

REPORTS
OF
CASES IN LAW AND EQUITY,
DETERMINED
BY THE
SUPREME JUDICIAL COURT
OF
MAINE.

By WM. WIRT VIRGIN,
REPORTER TO THE STATE.

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APPENDIX.

STATE OF MAINE.

EXECUTIVE DEPARTMENT, AUGUSTA, Feb. 15, 1867.

To the Honorable Chief Justice and Associate Justices of the Supreme Judicial Court.

A bill having been reported in the House of Representatives, looking to the assumption by the State of a portion of the municipal debts, a copy of which, House Document, No. 64, I enclose, in view of the probable passage of this bill in some form, embracing the objects and based on the principles indicated therein, in which case my action will be required, I avail myself of the privilege provided by the Constitution, to ask the opinion of the Court upon the question whether the debts contemplated in this bill may properly be regarded as for war purposes, so that the proposed assumption beyond the amount of three hundred thousand dollars may come within the purview of the constitution.

J. L. CHAMBERLAIN, *Governor.*

Bangor, Feb. 18, 1867.

Sir:—The undersigned, Justices of the Supreme Judicial Court, have the honor to submit the following answer to the inquiry contained in your communication of Feb. 15th.

Numerous amendments to the original constitution of the State have been adopted, in accordance with its provisions. The sixth amendment, in pursuance of the resolve of July 20, 1847, is in these words:—

Article 6. "The credit of the State shall not be directly or indirectly loaned in any case. The Legislature *shall not create* any debt or debts, liability or liabilities, in behalf of the State, which shall singly, or in the aggregate, with previous debts and liabilities hereafter incurred at any one time, exceed three hundred thousand dollars, *except to suppress insurrection, to repel invasion, or for purposes of war;*

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but this amendment shall not be construed to refer to any money that has been or that may be deposited with this State by the government of the United States, or to any fund which the State shall hold in trust for any Indian Tribe.”

Prior to this amendment, there was no constitutional limitation to the power of the Legislature to create debts in behalf of the State. The general design was to provide a perpetual check against rashness or improvidence. “The credit of the State shall not be directly or indirectly loaned in any case.” This indicates the great purpose of the amendment. But as there may be occasions for indebtedness for State purpose, authority is given to create a debt to the amount of three hundred thousand dollars. Indebtedness on the part of the State is limited to this amount. The object of the amendment cannot be misunderstood. Its binding force cannot be denied. It is the calm and deliberate expression of the popular will, embodied in the solemn form of a constitutional restriction upon legislative action.

But it was obvious that exigencies might occur, that pressing necessities might arise, when the safety and well-being of the State would require that this limitation should be disregarded. The amendment, therefore, is made subject to the following exceptions:—“to suppress insurrection, to repel invasion, or for purposes of war.” These exceptions relate to the general duties of government. They authorize the Legislature to *create* a debt, when necessary to discharge obligations arising under the constitution of the United States, or to protect its own citizens in the full enjoyment of life, liberty and happiness.

The debt must be created by the State. It must be to provide for the special objects distinctly set forth in the exceptions in the sixth amendment, and for none other, whenever the constitutional limit has already been exceeded. These are “to suppress insurrection, to repel invasion, or for purposes of war,”—great national emergencies requiring prompt and energetic action. Insurrection must exist, else it cannot be suppressed. The public enemy must have in-

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vaded the territory of the State or nation, else he cannot be repelled. There must be a state of war imminent or existing, else there can be no purposes of war. The exception looks to the present—insurrection, invasion or war as actually existing or impending. The government of the United States can rightfully call on the State in any of these contingencies, and it is the duty of the State to respond to the call. The existence of these conditions alone give the Legislature a right to create a debt exceeding in amount the constitutional limitation. The debt thus created must be to meet these exigencies, and not to pay the existing and outstanding liabilities of corporations or individuals.

The Act to which our attention is called, is entitled "An Act to *equalize* the war expenditures of the several cities, towns and plantations." The title of the Act clearly expresses its object—to *equalize* the war expenditures, by relieving some cities, towns and plantations in part from debt voluntarily contracted, and imposing the burden upon the rest.

By section 1, the Governor and Council are "to examine the accounts or claims of the several cities, towns and plantations of this State, for *expenditures made and liabilities incurred* in furnishing soldiers to the State under the several calls of the President of the United States therefor, to suppress the late rebellion, and shall determine the amount which shall be allowed or reimbursed to each respectively, which adjustment shall be made on the following basis, viz. : allowing to each city, town or plantation an amount not exceeding its actual expenditures necessarily incurred, having reference only to the *amount paid as bounty and expenses attending the same*, in which adjustment unnecessary bounties and expenses shall be reduced to a just basis," &c.

By section 2, when the above amounts are ascertained and certified to the Treasurer, "he shall notify the several cities, towns and plantations of the amount allowed each, and shall execute, in due form, the bonds of the State for

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their benefit, in sums of one thousand, five hundred, and one hundred dollars, to the amount of one third of the whole sum allowed, not exceeding two millions of dollars; but if one-third exceeds two millions, then each shall receive its proportion of that sum. Said bonds shall be payable at any time within twenty years, with interest coupons attached, payable annually, at the rate of six per cent.," &c.

By section 3, "The bonds belonging to any city, town or plantation that votes so to do, shall be sold by the State Treasurer, if they can be sold at par, and the amount so received shall be paid to the treasurer of such cities, towns and plantations, and applied to the payment of the indebtedness thereof, *or if not in debt*, to pay State taxes, current town expenses, or for the support of schools, as the town may vote," &c.

