Legislative Record

OF THE

Seventy-Sixth Legislature

OF THE

STATE OF MAINE

1913

SENATE.

Thursday, February 20, 1913.

Senate called to order by the President.

Prayer by Rev. Robert S. Pinkham of Gardiner.

Journal of previous session read and approved.

Papers from the House disposed of in concurrence.

An Act in relation to certain rights and liabilities of husband and wife.

This bill came from the House by that Branch referred to the committee on judiciary, and on motion by Mr. Morey of Androscoggin, was tabled for printing pending reference in concurrence.

House Bills in First Reading.

Resolve in favor of E. B. Weeks and Isaac F. Tibbitts of Old Town.

A communication was received from the office of secretary of State, transmitting the report of the Maine State Library Commission for the year 1912.

Placed on file.

The following bills, petitions, etc, were presented and referred:

Education.

By Mr. Murphy of Cumberland: "Petitions of Vernon F. West and 69 others in favor of Teachers' Pension Bill."

Agriculture.

By Mr. Burleigh of Aroostook: "Petitions of Mountain Grange; of Aroostook Valley Grange in favor of Experiment and Seed Farm in Aroostook County."

Pensions.

By Mr. Allen of Kennebec: "Resolve for State Pensions."

By Mr. Flaherty of Cumberland: "Resolve to provide means for examination of claims for State Pensions."

By Mr. Hagerthy of Hancock: "Resolve for Military Pensions."

Senate Bills in First Reading.

An Act to amend Chapter 39 of the Public Laws of 1911, providing for the weekly payment of wages.

An Act to repeal the bounty on bears. (Tabled pending first reading on motion by Mr. Bailey of Penobscot and upon request of Mr. Allen of Kennebec, was specially assigned for next Tuesday morning.)

An Act to amend Section 10 of Chapter 121 of the Revised Statutes of 1903, pertaining to larceny.

Reports of Committees.

Majority Report from the committee on judiciary, on bill, An Act to repeal Chapter 149 of the Resolves of 1911, and to provide for State paper, submitting the same in a new draft under the same title, and that it "ought to pass."

(Signed) STEARNS,
HERSEY,
SMITH of Presque Isle,
SMITH of Patten,
SMITH of Auburn,
WATERHOUSE,
DURGIN,
SANBORN,
DUTTON.

Minority report from the same committee on the same bill, that the same ought not to pass.

(Signed) DUNTON.

On motion by Mr. Stearns of Oxford, the majority report, "ought to pass," upon a viva voce vote, was accepted.

The bill was tabled for printing under the joint rules.

Mr. Dutton from the committee on judiciary, on bill, An Act to amend Section 8 of Chapter 116 of the Revised Statutes, relating to transcripts in the superior court for Kennebec county, reported same "ought to pass."

The repirt was accepted, and the bill tabled for printing under the joint rules.

Mr. Dutton from the committee on judiciary, on bill, An Act relating to the jurisdiction of the superior court in the county of Kennebec, and to fix the salary of the judge thereof, reported same "ought to pass." (This being a printed bill, it was given its first reading, and on motion by Mr. Wing of Franklin, was tabled pending second reading.)

Mr. Stearns from the committee on judiciary, on bill, An Act relative to telephone, telegraph, electric light and electric power companies, placing their

wires under ground, reported same "ought not to pass."

The reported was accepted, and the bill tabled for printing under the joint rules.

Majority Report from the Committee on Legal Affairs on Resolve relating to changing date of State Election from September to November, that the same "ought not to pass."

(Signed)

BAILEY,
COLE,
PEAKS,
CONNORS,
THOMBS.

Minority Report from the same Committee on the same Resolve, that the same "ought to pass."

(Signed)

WHEELER,
PEACOCK,
KEHOE,
ROUSSEAU.

On motion by Mr. Bailey of Penobscot, pending acceptance of either report, the bill and reports were tabled, and assigned for consideration next Tuesday.

Mr. Emery from the committee on appropriations and financial affairs, on Resolve in favor of W. J. Maybury of Saco, secretary of the committee on insane hospitals, reported same "ought to pass."

Mr. Walker from the committee on education, on bill An Act to prevent the organization or existence of secret societies in public schools, reported same "ought to pass."

The reports were accepted and the bill and the resolve were tabled for printing under the joint rules.

Mr. Packard from the committee on railroads and expresses, on bill An Act to extend the charter of the Waldo Street Railway Company, reported that legislation thereon is inexpedient, as the subject matter is included in a bill reported "ought to pass"

The report was accepted.

Mr. Packard from the committee on railroads and expresses, on bill An Act to extend the charter and rights of the Penobscot Bay Railroad Company, reported same "ought to pass."

The report was accepted and the bill tabled for printing under the joint rules.

Mr. Murphy from the committee on mercantile affairs and insurance, on bill An Act to amend Section 78 of Chapter 49 of the Revised Statutes of Maine, relating to insurance and insurance companies, reported same "ought not to pass."

The report was accepted.

Mr. Hastings from the committee on library, on Resolve providing for the purchase and distribution of the book, 'Makers of Maine," reported same "ought to pass."

The report was accepted, and the resolve tabled for printing under the joint rules.

Passed to Be Engrossed.

Resolve for a State pension for Maria A. Sylvester of Augusta.

Resolve providing a State pension for Elizabeth D. Low of Buxton.

Resolve providing for an increase of State pension for E. J. C. Owen.

Resolve providing for a State pension for Gary M. Garland.

Resolve proposing an amendment to the Constitution of Maine conferring the right of suffrage on women.

An Act to amend Section 27 of Chapter 135 of the Revised Statutes as amended by Chapter 184 of the Public Laws of 1909, relating to new trials in criminal cases.

An Act to extend the charter of the Monson Water Company.

An Act to incorporate the Washburn Water Company.

An Act to repeal Chapter 340 of the Private and Special Acts of 1907, relating to highway in Readfield closed to automobiles.

