

# MAINE STATE LEGISLATURE

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# Sixty-Seventh Legislature.

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HOUSE.

No. 278.

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## STATE OF MAINE.

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RESOLVE in favor of Charles R. McFadden.

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*Resolved*, That there be paid out of the state treasury to  
2 Charles R. McFadden of Waterville, the sum of four hun-  
3 dred and eighty-three dollars and sixty-eight cents, to  
4 reimburse him for his expenses incurred in defending  
5 against a suit on account of acts as sheriff in the line of his  
6 duty and under the specific order of the governor.

## STATEMENT OF FACTS.

Charles R. McFadden of Waterville was, in 1887 and subsequent years, sheriff of the county of Kennebec. In that year Michael Burns opened a shop in Augusta for the sale of intoxicating liquors, claiming that he was selling only liquors imported into the state and sold in the original package, which packages were, however, small boxes or cases; he claimed that the law of this state in relation to the suppression of drinking houses and tippling shops, so far as it affected the sale of liquors so imported and sold, was unconstitutional and void and that he proposed to sell his liquors without regard to that law.

The matter occasioned considerable disturbance in the minds of the public and was brought to the attention of the Governor, Hon. Joseph R. Bodwell. He examined the matter, advised with counsel in relation to it, and came to the conclusion that it was the duty of the executive officers to use all legal means to suppress Burns' shop. Thereupon, he called the county attorney and Sheriff McFadden to the council chamber and gave them positive instructions to prosecute Burns in the same manner as they would any other violator of the law.

McFadden raised the question of his own liability in case Burns' position should turn out to be correct and the Governor assured him that he should be protected by the State, and, if necessary, by himself out of his private purse. Thereupon, the County Attorney made a complaint against Burns for keeping intoxicating liquors intended for unlawful sale in this State. The judge of the municipal court at Augusta, issued his warrant, directed to McFadden, who, by virtue of it, seized the liquors.

As Burns continued to keep his shop open, a second seizure was made by McFadden in the same manner; whereupon Burns concluded to wait for the decision of the court. That decision finally was that the liquors were not liable to seizure, and were ordered to be restored to Burns. This

was done, and there was no allegation that McFadden, in any respect whatever, did any irregular or illegal act in the manner in which he performed the duties.

After the liquors were restored, Burns sued McFadden in the circuit court of the United States for \$15,000 damages for detaining the liquors away from him, arresting him without cause, breaking up his business, and various other causes. The case was tried and judgment rendered for McFadden on the ground that he did only his duty under the warrants which were committed to him to serve, and that these warrants were a protection to him. His expenses in making his defense were four hundred and eighty-three dollars and sixty-eight cents, which your committee find were necessary in character and reasonable in amount.

STATE OF MAINE.

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HOUSE OF REPRESENTATIVES, }  
March 5, 1895. }

Reported by Mr. LARRABEE of Portland, from Committee on Judiciary, and ordered printed under joint rules.

W. S. COTTON, *Clerk.*