, if hostilities would be avoided. This is gaining something. When parties are fully aware of the precise position they occupy, the next step taken by them will be taken understandingly, whatever else may be said of it. Again, the occurrences of last winter

served to awaken the attention of the country to the momentous importance of the question, and to induce such an examination of it as to result in a strong and universal conviction, that the pretence of claim set up by Great Britain to the disputed territory, is palpably unfounded and unjust, and can be persevered in, only, through an utter disregard of the plain and unambiguous terms of the treaty of 1793.

Soon after the termination of your session in March last, a proposition was made by the British Government to the Government at Washington, for establishing a Commission for the purpose of exploration and survey, but it was connected with such limitations and conditions, as, it is understood, caused an immediate rejection of it by the President. After which and believing, to be as early as July last, a counter project was submitted to the British Government, to which, as we learn by the late message of the President, no reply has yet been received.

Pending this negotiation, it seems, the British Government has deemed it expedient to make an exploration of the disputed territory by Commissioners sent out for that purpose - the alleged object being, to obtain (topographical) information, &c. as a means

of promoting an early and just determination of the question in dispute. These Commissioners have completed the exploration, and returned to England to report to their government. What that report is to be, or what is to be the effect of it, remains to be seen. The courtesy due from one government to another, requires us, perhaps, to believe, that the real and avowed design are the same, and that this survey has been undertaken really for the acquisition of information, and not for mere purposes of delay. At all events, a short time will determine. As the Commissioners may be expected to have reached England about the first of January, there will be ample time before the termination of your present session, supposing it to be the usual length, for the British Government to avail itself of its additional information, and to communicate with the government of the United States, in reply to the counter proposition submitted many months ago. If such communication should not be made within the time anticipated, I think you may fairly regard the British Government as having returned to its old practice of procrastination, and will be justified in adopting more vigorous and determined measures.

assured them have ever heretofore been adopted, to secure to this State both her property and jurisdiction in her lawful territory; unless the necessity for such a course should be obviated by the action of General Government. What those measures should be, may properly be left to future consideration. I need not say, that, in all your efforts to secure to Maine her just rights, you may depend upon my hearty co-operation.

In giving you information of the doings of this government, in relation to the disputed territory since the adjournment of the Legislature in March last, permit me to refer you to certain Resolves passed the twenty-third of that month. In one of them it is resolved as follows, to wit:—"that, when
 " the Governor shall be satisfied either by
 " the declarations of the Lieutenant Governor of
 " New Brunswick or otherwise, that the latter
 " has abandoned all intentions of occupying
 " the territory with a military force, and
 " of attempting the expulsion of our party,
 " — that, then, the exigency which called
 " forth the militia having ceased, the
 " Governor be, and hereby is authorized to
 " withdraw the same, leaving the Land
 " Agent with a sufficient posse, armed
 " or unarmed, as the case may require,
 " to carry said Resolve into effect."

Soon after the adoption of this resolution I received the written assent.

of the Lieutenant Governor of New Brunswick
to the following propositions made to
him by Major General Scott, to wit:— that,
“ it is not the intension of the Lieutenant Gov.
“ nor of Her British Highness Province of
“ New Brunswick, under the expected renewal
“ of negotiations between the cabinets of London
“ and Washington on the subject of the said
“ disputed territory, without renewed instruc-
“ tions to that effect from his government,
“ to seek to take military possession of that
“ territory, or to seek by military force to
“ expel the armed civil posse or the
“ troops of Maine.”

It appearing to me that the precise
contingency contemplated by the Legis-
lature had occurred, I could not hesi-
tate to recall the troops. Any other course,
it seemed to me, would not be only
incurring needless expence, but distrag-
arding the express directions of the
Legislature. Nor was the step taken
with any reluctance, as one, in the slig-
htest degree, derogatory to the honour of
the State: We never attempted, or profess-
ed to take military possession of
the territory. A recurrence to the Resolves
of the 24th of January and the 20th of
February, will show, that the object was
to arrest trespassers and protect property
from devastation: and of the last, particu-
larly, to resist a threat of expulsion
from the territory by the Lieutenant
Governor of the Province of New Brunswick.

The withdrawing the troops, therefore, was, in no sense, an abandonment of any position taken by this State. The troops maintained their ground, while the exigency of which called them out remained - when that ceased they retired. For a more detailed account of military operations, I refer you to the accompanying Report of the Adjutant General. I cannot, however permit this opportunity to pass without saying that the militia called into service, both officers and privates, with but few exceptions, conducted in a manner, in the highest degree creditable to themselves and to the State.