An Act to amend Section 1, Chapter 145, Revised Statutes, relating to the State pension law.

An Act to prevent the obstruction of ditches and drains in and along public ways.

An Act to authorize employment of county prisoners on highways.

Resolve in favor of the town of Howland.

Resolve in favor of the towns of Enfield and Howland.

Resolve in favor of aiding the town of Kingman in repairing a bridge in said town across the Mattawamkeag river.

An Act to repeal Chapter 573 of the Special Laws of 1874 entitled, "An

Act to prevent the destruction of smelts in the Piscataqua river and tributaries.

Resolve in favor of a co-operative survey of the boundary line between the State of Maine and the State of New Hampshire.

An Act relative to untrue and misleading advartisements.

An Act to establish a uniform poll tax.

An Act to amend Section 71 of Chapter 83 in regard to the release or discharge of attachments.

An Act to authorize the Valley Cemetery Company, located at Greene in the county of Androscoggin to take land by right of eminent domain for burial purposes.

An Act to incorporate the Quebec Extension Railway Company.

An Act to amend Section 1 of Chapter 163 of the Private and Special Laws of 1911, and to extend the provisions of said chapter authorizing the Aroostook Valley Railroad Company to extend its lines from Washburn to the west line of the State.

Finally Passed.

Resolve for the appointment of delegates to the conference of the National Tax Association.

Resolve in favor of the officers of the Senate at the organization of that body, Jan. 1, 1913.

Resolve in favor of repairing the bridge across the Kenebec river between the Plantation of West Forks and The Forks.

Resolve in favor of the repair of covered bridge across the Kennebec river in the town of Norridgewock.

Resolve ratifying an amendment to the Constitution of the United States providing that the United States senators shall be elected by the people of the several states. (This resolve carrying an emergency clause required a two-thirds vote of all members elected to the Senate. A rising vote was had, and 28 Senators voting in the affirmative and none in the negative, the Resolve was finally passed.)

Orders of the Day.

On motion by Mr. Packard of Knox, Senate Document 334, an Act to regulate moving of freight on railroads, was recalled from the committee on judiciary.

Subsequently the bill was returned to the committee and on motion by Mr. Packard, the Senate non-concurred with the action of the House in referring this bill to the committee on judiciary, and it was then referred to the committee on railroads and expresses.

On motion by Mr. Morey of Androscoggin, Senate Document 338, an Act to amend Chapter 5 of the Revised Statutes, relating to boards of registration, was taken from the table, and on further motion by the same senator, was referred to the committee on judiciary in concurrence.

On motion by Mr. Wing of Franklin, Senate Document 304, Resolve in favor of Indian Township for repair of roads and bridges, was taken from the table.

On further motion by the same senator, the Resolve was given its second reading and was passed to be engrossed.

On motion by Mr. Colby of Somerset, Senate Document 337, an Act for the ownership and maintenance of highway bridges by the State and the construction of such bridges by the State, county and towns, was taken from the table.

On motion by the same senator, the bill was recommitted to the committee on ways and bridges.

On motion by the same senator, Senate Document 346, An Act to incorporate the Fish River Log Driving Company, was taken from the table.

On further motion by the same senator, the bill was recommitted to the committee on interior waters.

On motion by the same senator, Senate Document 342, An Act to authorize the construction and maintenance of a dam and other structures in the Saint Francis river, was taken from the table.

On further motion by the same senator, the bill was recommitted to the committee on interior waters.

On motion by Mr. Conant of Waldo, Senate Document 344, An Act to amend

Section 8 of Chapter 195 of the Public Laws of 1911, relating to the disposition of Cattle reacting to the tuberculin test, was taken from the table, and on further motion by the same senator, was referred to the committee on agriculture.

On motion by Mr. Allen of Kennebec, Senate Document 345, Resolve providing for an appropriation for control of contagious diseases among domestic cattle, was taken from the table, and on further motion by the same senator, was referred to the committee on agriculture.

On motion by Mr. Murphy of Cumberland, Senate Document 340, An Act to amend Section 97 of Chapter 15 of the Revised Statutes, as amended, relating to the appropriation for the schooling of children in unorganized townships, was taken from the table, and on further motion by the same senator, was referred to the committee on education in concurrence.

On motion by the same senator, Senate Document 343, Resolve in favor of the trustees of Bridgton Academy, was taken from the table, and on further motion by the same senator, was referred to the committee on education in concurrence.

The PRESIDENT: The Chair lays before the Senate for consideration the special assignment for today, Senate Bill, No. 33, an Act to change the burden of proof in certain negligence cases in which contributory negligence is a defence.

Mr. BAILEY of Penobscot: Mr. President, this bill, Senate Document 33, reads as follows:

"In actions to recover damages for negligently causing the death of a person, or for injury to a person who is deceased at the time of trial of such action, the person for whose death or injury the action is brought shall be presumed to have been in the exercise of due care at the time of all acts in any way related to his death or injury, and if contributory negligence be relied upon as a defence, it shall be pleaded and proved by the defendant."

This bill seeks to do away with a rule of judicial procedure as old as the State itself. The principle or rule has been stated perhaps as concisely as anywhere in a Maine case by the Court, as follows: "The burden is on the party prosecuting to show that the person killed or injured did not by his own want of due care contribute to produce this injury.

That is along the general rule of procedure in courts that a person who desires redress, damages or remuneration from another must first establish his own case before that other is required to put in any evidence to refute his claim.

The principle of contributory negligence is very old. It has come down to us from the common law of England and was enunciated there centuries ago, and it has become a part of warp and woof of the negligence law of this State and of every other State in this Nation, as well as in England. It seems to be founded on the principle of natural justice between man and man, for it says to a man "You shall not recover damages for an injury suffered if you are guilty of negligence yourself which might have contributed to or added to that injury or brought it about." It says to a man "You shall not claim damages from me for doing that thing for which perhaps you are guilty." The principle is that a man must go into court with clean hands.

