

Indiana American.

BROOKVILLE -

Friday Morning, January 13, 1871

Governor Baker's Message.

It affords me great pleasure, in again welcoming the representatives of the people to these halls of legislation, to greet you at the outset with the assurance that the financial condition of the State, so far at least as the liquidation of our foreign indebtedness is concerned, is most satisfactory. Practically all the foreign debt of the State, except \$178,000 of the loan bonds issued under the legislation of 1861, has been redeemed.

In this connection I desire again to call attention to the renewal of an effort which is about to be made by the holders of the Wabash and Erie Canal stocks to induce the General Assembly to charge the payment thereof on the Treasury of the State.

The history of this transaction is rehearsed in full by the Governor, and he makes a lengthened argument to sustain his view of the matter as expressed in two propositions:

1. That by the terms of the act of January 19, 1847, and January 27, 1848, commonly called the "Butler Bill," and the nature of the negotiations which resulted in their adoption, and especially the amendments suggested by the principal bondholders to the first act, and adopted in the second, the character of the bonds surrendered, and the certificates of canal stock issued and received in lieu thereof, and by the contemporaneous and subsequent construction put upon the adjustment by both parties thereto, it is clear that the canal stocks which the State is now asked to charge upon her Treasury were to be, and were, charged exclusively upon the Wabash and Erie Canals, its lands and revenue, and that the State was not to be and was not, bound to pay any portion of these stocks, although she reserved the right to redeem the canal at her option after the expiration of twenty years from the date of its transfer to the Trustees, by paying the principal sum charged upon it to the holders of the certificates of the stock thus charged.

2. That the State has not, since the adjustment of 1847, by the incorporation of railroad companies, and authorizing them to contract railroads within the State, or by any other act of hers, according to any recognized rule of law, or any established principle of equity jurisprudence, created a liability on her part to pay said canal stocks, or any part thereof. In other words, had the same transactions occurred between two natural persons over whose rights and liabilities the courts could have exercised the fullest jurisdiction, the claims now urged against the State could not have been enforced as between these natural persons by an action at law, or a suit in equity.

In conclusion on this point the Governor says:

Before dismissing the subject I earnestly recommend the passage of a joint resolution proposing an amendment to the Constitution so as to declare that no act of legislation shall ever take effect or become a law of this State whereby said canal stocks, or any part thereof, shall be recognized as a debt of the State, or charged upon the Treasury thereof by way of redeeming said canal, or otherwise, until such act of legislation shall have been submitted to and ratified by the qualified electors of this State at a special election held for that purpose in pursuance of law, a majority of the votes cast at such election to be necessary to effect the ratification.

Regarding assessment, equalization and collection of taxes, the message says:

I recommend that in imitation of the assessment laws of Michigan, an amendment shall be passed declaring that the words "cash value," as applied to the appraisement of property for taxation, shall mean the usual selling price at the place where the property is at the time of assessment, not at a forced sale, but at private sale. I trust that you will be able to devise some remedy to prevent the demoralizing practice of counties and individuals competing with each other in the valuation of their taxables at a rate grossly disproportionate to their real value.

The action of the State Board in equalizing the appraisement of real estate has been disregarded in many, if not all, the counties in which a per cent was directed to be added to the appraisement as left by the District Boards; but where a deduction was directed to be made, the County Auditors, as a general rule, have not been slow to execute the order in making out the duplicates. By this failure to comply with the action of the State Board, and by unauthorized deductions not directed by that Board, the total value of all the taxable property of the State, as it stands on the duplicates, is reduced more than fifteen millions of dollars below what it would have been if the action of the State Board had been carried out, and no such unauthorized deductions had been made.