In further compliance with the Resolve of the 23^d of March, the Land Agent, with a sufficient armed posse, remained in the territory after the withdrawal of the troops. For a particular account of his proceedings, I must refer you to his Report herewith transmitted. It seems that during most of the time he has had in the service about two hundred men. That they have not been idle, will appear, I think, by looking at what they have accomplished. In addition to the labour expended in furnishing tolerably substantial fortifications erected upon the Moostock, with two large block houses and similar buildings at the mouth of the Fish river, they have made over one hundred miles of road through the heart of the wilderness - all of it being suitable for travelling with carriages and

and for the transportation of heavy loads. Booms have also been extended across the Choosstock and Fish rivers, of the most substantial character, and much valuable timber thereby saved. On the whole, though the expenses have been necessarily great, it is believed that the true interests of the State have been promoted by the course pursued by the Land Agent and those who have been associated with him.

Early in the fall, complaint was made to me that the Land Agent of Massachusetts was granting permits to persons residing in the Province of New Brunswick, and others, to cut timber upon lands contiguous to, and lying upon both sides of the Choosstock river. And it was represented that if such practice was to be persevered in, it would be impossible to the laws and resolves of the State in relation to the preservation of trespasses upon the public lands. The evils before experienced from this cause, and those apprehended, were represented as numerous, and among others that these permits were used by many as a mere cover for depredations upon the lands of the State. Under these circumstances I felt constrained to address the Land Agent of this State, advising that the utmost rightful power should be exerted on his part, to counteract the designs of these persons:— and that he notify them, that if they persevered in their attempts, the Legislature would probably adopt some regulations in regard to the use of

our public streams which would under the lumbering operations of but little avail to those engaged in them. The Land Agent conformed to this advice, and I am happy to state my belief, that no more permits were subsequently granted, and that most of the persons who had previously obtained permits abandoned the design of operating under them. A few, however, did not, and whether any measures should be adopted in relation to them, carrying out the suggestion before made, it is for you to judge.

The views I have presented in this communication, upon the subject of the boundary, were those entertained independently of what is now an ascertained fact, to wit: that our territory is actually invaded, and of course are to be modified by that circumstance. Official information of that fact was received by me a few days since, while on my way to this place, in a reply of the Lieutenant Governor of the Province of New Brunswick to a letter of inquiry addressed to him by myself in relation to this subject. It is admitted that one or two companies of British troops have been stationed at Timiseon-ta lake, but it is alleged by the Lieutenant Governor to have been done, not by his own orders, but by the authorities of Lower Canada. This movement I cannot but regard, under whatever branch of British authority, or on whatever pretence it may have been made, not only as a violation of the spirit of the arrangement agreed upon in March last, but as clearly an invasion of

our territory. Under these circumstances I deemed it to be my duty immediately to communicate the facts to the President of the United States, with other, though less official information received, of the building of barracks by the British Government on both sides of the St. Johns, near the mouth of Madawaska river, which I did, calling officially for the action on the part of the General Government which the case required and the Constitution and laws of the United States clearly enjoined. A copy of this communication to the President and of the correspondence between the Lieutenant Governor of New Brunswick and myself are herewith laid before you.

I ought not, perhaps, to close this communication without adverting to a difficulty between the State of Georgia and this State, growing out of a demand, made by the late Governor of Georgia upon Governor Dunlap and Kent, to deliver up two citizens charged with the abduction of a slave from that State, and which persons, it was alleged had fled from justice; and the refusal to deliver them up on grounds deemed by the then Governors of this State to be constitutional and satisfactory. The proceedings of the Legislature of Georgia having been, at the request of the Governor of that State, laid before the Legislature of this State, and the latter having taken no action thereon, referring the whole matter to the Executive, the Governor of Georgia thereupon in his message to the Legislature holds the following language:

.. The demand of the Legislature of Maine and

the previous conduct of Governor Dunlap and Governor Kent, prove conclusively, that the opposition to the institution of slavery is so great among the people of that State, that their public authorities are prevented from obeying the injunctions of the Constitution of the United States, when required to deliver up fugitives from justice charged with the crime of violating the rights of property in slaves. This State must therefore protect by its own authority the rights of its own citizens in slave property, against the disposition of the people of Maine to violate them. For this purpose you will be justified in declaring by law, that all citizens of Maine who may come within the jurisdiction of this State, on board of any vessels, as owners, officers, or mariners, shall be considered as doing so with the intent to commit the crime of seducing negro slaves from their owners, and be dealt with accordingly by the officers of justice.