The senator from Aroostook, in debating on another question a few days ago, brought to our attention the story recorded in Sacred Writ, of the woman taken in adultery who was brought before the Master. The multitude complained with rage and sought vengeance upon her, but the great Teacher and Moralist said "Let him who is without fault cast the first stone." And Confucius, the great Chinese teacher and moralist, says: "Let no man complain of his neighbor who practiceth the same wiles." So that it seems to be, outside of law, a principle of morals or of natural justice.

This particular bill assumes in favor of the party injured who has died, assumes in favor of his

representative in court, certain facts which otherwise he would be obliged to prove. It makes an arbtirary exception to the general rule of court procedure, that a man must prove or establish the elements necessary to produce his case. It assumes certain facts in his behalf which under the existing law he must prove. In other words, it changes the burden of proof. As I said before this law is as old as the State itself. It has become a precedent for practitioners in court, and to indicate to the public at large the principle upon which all cases of similar nature shall be decided.

I do not mean to say, Mr. President, that we should always bind ourselves to precedent, because precedent may become paralysis if we adhere to it too closely, and the conditions have changed under which it was first adopted. But I claim that this law is not justified by any change either of methods or conditions at the present time. We should be very slow to subvert a principle of law and of judicial procedure unless time, the great reasoner, or usage, the great tester, has proved it conclusively wrong.

I assume that this Legislature will pass the Workmen's Compensation Act. If it does, it will take away entirely the defence of contributory negligence in a large number of cases in which it is invoked. The Workmen's Compensation Act of course only applies to parties in employment. It does not apply to third parties, but if we look through our court records, our law reports, we will find a large majority of the cases in which this rule is invoked is between the master and servant. This law takes away entirely the Workmen's Compensation Act and the Employers' Liability Act; will take away entirely the defence of contributory negligence. Perchance it may be said that this is in favor of this bill; that does not do away with the defence of contributory negligence, but seeks to change the burden of proof in regard to it. If it is a just defence, if it is a just requirement, I think that the law should remain as it is.

The Workmen's Compensation Act is demanded by certain economic and social conditions which exist at the present time. Corporations are responsible for a large number of employes. Their safety and their well being are in their hands, and it will not do in these modern times, in reply to these questions which press upon us, to say "Am I my brother's keeper?" That time has gone by. The Workmen's Compensation Act will leave the doctrine of contributory negligence as applied to the third person, to the ordinary walks of life, the master and servant, in the primitive sense, the servant in our homes, the clerk in his store, the farmer and his hired man.

And it also leaves it of course in the application to towns, which are made liable by statute to a person who has suffered injury on account of a defect in the highway.

This law applies only in certain particular instances, and I presume that is why it is claimed—because I do not think they mean to do away entirely with the doctrine of contributory negligence. To show how it may work perhaps I may be allowed to cite certain cases that have come before the court in our State and other states. A doctor was called at night to attend a case of child labor. He drove his large and heavy touring car in front of a house and left it by the curb. When he went into the house his lights were burning. He was detained there a considerable length of time and during that time his lights probably burned out. Another man, driving a light automobile, came along the street and ran into the heavy automobile. The light automobile was overturned and wrecked and the driver pinned underneath it and killed. The man brought a case against the doctor. There was no eye witness to the tragedy. The only man who could give any light on the accident, on that which took place, was dead. The court said: "We have no proof that the dead man was in the exercise of due care." The defendant's lawyer said: "How do we know that this man who seeks to hold the defendant in damages had his own lights burning? How do we know he was driving at a safe rate of speed? How do we know he was on the right side of the street?"

It was argued in the case that if the man driving the light automobile had had his lamps burning and trimmed and

lighted, and was driving at a reasonable and safe rate of speed, he must have seen the large car standing against the curb. And the court say "You cannot recover because your intestate may not have been in the exercise of due care himself. There is no proof of it. We cannot assume that he was. It must be proved."

Another case: A maid servant was sent to hang some clothes out on an overhanging platform on the third floor of a flat. The clothes reel was in the corner of the platform and there was a rail about two feet high around the platform. She was there alone. Later on she was found on the concrete below in the courtyard, dead. The rail was not impaired. There was no evidence whatever to show how she came to fall over that rail, or whether she did or not. The plaintiff claimed the rail was too low; that it should have been at least three or four feet high, and that she must have fallen over it. The defendant said that she might have stood upon the rail and lost her balance; that she might have got on the outside, perchance, to reach out further on the line. But there was no eye witness to this accident; no one to say whether this girl was in the exercise of due care, or ordinary care, or not. It was held that she could not recover.

So I might go on and state a good many cases the same way, but I think that will illustrate the principle.

Let us analyze the logic and fairness of this act. If a man is killed in an accident, he, and there are no eye witness, he himself has the facts which brought about that accident locked up in his own breast. If there were witnesses—this bill goes to the extent that if a man is killed outright or lives a certain length of time, but is dead at the time of the trial, it goes to the extent, not only if the man is killed outright, but if he lives a certain length of time and dies before the time of the trial, it is said the facts shall be assumed in his favor.

Now assuming that the man lives for a certain length of time after the accident, but dies before the trial, in our State we have a provision for taking the man's deposition in perpetuam, that is, his statement can be given with all the solemnity of court proceedings, recorded in the registry of deeds where everyone can see it and it can be used in court.

Under these circumstances I do not see the need of this act, because you have had the benefit of the man's testimony, given as I said before, with all the solemnity required in court.

Again, suppose that the man lives a certain length of time after the accident, but dies before the trial, and there are eye witnesses to the accident, cannot his representative summon those eye witnesses into court in his favor just as well as the defendant can be compelled to under this act? Both have an equal opportunity to obtain those witnesses to prove the necessary fact. And I ask again if it is necessary to change the old established and well understood rule of court procedure on that ground.