The message devotes considerable space to the subject of the divorce laws of the State, stating the cause for which divorces are granted as follows:

1. Adultery.
2. Impunity.
3. Abandonment for one year.
4. Cruel treatment of one party by the other.

5. Habitual drunkenness of either party.

6. The conviction, subsequent to the marriage, in any country, of either party of an infamous crime.

7. Any other cause for which the Court shall deem it proper that a divorce should be granted.

The Governor, the great objection to our state is the discretionary clause allowing a court to grant a divorce for any cause that the judge may deem sufficient.

This clause, which pretends to lay down a rule for the government of human affairs in the most important relation of life, is at war with the fundamental idea and elementary definition of law. Law is a prescriptive rule of civil conduct. This statute prescribes no rule, the observance of which shall save, or the violation of which shall forfeit conjugal rights. Under this clause, the question is or is not a sufficient cause for a divorce, instead of being determined by a general rule, is measured by no rule at all, and the standard of judgment, instead of being prescribed so that it may be known and read of all men, re-

until he pronounces judgment between the parties in the case before him. It is worse than delegating legislative power to the judiciary—which the Constitution expressly prohibits—for it authorizes the Judge to make his own judgment of what the law ought to be, the rule of decision in each case, as it arises, without any previous assimilation of the standard or rule by which the rights of the parties, are to be measured.

* * * * *

The facility with which citizens of other States, after a pretended residence in this, can and do procure divorces in our courts, and then return to their homes from which they fled for that very purpose, is a reproach to the civilization of the age, and a breach of that comity which should be scrupulously observed between sister States of the same great Republican family. I, therefore, recommend that the clause of the statute which authorizes divorces for any cause that the Court may deem sufficient, be repealed, and that the clause making cruel treatments a good cause of divorce be so amended as to require the treatment to be cruel and inhuman, or cruel and barbarous. I further recommend that the practice in divorce cases be so amended as to embrace the following provisions, viz:

1. That by the terms of the act of January 19, 1847, and January 27, 1848, commonly called the "Butler Bill," and the nature of the negotiations which resulted in their adoption, and especially the amendments suggested by the principal bondholders to the first act, and adopted in the second, the character of the bonds surrendered, and the certificates of canal stock issued and received in lieu thereof, and by the contemporaneous and subsequent construction put upon the adjustment by both parties thereto, it is clear that the canal stocks which the State is now asked to charge upon her Treasury were to be, and were, charged exclusively upon the Wabash and Erie Canals, its lands and revenue, and that the State was not to be and was not, bound to pay any portion of these stocks, although she reserved the right to redeem the canal at her option after the expiration of twenty years from the date of its transfer to the Trustees, by paying the principal sum charged upon it to the holders of the certificates of the stock thus charged.

2. That the State has not, since the adjustment of 1847, by the incorporation of railroad companies, and authorizing them to contract railroads within the State, or by any other act of hers, according to any recognized rule of law, or any established principle of equity jurisprudence, created a liability on her part to pay said canal stocks, or any part thereof.

3. That the defendant, who is a resident of the State, to be sued in the county of his or her residence.

4. Requiring the plaintiff not only to have been a re-idea of the State for one year prior to the filing of his petition, but that he should continue to reside in the State during the pendency of the suit, and until the case is tried.

5. Vesting in the Circuit Courts exclusive jurisdiction of applications for divorce.

6. Requiring the petition in every divorce case to show where the causes of divorce relied upon occurred, and where the applicant resided at the time, and if they happened or occurred elsewhere than in this State, and at a time when the plaintiff was not a resident of this State, that no divorce shall be granted unless it be alleged in the petition and proved on the trial that matters relied upon would be a good cause of divorce by the laws of this State, place or jurisdiction within which the same happened or occurred.

7. Requiring the allegations as to places where the cause or causes of divorce relied upon occurred, and the place of residence of the plaintiff at the time of their occurring, to be verified by affidavit appended to the petition, and also to be proved on the trial.

8. Requiring the allegations as to places where the cause or causes of divorce relied upon occurred, and the place of residence of the plaintiff at the time of their occurring, to be verified by affidavit appended to the petition, and also to be proved on the trial.

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