Coming to us in a less official character, but few, I think, would regard this proposition as serious. Be that, however, as it may, if there was the least probability, that such a measure could succeed in the Legislature of Georgia, some counter action on our part might, perhaps, be necessary. But I am sure it cannot prevail. The proposition so clearly violates the Constitution of the United States, and is so subversive, not only of the plainest principles of law, but of common sense and common justice, that the intelligent Legislature of that distinguished and gallant State will not.

er sanction it. The late Governor of Georgia and my predecessors, though not agreeing in their construction of the Constitution in regard to the relative rights and obligations of the States, yet differ, principally, upon a question of a fact, to wit: whether the persons demanded, were or were not fugitives from justice. For the decision of this question the Constitution has established no tribunal; and Maine, in claiming an equal right with Georgia, to examine and determine it, believes that she is not only not violating the Constitution, but is planting herself upon the great doctrine of State rights. Upon a question of this sort, then, where there is found to exist an honest difference of opinion, sure it would be worse than folly to array the citizens of the respective States in hostile attitude, and to regard large classes of the citizens, indiscriminately, of one State, as only bent on the commission of crime when entering the territory of the other. There is no reason why Maine and Georgia, though widely separated upon the map of the country, should not be nearly allied in mutual respect, interest and kind offices. The state of public feelings in Maine has been entirely misconceived by the late Governor of Georgia. If there are any among us who are disposed to interfere with the domestic institutions of Georgia or any other State, in violation of law, or who are

disposed to obstruct the public authorities in the strictest performance of the constitutional obligations to deliver up fugitives from justice, be the offence what it may, the number is extremely limited. I am persuaded that the present apparent feeling in our sister State will soon yield to juster views and that no root of bitterness will be apprehended to spring up between the two States, tending permanently to affect the peaceful and friendly relations that ought ever to subsist between the different members of our great confederacy, and which, I am confident, the citizens of this State are disposed assiduously and sincerely to cultivate.

I shall communicate with you further, by special message, as circumstances may require, during the progress of the session—a session, which I hope may prove to be both pleasant to yourselves and abundantly promotive of the best interests of the State.

John Fairfield.

Council Chamber

Jan'y 3, 1840

To the Senate
and House of Representatives.

The inspectors of the
 State Prison having made their Report to
 this Department, a copy of the same is
 herewith laid before you.

Executive Department
 January 13th 1840

John Fairfield.

To the Senate
and House of Representatives.

I herewith lay before you a
 communication from Daniel Bient Esq. United States
 Consul at Paris, with the project of a law providing
 for the acknowledgment of deeds of conveyance of real
 estate and other property situate in this State, by
 persons residing abroad. The necessity of some en-
 actment upon the subject is obvious, and the draft
 of a law herewith communicated appears to be un-
 objectionable.

I also lay before you agreeably to the request of
 the Governor of the State of Missouri certain resolutions
 adopted by the Legislature of that State, in relation
 to the public lands.

John Fairfield.

Council Chamber

January 15. 1840

To the Senate
and House of Representatives.

I herewith lay before you the Report of William G. Williamson Esq. one of the Commissioners appointed "to inquire into and examine the doings and transactions of the several incorporated Banks in this State" under the Act of March 31st 1831.

Council Chamber, John Fairfield.
 January 17, 1840.

To the Senate
and House of Representatives.

By the request of the Governor of the State of New Jersey, I herewith lay before you certain Resolves adopted by the Council and General Assembly of that State, relative to the late proceedings of the House of Representatives at Washington, by which certain persons claiming a right to seats in that body were excluded therefrom.

Council Chamber, John Fairfield
 January 30, 1840.

To the Senate
and House of Representatives.

By the request of the Governor of the State of Vermont, I herewith lay before you certain resolutions adopted by the Legislature of that State, relative to the disposal of the proceeds of the public lands of the United States.

Council Chamber John Fairfield.
 February 1. 1846.

To the Senate
and House of Representatives.

The Land Agent having this day communicated to the Governor and Council the Report of Isaac Fish, Esq. Agent for the Acrostock Road, south of the Acrostock river, the same is herewith laid before you.

John Fairfield
 Council Chamber,
 February 12. 1846.

To the Senate
and House of Representatives.

Agreeably to the request of the Governor of the State of South Carolina, I herewith lay before you a Report and Resolutions adopted by the Legislature of that State, in relation to the refusal by the authorities of this State to deliver up, on the demand of the authorities of the State of Georgia, certain persons alleged to be fugitives from justice from the latter State.

John Fairfield.

Council Chamber

February 20. 1840

To the Senate
and House of Representatives.

Major General Joseph S. Jewett of the Fifth Division, and Major General Isaac Hodsdon of the Third Division of the Militia, having held their respective offices for the term of seven years, have been honourably discharged; vacancies therefore exist in those offices, to the filling of which, your attention is respectfully requested.

John Fairfield.

Council Chamber

February 25. 1840

State of Maine.