But take it again, suppose that the man is killed instantly or is unconscious until he dies, and there are no eye witnesses to the tragedy, has the defendant any knowledge of the conditions, the facts, the actions of the deceased which he can bring into court to prove that he was guilty of contributory negligence? Can the defendant unseal the lips which death has closed? Can the defendant wring from his palsied brain the intelligence he had at the time of the accident? Can he by any magic reflect from his glassy eye the imprint it received in life? Obviously not. Very apparently not.

If that be the fact, what is the particular reason for this change? Each side has equal opportunity for obtaining the truth. But it seems to me the master argument is this: It assumes, in the dead man's favor, facts which the defendant cannot disprove. I ask if that is fair? It seems to me that it presumes in his behalf certain premises the falsity or truth of which cannot be established. I ask if that is right, just or reasonable?

And therefore, Mr. President, taking this long line of judicial decisions in our own court, which have been confirmed by juries and acquiesced in and understood by our people, it does not

seem to me wise to change this rule, and therefore, I move the bill be indefinitely postponed.

Mr. MOREY of Androscoggin: Mr. President, I wish to say a word or two in regard to this bill. I did not appear before the committee on judiciary at the time of this hearing. I do not know as I knew anything about the pendency of this bill at that time, but it is a bill that has been introduced before the judiciary committee and has been reported unanimously by that committee "ought to pass." The gentlemen composing that committee are very well known in both branches of this Legislature. They have carefully considered this case, and were it by its adoption to work any hardship upon the State, I do not believe they would unanimously have reported this bill.

Now, then, let us analyze it a little. Questions are approached from different view points. The argument has been urged, and strongly, that this is a precedent in our State, that for many years our State has adopted the common law rule of contributory negligence. This must not be confounded with the equity rule, that he come into court with clean hands but that he come into court without having contributed in any way to the injury. The distinction between that rule and the equity rule of clean hands is entirely different. The equity rule being that the person asking equitable relief must himself have acted equitably.

The doctrine of contributory negligence that a man seeking damages for personal injuries must have been free from any legal fault which produced the injury.

The mere fact that it has been a precedent in our State for many years, if it can be shown that the rule ought to be modified, should not stand in our way. For more than 40 years this State by a long line of judicial determinations had established the rights of people under their insurance policies, fully and completely established it, yet, but a few Legislatures ago they removed from the court entirely every appeal from a person whose property had been destroyed by fire. The entire property of the inhabitants of the State might burn but they are unable to appeal to the courts for protection. All must now be by referees. Liability only to be tried—amounts only in case of fraud by the board of referees. They wiped out the entire court's decision and yet can the Senator from Penobscot claim that venerable precedents are dear and must be pursued at all hazards?

Our own national government, in 1906, placed upon its statutes modifications of this law of contributory negligence which the State would do well to heed, and if it had done so before and adopted the rule of negligence of the United States, a large amount of unjust or adverse criticism of our courts would have been avoided. It is because the people feel that in the interpretation of the rules justice is not being done, and so do showing what our national government has done. I will just call attention to two or three rules that were established in 1906 by our government, because in the opinion of our law maker at Washington the time had come when the rule of contributory negligence should be changed. Here is the first:

"Be it enacted, etc., that every common carrier engaged in trade or commerce in the District of Columbia, or in any territory of the United States, or between the several states, or between any territory and another, or between any territories and any state or states, or the District of Columbia, or with foreign nations, or between the District of Columbia and any state or states or foreign nations, shall be liable to any of its employes, or, in the case of his death, to his personal representative for the benefit of his widow and children, if any, if none, then for his parents, if none, then for his next of kin dependent upon him, for all damages which may result from the negligence of any of its officers, agents, or employes, or by reason of any defect or insufficiency due to its negligence in its cars, engines, appliances, machinery, track, roadbed, ways, or works."

Of course they could only take interstate matters; they could only take up questions of common carriers running from one state to another. They could not come into our State and say what the rule of negligence should be for matters distinctly within the State. They could pass a statute affecting the doctrine of contributory negligence as applied to in-

terstate commerce. They had the right to do that. It showed the opinion of the government; it showed the opinion of the President of the United States in signing the bill that this doctrine should be modified notwithstanding its antiquity.

Modifications of this rule have by common consent of those familiar with the hardships and sufferings it has imposed come to be known. The gentlemen of this judiciary committee have unanimously reported that this bill ought to pass. Look at this section, "That every common carrier engaged in trade or commerce in the District of Columbia or in any territory of the United States, or between the several states, or between any territory and another, or between any territory or territories and any state or states, or the Dist. of Columbia, or foreign nations, or between the Dist. of Columbia or any state or states or foreign nations, shall be liable to any of its employees, or in case of his death to his personal representatives, for the benefit of his widow and children, if any, if none, then for his parents, if none, then for his next of kin dependent upon him, for all damages which may result from the negligence of any of its officers,agents or employees, or by reason of any defect or insufficiency due to its negligence in its cars, engines, appliances, machinery, track, road bed, ways or works."

The fellow servant doctrine which has always stood as a barrier preventing the recovery of damages by the family of some poor man who lost his life from the negligence of a fellow servant, some poor man's family is brushed away, and the next section reads:

"Section 2. That in all action hereafter brought against any common carriers to recover damages for personal injuries to an employee, or where such injuries have resulted in his death, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery where his contributory negligence was slight and that of the employer was gross in comparison, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee. All questions of negligence shall be for the jury"

In other words, not as in our State, but it says the question of contributory negligence shall not be a defense, and the contributory negligence of the plaintiff shall be porportioned to the entire negligence in the case, and the jury shall say what part of the award shall be taken away by reason of the contributory negligence of the plaintiff. The United States rule, adopted by our country, says that some technical, insufficient and slight act shall not be a bar from a recovery.

That is the law of the United States. They have gone as far as they could and every state so far as the interstate common carrier is concerned is subject to this beneficient law.