The proposed bill in its very terms negatives the existence of the excepted cases, in which alone the constitutional limitation upon such State indebtedness may be exceeded. There is no insurrection to be suppressed, no invasion to be repelled, no war for the purposes of which money may be needed. The bill is to *create* a debt on the part of the State, with which gratuitously to reimburse the numerous municipal corporations therein for expenditures voluntarily incurred by them, for the payment of which they now are, and the State is not now liable, but is in and by its passage hereafter to be made liable.

During the existence of the rebellion, the Legislature by various Acts created a debt "for the purposes of war." Of such debt, the obligation of payment is as unquestionable, as the right to create it is undoubted. This debt, thus created, largely exceeds the constitutional limitation upon State indebtedness.

The municipal corporations of the State had no legal right to give bounties or contract debts for any such purpose. It was not within the scope of their power. Nevertheless, without legal authority, they attempted to create debts for that object. They were under no obligation to do

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so. The Legislature by subsequent enactment ratified their past doings in relation to bounties, and rendered valid what would otherwise have been held invalid. At the same time it empowered them within certain limits to create a future indebtedness for similar purposes. But the indebtedness thus to be created was by and for those corporations. The debts were theirs. They were voluntarily incurred, each corporation acting for itself and determining the amount of its own liability. These debts now exist and are obligatory upon the respective cities, towns and plantations by which they were created. Being debts, they are like other debts, no matter what their origin, nor how generous the purpose of their creation.

The cities, towns and plantations, in their action under the several statutes to which we have referred, were in no respect, either directly or indirectly, the agents of the State, nor did they incur any liability in its behalf. They had no authority express or implied to do that. The Legislature in its various enactments made such provisions, in the way of bounties and of rendering aid to the families of soldiers while in the service, as it deemed just and fitting. The State has honorably discharged all its constitutional obligations. It empowered no municipal corporation to act as its agent—to supplement its deficiencies—to supply its omissions—or to remedy its shortcomings. It did its own work and did it well. It indicated the precise limit within which it would reimburse the several cities, towns and plantations for their expenditures. Outside of those limits, the condition of any municipal corporation was the same as that of any individual, who, not being liable to serve, should procure a substitute or advance funds or do any other act in furtherance of the common cause of the nation.

If the cities, towns and plantations were the agents of the State, (which it is manifest they were not,) then their whole indebtedness incurred for bounties and the expenses attending the same is the present debt of the State, for the payment of which justice would require that immediate

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provisions should be made. While the people of Maine have imposed restrictions upon the Legislature, by prescribing limitations upon its power to create a debt, it never repudiates in whole or in part. If these corporations were the agents of the State, and the debt was created by its agents in its behalf, then the act wholly fails to discharge what in such event would be its manifest duty; for assuredly, debts contracted at its own instance, by its agents on its own account, should be held sacred. But such is manifestly not the view of those who favor the passage of the Act under consideration, for its very language repudiates the idea of any present State indebtedness, and proposes to assume a fraction only of the existing liabilities of the cities, towns and plantations of the State.

By section 3, the proceeds of the bonds are to be applied to the payment of the indebtedness of the cities, towns and plantations, and "if not in debt, to pay State taxes, current town expenses, or for the support of schools, as the town may vote." The constitutional limit of three hundred thousand dollars has been passed. The proposition is to still further exceed that limitation. The debt in and by this bill to be created, among other objects is "to pay State taxes, current town expenses, or for the support of schools." Is such a debt *created* to suppress insurrection, to repel invasion, or for the purposes of war? The proposed bill particularly specifies the appropriation to be made of the bonds of the State, or of the funds derived from their sales, and they are for none of the purposes indicated in the exceptions to the sixth amendment to the constitution.

It is not enough that a debt has been created by some corporation or individual for the "purposes of war." If it were, the Legislature might assume the debts of any sister State or of the United States as well as of individuals. They might assume debts thus arising from any of the past wars in which the nation has been engaged. The authority is not given to create a debt to pay debts howsoever and by whomsoever created, though for purposes of war. The

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State must by its constituted authorities create the debt in its inception and for the purpose specially excepted from the general prohibition of the amendment. Whatever the State in its corporate capacity expended, or whatever, if it were an individual, it would be bound to pay as a just debt for the purposes of war, may be provided for by creating a debt exceeding in amount the constitutional limitation of three hundred thousand dollars. But a debt *created* by the Legislature for and on account of the State and on its credit differs most essentially from the assumption of a debt created by others and on their account and credit. The constitution authorizes under certain conditions the former, but not the latter.

The bill proposes to create a debt when none now exists. It is not a bill to create a debt to suppress insurrection, to repel invasion, or for the purposes of war. It does not purport to be. It is a bill to create a debt to pay the debt or expenditures of municipal corporations, in the creation of which the State was not a party, in the disbursement of which it was not consulted, and over which it had no control, and for the payment of which it is under no present liability.

The conclusion to which we have arrived, is, that the proposed bill to which you have called our attention, would, if enacted, be in plain violation of the constitution of this State.

JOHN APPLETON,	JONAS CUTTING,
EDW. KENT,	C. W. WALTON,
WILLIAM G. BARROWS,	CHAS. DANFORTH,
RUFUS P. TAPLEY,	J. G. DICKERSON.

TO HON. J. L. CHAMBERLAIN,
Governor of Maine,
Augusta.