— In Senate, February 15th 1846. —

Ordered. — That the Justices of the Supreme Judicial Court be requested to give their opinion on the following questions, to wit: —

Question 1st Have the Legislature the power to grant divorces in cases, where the Supreme Judicial Court have jurisdiction?

Question 2^d Have the Legislature the power to grant divorces in cases, where the Supreme Judicial Court have no jurisdiction?

In Senate, February 17, 1846.

The President, laid before the Senate a communication from Hon. Nathan Weston, Nicholas Emery and Oliver Shepley, Justices of the Supreme Judicial Court, giving their opinion on the foregoing Order, which was read and is as follows: —

To the Honorable the

Senate of the State of Maine:

The Justices of the Supreme Judicial Court, in obedience to your order of the eleventh inst., have considered the questions thereby proposed to them, and now have the honor to transmit the following observations as their opinion.

The questions presented to the Justices under that clause of the constitution, which requires them "to give their opinion upon important questions of law and upon solemn occasions," are perhaps almost necessarily presented under circum-

stances indicating that an opinion is expected speedily. And they are received, when the mind, having been greatly exhausted by the pressing labors of other official duties, no longer possesses its natural vigor, and cannot even exercise its accustomed extent of thought or power of reason. And it cannot be allowed the time for that extensive research and patient examination and reflection, which the importance of the questions, often a little aside from the range of its accustomed studies and duties, may demand.

And it is not excited to action and aided by the elaborate examination and forcible reasoning of other minds, which have been interested to examine and argue them. Opinions formed under such circumstances, can scarcely claim the respect which might be readily yielded to those formed under more favorable auspices.

Marriage is usually and justly regarded in christiandom, as an institution of divine origin, and regulated to a certain extent, by the divine command. And in countries where neither the Jewish law nor christian has been received, regulations of it have been regarded as disclosed by the light, and existing in the law of nature.

There can, however, be no doubt, that it is subject to the regulation of municipal law, in all those numerous incidents wherein the divine law is silent. The mode of entering into the contract; to what extent and in what it shall affect the personal liberty and safety of the parties, and in what manner these shall be protected and secured; the effect which it shall have upon their estates during its continuance and after it is

terminated by death, the duties which it imposes upon each, and the obligations under which it places them to others, are some of the matters coming rightfully within the control of the legislative power. And they prove, that it is also a civil institution to be regulated by law for the common good. The common law considers it in no other light than as a civil contract, leaving morality and religion to act upon it according to their own principles. This contract, to be binding, must, like others, be entered into by those having ability to contract, and who freely do so in the manner which the law prescribes or allows. When thus executed, it confers upon the parties certain legal rights, according to the then existing state of the law. The rights of the parties to their property or estates, are no longer the same. Former rights are diminished or modified, and new ones are acquired.

These rights the law recognizes as having been derived from the contract of marriage, and enforces them. Here then is contract, valid in law, and from the obligations of which neither party can be freed, but by some course of procedure which the law admits to be effectual, to declare that it is no longer binding. Whatever this may be, it has the effect of depriving one party to the contract of legal rights, and of releasing the other party from legal obligations.

Such rights and duties, when acquired and existing by virtue of a deed, bond, promissory note, other contract of similar character, cannot be destroyed or released by the legislative power. To do this, would violate that clause in the constitution of this State, which declares that the legislative

power shall pass no "law impairing the obligation of contracts." The rights and obligations secured by this class of contracts, are precisely such as the parties to them, acting in obedience to the laws, choose to make them, and such as the contract itself sets forth and defines. The only proper proof of them is found in the language of the contract. The Legislature, by no law of general policy for the regulation of municipal affairs, or of moral or intellectual culture, would act upon or affect them. These contracts may be dissolved at the decision of the parties interested. In all these respects, they are unlike and differ from the marriage contract — that cannot be dissolved by the consent of the parties. The State has an interest in it as a civil institution, designed to cherish virtue and to promote the happiness of the community. All the rights and duties arising out of it, except those occasioned by the difference of the sexes, are not provided for in the contract, nor are their existence proved by it. They are acquired solely by a law of the State, and are such, as that determines that they ought to be. It is for the legislature power to determine what will promote the general welfare and the happiness of the people in the regulation of this relation in life, as well as in that of parent and child, and master and servant. It may by law declare, that the husband shall have no right to the estates of the wife, and the wife none to those of the husband.

Such a law would change the rights of the parties, as they have hitherto existed under the marriage contract, in all those cases where the title had not been changed by being re-

duced to actual possession. And in the same manner may every right and duty existing under it, saving those before excepted, be altered or destroyed by general laws regulating the relation of husband and wife. And the contest itself will be left shorn of all privileges and duties, rights and obligations, except those personal ones before named. No rights or duties would be left, which could be asserted and enforced in a court of common law. In an ecclesiastical tribunal, there might be a suit relating to marital rights. This, however, may be regarded as a process to enforce moral duties. Was it intended by that clause in the constitution, to preserve the mere existence of a contract, when all other rights than these were liable to be destroyed? Or was it intended to protect those contracts only, securing a pecuniary or other beneficial interest, which could become the subject of estimation, and of compensation?