Our government adopted and established this rule in 1906, and were our State to follow the rule of the United States, it would seem it would be no hardship.

I wish now to take up the two or three instances mentioned by the distinguished senator from Penobscot, as to the hardships that might follow in case this rule went into force. He cited the automobile case. Well, the person for whom damages was sought to be recovered was alive; he had the means at hand for obtaining witnesses if there were any, as to the circumstances. He could show how the automobile was found in the road. It would not be necessary for him to produce the witnesses. The burden is still to maintain the case, but it would be on the defendant to show that the man that got killed was not guilty of contributory negligence. How would it be done in that case? The position of the automobile in the road; the question of the oil found in the lamps. All these things could be ascertained upon inspection which the man alive could attend to.

I will take another automobile case. A young boy was invited to ride with a man that owned an automobile, and in going along, the driver of the automobile went to the left of the road, collided with a team and tipped the automobile over and it fell on the boy

and pinned him underneath it, and within a few months he died. Now then, with him went the evidence of the occurrence on the highway. There is provision for taking deposition, and it is just as available for the defense as for the plaintiff, but with the young man dead, the dependent mother, would have difficulty in showing the state of affairs.

Take another case. These are cases that that are court cases. A man worked in a mill, and a block of wood was set in front of him on a machine to be shaved, and through some defect in the plates, which held the block in place, the block kicked out and in two days the man was dead and his family penniless. They say it is a hardship to shift the burden of proof. The defendant company could show how the deceased put the block in from others at work. Could we show by anyone, all being in the employment of the defendant, that the deceased inserted the block correctly in place? If, from the circumstances, which they were abundantly able to prove, they could show that the company was not at fault in the running of the machine, then how could it be possible to fasten liability upon them. This bill does not create liability, but it means that they must show by some evidence that they were not at fault.

Another case of a workman on a gravel car going around a sharp curve on the street, and a man in a hurry to make time. One poor fellow was thrown off and died on the pavement, his head crushed. Could the company under whose control the man was, establish any fault with the man? He was riding on their car. He was riding in what he supposed was a safe place furnished by the company. He could not testify. If it could be shown that he was sitting in an improper manner the company—and this is right—had the means to do it. Should that family go these years unprotected because the only one who knew anything about it could not say a word? His mouth is closed in death. The company should show that they were free from fault.

The doctrine of the divisibility of contributory negligence is recognized by the national government. It is in the line of progress that has taken place in our country in more ways than one. There never was a time when the judiciary of our country seemed to lack the full confidence of the people as it does at the present time. Is it because they are insisting upon and following the old precedents that have been land marks when conditions were different in our country? They must follow the law—change the rule of law to keep step with modern requirements and give the judges a chance to enforce popular laws.

In the matter discussed the other day in the Senate, the first case in point, Senator Dutton's bill, in which the Senate voted that an action might be maintained by one woman against another woman. In the case cited, Roe vs. Doe, in this State, in which the court held that such actions could not be maintained, some 10 or 15 years after that case, I brought a case, which was one in which a deliberate attempt was made to break up a home. No effort could stop it, and there was but one thing left. The case of Roe vs. Doe was well known, but in the meantime since that decision, decisions in twenty-two states of our Union where the matter had come up, the court had decided that such an action was maintainable. And it left at the time that case was argued in court but two states that clung to the old rule. One was New Hampshire and the other was Maine. Since that time, New Hampshire has deserted its position, and we are the last that swung into line, the other day.

Now the question is, what is the right thing to do? When the government starts out and adopts the rule, as it did in 1906, it seems as though that ought to be a very good precedent. It does not place the liability upon the defendant. It is only in the case of the death of the person at the time of the accident or before the time of the trial that the burden of proof is on the defendant to show that the plaintiff was not in the exercise of due care at time of injury. It is right that that should be done, because nine-tenths of these accident cases are occasioned—I am going to say more than that, perhaps forty-nine out of fifty, are cases of persons employed in some manufacturing plant, and I suppose every one of those companies is insured. I sup-

pose it does not make one cent difference to them whether a verdict is for or against them.

By simply requiring a company that has all the means at its hands; by requiring a railroad that has all the means at its hands, to produce the circumstances, and show them to the court, there is no hardship in that. These matters finally rest with the court. The men on the juries are drawn from the best men you have in your towns and cities, and go to court to discharge their duties. They pass upon the cases. Is there distrust of the juries of our State and of our whole judicial system? I believe not.

Is the court of Maine, that looks to the bottom of every case, still to see that justice is to be done? It would make no difference what the rule would be, as far as getting justice from the court is concerned, but when this rule is upon the statute books, when you must show a person absolutely free from any contribution to the injury, then no matter what the opinion of the Court might be, if after searching for the evidence affirmatively showing freedom from contributory negligence they cannot find it, although they might be satisfied in their own hearts that they should render a decision in favor of the plaintiff yet they cannot do so under the law as it now stands.

After all, gentlemen, it goes to the eight men in this State who are the guardians of the State, and who are to be the final arbiters, and who stand for the property rights of the people of this State, and in the general upheaval, where unrest is taking the place of the former quietude, where men are looking for their rights as never before, why, pray, should not this bill become law? You can safely trust the court.

No man will question the absolute fairness of the members of the judiciary committee. They unanimously said in the interests of justice and right that this is a fair law to be introduced, and so it comes now to this body. Shall that report be sustained?

This is only another step forward. We have taken two or three within the last few weeks. It is only a step in the line of progressive legislation for the rights of the people and placing the available instruments in the hands of the court to keep pace with the requirements of the times.

I move, Mr. President, that the report of the committee on judiciary be accepted.

Mr. COLE of York: Mr. President, something has been said about the undesirability of questioning a report of any committee that comes in here, especially the report of an able committee like the judiciary. Personally, I would take the report of these gentlemen upon any question, because I believe every man on that committee is an able lawyer. But I believe that every man in this Senate has it due to himself to understand the questions of law which we are about to pass, in order that when we go back home we may intelligently interpret these laws to our constituents, and if we sit here on matters of law, on the changes of the great body of the law, and do not know and do not understand what we vote upon, then we are not doing our duty by ourselves or our constituents. So, as one member of this body, I welcome any discussion of any matter on which any committee to which I belong has presented any report, although it be unanimous, if it is to be law, to affect all the people of our State. It does not mean that we do not have faith in a committee because we discuss reports. It means we desire to use intelligence in our actions, and we are only exercising that right for which we were sent here and performing the duties for which we were elected.

I am very glad to acknowledge one thing stated by the distinguished senator from Androscoggin, and that is that this Legislature is doing good, honest, honorable work for the people of the State of Maine. And if this discussion has brought nothing else, it is worth while from the distinguished senator, because you and I believe that this is a remarkable Legislature, and that it will perform remarkable things. And I for one, as a member of the majority party, thank the distinguished gentleman for his kind remarks.

Now regarding the point at issue. The

federal law from a casual reading of it applies only to common carriers, because the United States is limited to inter state commerce and to common carriers. The United States, unless it had some rule of its own would be bound by the law of every state in which cases were tried. There is no federal common law. The United States is bound on cases in the State of Maine by the law of Maine. In the state of New Hampshire, it is bound by the law of that state. It has as many common laws as there are states in the Union, and therefore it is slowly compiling a sort of code for itself and taking upon itself the responsibility of deciding those questions over which it has control. But this law is not based on common carriers; it goes to the small employer. It goes to the mill man and to everyone, and I believe that the law as it stands at the present time is good, safe, sound and sane. It may not be progressive. It may not be up to date to say that we should not demand proof beyond a reasonable doubt to convict a man of crime or misdemeanor.

We might follow the example of some European countries and be progressive, but I do not believe Maine should change. I do not believe we should make it any easier for men to get into court than it is, today. I believe we should not promote litigation or make it any easier to get a verdict, and the court of Maine is honorable, today, and those who practice before that court will go on record that we have faith in the honor and justice of the court, whether they decide for or against it.

I believe the foundation of our modern government is the strength we put behind the supreme court of our State, and the honor we attribute to their decisions. And the moment we falter in our trust in the court, that moment we are giving dissolution to the great foundation of the last tribunal to which we apply. And it has become the custom in this country and all counrties, whether we win or lose, to accept the final result and believe that justice has been meted out. We may not agree with the court, but we have been taught to believe it right and we submit that as long as we keep that in mind, our country will be better.

If this bill stopped at its first clause and said "for causing the instant death of a person," I should vote for it and perhaps believe it might be right, but it does not do that. It goes still further, and in the next clause says "or for injury to a person who is deceased at the time of the trial of such action."

There is one mode of trying a case where the plaintiff is alive, and there is another where it is a trial by his executor or administrator. Now the plaintiff may be injured, and as far as this bill is concerned, I do not know any reason why he may not recover from that injury and live for a reasonable length of time before the statute of limitations runs against his right of action. I do not know why, after his full recovery, he may not bring an action in his own name and his case be prepared during his lifetime, and then if he dies, comes the action of his administrator coming into court, and the whole burden is changed. It seems to me that it is unfair and unjust after a plaintiff has had a time to live, and we cannot say whether that man shall live one hour, one week or a year, or any time—the statute limitations fixes the time of action—but most actions are not brought within a week or month or six months from from the time the cause of action accrues. They drag along and are entered in court and it is usually 12 or 18 months before the case comes on for hearing. Changes take place; the plaintiff presents the case if alive, if not, his administrator presents the action. The defendant is barred from testifying personally unless the administrator or executor testifies. He has already one burden placed upon him, and I believe it is only fair that the defendant should have some rights in court.

I do not stand here because some corporations would say that perhaps this is a chance for a defense of a corporation. I stand here for the individual, because any party in a negligence suit comes within the purview of this statute. It is not a common carrier, according to federal law; it is for the individual; it is for the

small contractor who hires one or more men to work for him; it is for the mill where are employed from ten to ten thousand men. It is not for railroads and street railways alone; it is the poor individual, and the man who recovers in an action of law, Mr. President, and proves his case, and he should prove that he is worthy of his case, and oftentimes the defendant is less table to stand the result of the suit than the plaintiff.

If the plaintiff is in any way responsible for that accident, it is no more than right and just that the defendant should have the evidence. It has been the rule of the courts of the State of Maine that any plaintiff who comes into court should win his case by a preponderance of the evidence in all cases. The burden is upon him, and I see no reason why we should change the burden of proof.

If the parties think the death is caused by some unknown cause, that we do not know what caused it, then it may have been the plaintiff's fault. It may not be the defendant's fault. There is a question in our minds, and I believe the living have some rights, as well as sentiment for the dead, which more or less exercises our judgment, or warps our judgment.

I believe that we ought to go slowly in changing the fundamental principles of our law. I believe that we should have progress in all things which affect the general welfare of our people as a whole. I believe that State should do what it can for the people as a whole, but this law affects man to man, one individual in his relations with another. And, gentlemen, every one of you may be a defendant inside of twelve months. You do not know what is going to happen when you go out of this building today. You do not know, before you get home, what you are going to do to somebody else, provided that you are innocent of anything. Do you want simply because of the misfortune of another sometime in the future to be deprived of a right which you believe is yours?

I believe that the present law is adequate; that all parties obtain justice under it, and that it should not be changed.

Mr. HERSEY of Aroostook: Mr. President, as a member of the judiciary committee, I perhaps am called upon to voice and defend a report. I would not defend the report as a mere matter of defense, this morning, but I would say a word in defense of the great principle that is in this bill before us.