The language used in the constitution of this State for the preservation of the obligation of contracts, appears to have been copied from the constitution of the United States. Several cases have come before the Supreme Court of the United States, requiring a construction of that clause of the constitution. It is believed that in no one of them has it received a more enlarged construction, than in the case of *Dartmouth College against Woodward*, reported in the 4th vol. of Mr Wheaton's reports. It was there decided, that a grant of an eleemosynary private corporation, was a contract protected by that clause, although there was no other party who could or did complain, than the

Trustees under the charter. Among the reasons prominently assigned for this construction, are the following:—"It is a contract for the security and disposition of property. It is a contract on the faith of which real and personal property has been conveyed to the corporation. It is, then, a contract within the letter of the constitution, and within its spirit also," unless, says the opinion, its being invested in trustees makes a difference. It had been alleged in the argument of that case, that a construction so enlarged, would include many contracts never designed to have been included, and among others, the marriage contract. In answer to this argument, Chief Justice Marshall observes:

"The provision of the constitution never has been understood to embrace other contracts than those with respect to property, or some object of value, and confer rights which may be asserted in a court of justice. It never has been understood to restrict the general right of the Legislature to legislate on the subject of divorces. Those acts enable some tribunal, not to impair a marriage contract, but to liberate one of the parties, because it has been broken by the other. When any State Legislature shall pass an act annulling all marriage contracts, or allowing either party to annul it without the consent of the other, it will be time enough to inquire whether such an act be constitutional." "Where it is said that this clause has never been understood to restrict the rights to legislate on the subject of divorces, it is supposed that reference was made to the practice existing before, and continued

since, the adoption of the Constitution of the United States, in many of the State Legislatures to grant divorces. This practice continued to this day in several of them, and being it is believed the only by which a divorce can now be obtained in four or five of them, exhibits a practical construction of that clause, indicating that it was not intended to operate upon the marriage contract. The more this clause is extended by construction, the more is the legislative power of the States diminished. These considerations lead the undersigned to the conclusion, that a just construction of that clause does not forbid the Legislature to grant divorces.

The constitution of this State provides, that "the powers of this government shall be divided into three distinct departments, the legislative, executive, and judicial,"— and that "the judicial power of this State shall be vested in a Supreme judicial Court and such other Courts as the Legislature shall from time to time establish." The constitution does not define the extent, or prescribe the limits, of the judicial power. The Supreme Court cannot exercise its judicial power by virtue of the constitution alone, but must ascertain the extent of its powers and duties from the enactments of the Legislature. The judicial power is, therefore, in our constitution, whatever the laws of the State, from time to time enacted, declare it to be. And when any subject is thus declared by law to be of judicial cognizance, it becomes a part of the judicial power, in the only sense in which that term in the constitution

can have a practical operation. Other departments of the governments while it so remains a part of the judicial power, are forbidden to exercise it. If the Supreme Court acts upon a question of divorce over which it has jurisdiction, and decides that by the rules of law and evidence a divorce cannot be granted — and the party then applies to the Legislature, and it takes jurisdiction and grants the divorce, it practically allows the party an appeal from the highest tribunal established by or known to the constitution. And it would appear to present one of the practical evils designed to be provided against in that clause of the constitution. It would present the spectacle of two different departments of the government acting upon the very question which had been committed to one of them to determine finally as a judicial question. The result of this reasoning is, that in the opinion of the undersigned the Legislature cannot "grant divorces in cases where the Supreme Judicial Court have jurisdiction."

There may be questions, in their nature essentially judicial, which have not been thus assigned to, and incorporated into, the judicial power. And the question arises, and it is one of great delicacy and importance, and calling for a more extensive research and examination than can now be permitted, whether any subject, although in its nature judicial, can, under our constitution, be regarded as coming within the judicial power, unless it has by law been so assigned to it. There is no other mode of ascertaining with