I agree with the able senator from Androscoggin, that the time has come when a Legislature should consider something besides standing by an ancient rule. We should consider the great mass of the people whose servants we are and for whom we legislate. And I believe, senators, that sitting here, today, we ought to consider this question, not from the standpoint of lawyers alone, for every lawyer that can be seen over two counties has at times practiced for corporations, acted for them, and I do not believe, I cannot believe, that that the wave from the lobby, for the corporations in this State that have been active for the last few days over this bill, has reached the Senate of Maine. And it does not appeal to me, this morning, or to the men sitting here, who are engaged in manufactures, who themselves employ labor, that they will be moved by the appeal made to them that they should stand by this ancient wrong.

I do not believe, if you enact this law, Mr. President, that it is going to injure a single corporation doing a lawful business in this State and an honorable business, but if you defeat it I do believe it will injure every railroad company, every corporation, every man doing business in this State and employing labor, because you say the employer would deny him justice. And when you do that, you are bringing into this nation revolution and anarchy on the part of labor. There should be no conflict. Those great 54 railroads in this country said "We will do the right thing," and agreed to arbitrate. They did justice to labor, they did justice to themselves and they did justice to the people, and I admire the great men of our railroads for doing that, when our little miserable organization in our county

that refused to abritrate with its employes, it did an injustice to the public and to themselves and worked their own destruction.

Talk about defeating this little measure of the people, this morning, in the Senate of Maine, on the ground that you are going to injure some corporation. Think of it. You are not removing for one moment the defense of contributory negligence. You are not taking the defense of contributory negligence away from the people, away from the corporations or anything of that kind.

Why, gentlemen, you say if the defendant can prove that the plaintiff, or his estate, the man killed was guilty of negligence himself and contributed to his death, he cannot recover. It does not affect the question of a man living. It is only the man dead and his estate. It simply says that his mouth is closed by death. You do not say that he was doing wrong at the time of his death, because his mouth is closed. If he was, you can prove it. Now just one illustration, and I am through. When this matter came up before our committee, 10 lawyers listened to it and before us appeared in behalf of this measure the able ex-attorney general of this State. He sits here in the Senate, this morning, and he gave us many illustrations from his experience at the bar of the inequity and the injustice of that rule as applied to dead men. After he was through, and the attorneys for the railroads and the corporations sat there and listened to it, we asked if there was any opposition, and that genial, smiling old gentleman that I love so much, a brother at the bar, who is an attorney for the Maine Central, got up and smiled upon us, an old man as he was, and said he guessed he would not talk to our committee. No, because he knew he would not have to. He thought that through the lobby out here in the hall it would be taken care of when it came up. Is he going to be deceived?

Up in my county a year ago a young man in my town, who grew up with me as a boy, married his wife there, and had a little home, simply a rent, a wife and one child, no property, trying to make a living for himself and baby by driving a mail route through the adjoining towns, going back home at night, drove out into the adjoining town to his duties with a safe horse. He was a sober, industrious young man. He came to a bridge that had been left by that town without a railing over a large river, a narrow bridge with no rail, and for years the town had neglected to put a railing upon it. They were violating the law every moment. He delivered his mail at a house near the bridge, sober, all right, a careful team, and stepping into his team, he drove onto the bridge. No one saw him when he crossed the bridge, but an hour afterward he was found below the bridge in the water, the wagon on top of him, the horse released from the broken harness, feeding beyond the bridge. There was the track of the wagon where he went over a hole, where you could see the water running, and the horse was frightened, and he was in the water dead, and she was a widow with a babe, no property, she dependent upon charity. The town consulted a lawyer in my town, to see if they were liable, and he takes down the book that the senator quotes, and says. no. He is dead, his mouth is closed, there is no one to say what he was doing at the time he crossed that bridge. He might have driven over there himself, he might have driven his wagon over the bridge. To be sure, the town was negligent, they admit that. The town was guilty, they admit, but the wagon might have been driven over the bridge by him, he might have been careless and negligent. And they say she cannot recover.

My brother cites the automobile incident. Let me cite one. I have not been for accumulating much of this world's goods, perhaps it is my own fault. It is not my wife's, I assure you. Suppose I am on the street of my own town at night and it is dark and I am on my way to my home and there is a sharp turn in the road, and the senator from Penobscot with his great powerful car is coming down the street and going 40 miles an hour. He is violating the ordinance, and his lights are off, and I do not hear his car as it comes around the turn, and I see no lights and I am struck, and I am dead.

What remedy have I? Nobody saw me when I was killed. My estate could prove that the senator from Penobscot had not any lights and was driving 40 miles an hour and was violating the ordinances of the town, and he struck me. They could prove all those things, and then the senator could turn around and say "What was Hersey doing? He stepped in front of the car deliberately; he might have heard the car and saw it and deliberately stepped in front of it and committed suicide." Nobody knows, and I am dead. And I have no remedy. Is that right, and is it justice? If it is, you vote that this bill do not pass.

Mr. COLE: Mr. President, I do not wish to weary the Senate, but there seems to be one stock argument for every man who has a pet measure which he wishes to put through the Legislature. I believe it is due every senator to express his own mind, and I will say further, in expressing my mind upon this point, that you all know there are laws slipped through this Legislature because some attorney has a case he cannot bring on account of the law as it is, and he thinks that he can amend the law and get it through. I am not sure whether there is anything in this case from Houlton, but apparently one was lost because of the law.

Gentlemen of this Legislature, the ambulance chaser is getting this business. Let us keep him out. I do not think that this is a corporation measure. As I said in the beginning, it is man to man. It applied to everybody, whether a corporation, a partnership or an individual. Today, the guilty party must pay, and the innocent party, if he can prove his innocence, is entitled to collect and can collect.

I believe that we ought to think it over, gentlemen, I believe that the fundamental principles of the law of the State of Maine should be sincerely discussed, and that we should be sure that no sinister motive is behind any change.