certainty, what subjects are comprehended within that power. Men's judgements may greatly differ respecting what questions are in their own nature essentially judicial. One of the principle objects of the provision for the division of power, doubtless, was to avoid the danger and mischief of a conflicting exercise of power upon the same subject. By the proposed construction, this can never take place between the legislative and judicial powers, in those cases over which the judicial power by law has no jurisdiction, although they may be apparently proper for judicial decision. To declare that all questions apparently more fit for the exercise of judicial than legislative power, were included within the judicial power, would be, therefore, to extend that power by construction, beyond what is necessary to avoid the mischiefs to be apprehended from a conflict of power. And it would leave the judicial power so vague and undefined, as to afford frequent occasions for those very conflicts and mischiefs which it was the intention to avoid. It may be objected to this construction, that it would permit the Legislature, by refusing to pass any law giving to the judicial power cognizance of any class of contracts or questions, to usurp the whole judicial power, and to decide upon all contracts and questions arising between party and party. It is not to be presumed that it would refuse to perform its duty and so violate the constitution as to annihilate, for all practical purposes, one department of the government. And if it could be supposed to

do so, it could not itself exercise the power thus 37
improperly withheld, in all that class of cases
which are required by the constitution to be tried
by a jury. The objection is not believed to be of
sufficient importance to require that other in-
superable difficulties existing to prevent such
an exercise of power, should be stated. An em-
inent jurist, and, one possessed of high powers
of mind, has declared that the question of divorces
involves investigations which are properly of a
judicial nature. There may, however, be in the
judgment of the Legislature, other proper causes
of divorce than such as have by law been assign-
ed to, and thereby become a part of the judicial
power.

Under written Constitutions and laws, defining
the powers and duties of the different departments
of government, the justness of the old maxim,
that a good judge acts well his part by en-
larging his jurisdiction, is not perceived. The
better rule would seem to be for all to exercise
the powers granted, without any attempt to
enlarge or restrict them by a strained con-
struction.

If this reasoning be not erroneous, it will be
perceived, that the language of the Act of March
5, 1834, declaring, "that the Supreme Judicial
Court shall have exclusive jurisdiction in all
cases of divorce," does not enlarge or extend
the judicial power beyond the cases over which
it has jurisdiction; and such does not appear
to have been the intention of the Legislature.
Nor could the Resolve passed in the Senate, on
the 8th, and in the House, on the 9th of March

1838. For the like reasons, have any such effect; even it could be regarded as any thing more than the deliberate judgement of the two branches of the Legislature then existing. Other reasons have been noticed, which appear rather to exhibit the inexpediency, or the danger, or the injustice of the exercise of the power by the Legislature, than to prove it to be unconstitutional.

While they may believe with the distinguished jurist before alluded to, that "the jurisdiction over divorces ought to be confined exclusively to the judicial tribunals under the limitations prescribed by law," the undersigned, from the information to which they can now obtain access, are not prepared to deny, that, "the Legislature have the power to grant divorces, in cases where the Supreme Judicial Court have not jurisdiction;" and they therefore answer the second question in the affirmative, and the first in the negative.

Nathan Weston,
Nicholas Emory,
Oliver Shepley.

Titles of Acts passed the first session, 1840.

- 1 An Act repealing the 7th Section of an Act incorporating the Thomaston Theological Institution.
- 2 " " respecting side Booms in Androscoggin river.
- 3 " " in addition to an Act establishing the County of Aroostook.
- 4 " " to annex part of the town of Rome to the town of Vienna.
- 5 " " to annex the town of Wales to the County of Kennebec.
- 6 " " to set off Benjamin Marsh of Orono from Stillwater Village Corporation.
- 7 " " altering the times of holding the District Court for the western District in the County of Franklin.
- 8 " " to remedy certain defects in existing laws.
- 9 " " supplementary to an Act incorporating the Thomaston Theological Institution.
- 10 " " authorizing the Parish of St. Pauls in Portland, to sell their House of worship and other property.
- 11 " " additional to "an Act for the limitation of criminal prosecutions.

An Act to change the name of the town of East Mooring.

" " to provide in part for the expenditures of government.

" " to extend the time to locate and construct the Portland, Saco and Portsmouth Rail Road.

" " additional to an act accepting the surrender of the charter of the People's Bank Bangor.

" " to regulate the taking of Fish, and for the preservation thereof in the several rivers, and streams emptying into rivers in this State.

" " additional to an act entitled an act altering the times of holding the District Court for the Western District for the County of Franklin.

" " to change the name of Oxford Bridge Corporation.

" " to authorize the First Universalist Society in Freeport to appraise their meeting House, and to sell, take down, remove or repair the same.

" " to recharter the Belfast Upper Bridge Company.

" " additional to the several Acts to regulate the jurisdiction and proceedings of Courts of Probate.

An Act to incorporate the Piscataquis Agricultural Society.

141.

" " authorizing the erection of a Bridge across the Kennebec River at Kendall's Mills in Hainfield.

" " to limit the tenure of Military Office.

" " to incorporate the Eliot Academy.

" " additional to prevent obstructions to Fisheries.

" " to incorporate the town of Smithfield.

" " authorizing the Proprietors of the old meeting house, so called, in Woolwich to alter, repair and appraise the same.

" " to prevent obstructions in Machias river.

" " additional to an Act to incorporate the Maine Episcopal Missionary Society.

" " to authorize the proprietors of the Congregational meeting house in Norway to dispose of the same.

" " to incorporate the Machias River Company.

" " in addition to an Act to incorporate the Maine Mutual Fire Insurance Company.

" " to exempt the proprietors of Turner Centre Bridge from lighting said Bridge except at certain seasons.

An Act respecting the Fire Department in the city of
Bangor.

- " " additional to an Act to annex Wales to the
County of Kennebec.
- " " accepting the surrender of the charter of the
City Bank, Portland.
- " " accepting the surrender of the charter of the
Exchange Bank.
- " " relating to the North Turner Bridge.
- " " in relation to the House of Correction in the
town of Hallowell.
- " " to establish the Boundary line between Bath
and Phippsburg.
- " " additional to an Act to incorporate the Par-
sonsfield Seminary.
- " " to divide the town of Lisbon and to incor-
porate the town of Webster.
- " " to establish a Fire Department in the town
of Eastport.
- " " to change the names of certain persons.
- " " to extend the limits of the charter of the Salt
Water Falls Company, approved March 24, 1836.

An Act to change the names of certain persons.

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- 1. " additional to the several Acts now in force exempting certain articles from attachment.
- " " repealing part of an Act establishing the duties to be paid by certain persons therein named.
- " " to incorporate the Franklin County Agricultural Society.
- " " additional to an Act to organize, govern and discipline the Militia.
- " " to dissolve the Brunswick Village Corporation.
- " " authorizing the County Commissioners for the County of to lay out a road over tide waters of Goose River Creek in the town of Camden.
- " " to limit the compensation of sheriff in the County of Franklin.
- " " to provide for furnishing blank books to the cities, towns and plantations in this State.
- " " accepting the surrender of the charter of the Bangor Commercial Bank.
- " " in addition to the several acts for the relief of Poor Debtors.

- 124 An Act authorizing the town of Waterville to dispose of the old meeting house in west-Waterville.
- " " additional to an Act concerning the election of Representatives.
- " " altering the time of holding the District Court for the Eastern District in the County of Androscott.
- " " to extend the time of building the Bridge over the St. Croix River at or near Spragues Falls.
- " " to increase the Salary of Register of Probate in the County of Franklin.
- " " to divide the town of Crono and incorporate the north part into a town by the name of Old town.
- " " additional to an Act to incorporate the Bangor and Piscataquis Canal Rail Road Company.
- " " to prevent disturbances in Schools.
- " " additional to an Act establishing and regulating the fees of certain officers therein named.
- " " to incorporate the Magalloway and Schoodic Canal Company.
- " " to divide the Ministerial funds in Turner.

An Act to establish the compensation of the Surveyor ^{W⁵}
General.

" " to ascertain the amount and description of
estates of certain description of persons within
this State.

" " to apportion ~~and~~ assess on the inhabitants of
of this State a tax \$101.075.88.

" " further regulating judicial process and proceedings.

" " to change the name of certain persons.

" " to set off lands of Benjamin Mantor and
Jonathan Luce from the town of New Vine-
yard and annex the same to the town
of Anson.

" " to set off township number 19 from the
town of Columbia.

" " relating to the Militia.

" " to provide in part for the expenditures
of Government.

" " to repeal an Act to incorporate to incorporate
the Kennebec Dam Company, also an Act
entitled an Act additional to an Act to
incorporate the Kennebec Dam Company.

" " additional to an Act relating to the Passamaquoddy
Tribe of Indians.

146. An Act Altering the time of holding the District Court in the County of Piscataquis.
- " " authorizing School District No. 3, in Thomaston to sell their School house and land.
- " " additional to the several Acts now in force to organize, govern and discipline the Militia of this State.
- " " relative to lands forfeited to the State.
- " " to suspend for a limited time the operation of certain portions of an Act entitled "an Act prohibiting the emission and circulation of Bank Bills of small denomination and certain others," passed March 19, 1836.
- " " authorizing the several School Districts in the town of Winthrop to purchase the School Library.
- " " additional to an Act to provide for repair of highways in certain unincorporated townships.
- " " to establish, regulate and preserve the Booms on the Arrowstock, Fish and St. John's Rivers.

47

Titles of Resolves passed the first Session of the
twentieth Legislature, A.D. 1840.

Resolve in favor of Richmond Loring.

" for the relief of Alexander Thompson.

" for authenticating the Probate Records of the County of Cumberland.

" in favor of Henry L. Noyes.

" authorizing the County Commissioners of Aroostock County, to hire money for, and on the faith of the County,

" authorizing a loan in behalf of the State.

" in favor of Jonathan M. Smiley.

" in favor of Eleanor Gray.

" in favor of C. J. Whitney.

" directing the mode of authenticating securities issued by the State.

" in relation to Military Pensions.

" in favor of William Thompson.

" in favor of Betsey Kimball.

148 Resolves in favor of Robert Martin.

" in favor of Rufus Gilmore.

" in favor of Jacob Fish.

" in favor of Deacon Lookhason and Joseph
Lolah Solmo.

" respecting the Geological Survey of the State.

" for the payment of bounty to the Penobscot In-
dians upon Agricultural productions.

" directing the manner of binding the pamphlet
Laws and Resolves.

" in favor of William M. Jordan.

" in relation to the distribution of annual School
Fund.

" in favor of Jonas Farnsworth, Agent of the
Paspamaquoddy Tribe of Indians.

" for furnishing arms for the militia

" in favor of Lewis Bailey of Gardiner.

" in favor of June Fish.

" in favor of John G. Chase.

" in favor of Benjamin P. Chapman.

Resolue in favor of Tobias Thompson.

119.

" in favor of Ephraim B. M^o Condra of Houlton.

" in favor of Sally Grover.

" in favor of the Insane Hospital.

" in favor of Jacob H. Clement.

" in favor of Levi O. Farnham.

" in favor of Amelia Wood.

" in favor of Levi Tapp of Leeds.

" in favor of Benjamin Chadbourne.

" in favor of Rendel Whidden.

" in favor of Stephen Rowell, Tisha Adams,
Sarah Adams and Asahel W. M^o Mohon.

" repealing in part a Resolue authorizing a Loan
in behalf of the State, approved March 12, 1839.

" authorizing a Loan in behalf of the State.

" directing the Attorney General to perform certain
duties.

" in favor of John A. Dill of Gardiner.

" in favor of Chadbourne and Rawson.

- Resolve for the payment of accounts against the State
- " for the preservation and repair of the Mass Hill Road.
 - " in relation to the third volume of the private Acts and Resolves of this State.
 - " in favor of the proprietors of township D, 13 Range.
 - " in favor of Alden M. Norris.
 - " in favor of Samuel Bassick.
 - " in favor of Gethwood Libbey and E. B. Libbey.
 - " in favor of Ira Fish.
 - " directing the payment of accounts of cities, towns and persons, for supplies furnished and services rendered in consequence of drafts of Militia into service.
 - " relating to the State Prison Debts.
 - " providing for the choice of Electors of President and Vice President of the United States.
 - " relating to the military expenditures of the State in the protection of the North Eastern Frontier.
 - " in favor of Elisha Hilton.
 - " in favor of the School on Georges Island.

Resolve in favor of Albert Tanson.

51.

" in favor of Wilmet W. Walker.

" making appropriations for military purposes.

" for the erection of a Gun house in Limerick.

" in favor of Samuel Holden.

" in favor of John Morrill.

" in favor of Ebenezer Jones.

" for the preservation and repair of the Canada Road.

" relative to a general Bankrupt Law.

" relating to the Massachusetts claim.

" in favor of Widow Emeline Maddox.

" in aid of the deaf and dumb ~~and~~ blind.

" in favor of Barlow Dyer.

" in favor of Joseph Pomeroy.

" in relation to the sale and conveyance of the public lands and in favor of George W. Duck, more and others.

" authorizing an exchange of State securities.

52. Resolve laying a tax on the several Counties in this State
- " relating to the French spoliation prior to September A. D. 1800.
 - " relating to the repeal of the Act giving a bounty to vessels engaged in the fisheries.
 - " authorizing the payment of interest on the temporary loan, approved February 15, 1839.
 - " making appropriation of land for officers (and soldiers of the Revolution and their widows.
 - " for the distribution and safe keeping of the Laws and Reports.
 - " in favor of Benjamin Partridge and Benjamin C. Mezquie.
 - " providing for the repair of the Baring and Heulton Road.
 - " authorizing the acting Quarter Master General to audit certain accounts.
 - " in favor of Columbus Dunn.
 - " in favor of Jeremiah Smith.
 - " in favor of John Smith.
 - " on the Pay Roll of the Senate.

Resolve additional for the payment of accounts against 52
the State.

" on the Pay Roll of the House of Representatives.

" authorizing the Treasurer to receive the claims of the
State for expenditures in relation to the North East-
ern Boundary.

" in favor of the Aroostook Road.

" providing for additional copies of Blank Books
for taking the town valuations.

" relating to the election of members of Cong-
ress from the State of New Jersey.

" relating to the North Eastern Boundary.

(94) Resolves.