I believe we should make it more difficult to get into court. I believe that every case that goes into court should go there upon its merits, and not because of the ease of the statute which allows it to get there. I believe, and I am speaking for plaintiffs and defendants alike, that the less litigation we promote, the more peace, harmony and prosperity we will have in our midst.

It is only one more chance to get into court easily. It is only one more chance for a lawyer who is willing to take a chance on a contingent fee to get in. It does not wholly affect the corporations, and the lobby is not wholly behind it. For the case of the mail carrier, the boy who grew up with the senator from Aroostook; he was not a corporation. There were certain other safeguards around the town. He might have recovered if he had properly understood the law. The mail carriel, driving over that bridge every day, did not give the statutory notice to the town of the condition of the bridge, so that there are things that sometimes weave around a case to defeat it.

Gentlemen, let us ponder. Let us think, let us consider well whether these fundamental principles of the law of this State regarding the trial of causes, it is worth while to change. I do not believe it is, and yet I am one of those who would benefit by it if it were changed, and perchance, if I were fortunate enough to get a verdict, would get it easier on account of this change.

Mr. STEARNS of Oxford: Mr. President, I will only detain the Senate a few moments, but I wish to take the chance of being called an "ambulance chaser," while I express my feeling in relation to the measure now before the Senate. I do this for two reasons. I do not feel that it is necessary to defend a report of the judiciary committee. I believe that the senator from York and the Senator from Penobscot have the privilege and the right, and it might be under certain conditions their duty to speak against a report of the judiciary committee. I certainly would take the same privilege against any report from their committee, but I was in the Legislature of two years ago, and this same measure was up. It

came before the committee on judiciary two years ago. It was presented at that time at a hearing, fairly. It came into the Legislature upon a unanimous report, as I remember it. It passed the House of Representatives without a vote against it. It came into the Senate and there found a grave yard, and was indefinitely postponed. Is that the course that is going to be pursued in this Legislature?

We have frequently seen that the Senate has been staked out for a grave yard. I do not believe it is going to be staked out this year at this time for this measure. The principle involved here has been ably discussed. The Senator from Penobscot has defended the common law rule. He would not for a moment suggest that we in this Legislature are not a liberty to change that rule. We are here as law makers, not as law givers. To be sure, in the cases he has cited, the Court has upheld the common law rule. That was their duty, gentlemen. They had to give the law as it was, and the common law rule had not been changed. We ask simply that that rule be changed, and we see no reason why it should not be changed. We think we see a reason and know why it should be changed, in justice and in right.

I will not detain the Senate with many instances, but I have one in mind and it is a case in the 92 of Maine, McLean vs. Perkins, I believe. It was where a contractor, a construction company, sent his men up the Penobscot river in the night, two boat loads, one following the other. The last boat loaded with four men, I think, following closely the first boat with a lantern. And shortly thereafter, it apepared in testimony that the occupants of the first boat saw the light had disappeared from the boat in the rear. Three days afterwards it was found that these four men were drowned. The boat was found, and it was found to be an absolutely unseaworthy boat, only seven inches, I think, from the side of the boat had been torn away prior to the time the men embarked in it. They were sent out with that boat in that condition, and a big seam that had been corked up some way without regard to the unseaworthiness of the old affair. There was no question about that, and suit was brought. The Court said they could not recover because no one saw the accident, no one knew whether this man, McLean's intestate jumped over, and the others jumped overboard after him, or whether it might not have been by other means; one reason might be as good as another.

Now, fellow senators, here we seek to change the rule so that the representatives of the deceased may not be obliged to bear this burden. There is no reason why they should. A man is presumed to be innocent until he is proven guilty. A man is presumed to be sober until he is proven to be drunk. Why should not a man killed as the result of accidnet be presumed to be in the exercise of due care until it is shown that he was careless? We believe honestly, thorcughly, that this rule should be changed and changed now. And we hope when you vote upon this question, that you will vote your conscience and your convictions, and I believe that you will not reflect the caprice of the railroad lobby or any other interest that may appear. I believe you will vote as you see it. I am confident that this rule will be changed and changed now.

Mr. WALKER of Somerset: Mr. President, yesterday was woman's day in this honorable body, and today seems to be lawyer's day. Now inasmuch as the very wise lawyers of the Senate are disagreed as to whether or not this measure would be feasible, and inasmuch as we have a Workmen's Compensation Act before the Legislature, I think it might be well to leave the whole thing as it is and indefinitely postpone it, and I therefore second the motion of the senator from Penobscot in indefinitely postponing this question.

Mr. RICHARDSON of Penobscot: Mr. President, I just wish to say one word. I think some of the arguments that have been advanced here are unworthy of the senators who make them. I am identified with a corporation and have been for many

years. I believe in that way of doing business. I believe in every corporation there are warm hearted men who wish to do right by their employees. I resent the references that have been made to the corporations and to the lobby. I think those references are wrong, and I say now that those references might almost convert me to vote against this measure. I had made up my mind to support the report of the committee. I am very sorry to have such things brought into this debate.

Mr. PATTEN of Hancock: Mr. President, this is without any doubt a legal question, and I would not inject into the discussion any medicine whatever, had it not been that the senator from Androscoggin and the senator from Penobscot had referred to the physician who visited the patient in the night. And it comes to me at this time that if that patient was unfortunate enough to join the great majority, would the physician in the case of the accident be able to prove himself not guilty of her death? And as I understand it, I should certainly vote against this measure, and I think the physicians of Maine wil vote with me.

Mr. BAILEY: Mr. President, I wish to perhaps make clear some of the argument advanced by the honorable senator from Androscoggin.

As I view this matter, Mr. President, this is not a question of passion; it is a question of clear, pure reason, and eloquent appeals in favor of those who are stricken down or those who are left perhaps without the means of support have no bearing in this matter. Neither does the effect which it will have upon corporations. It is a question for each individual senator as he thinks.

Now the senator from Androscoggin has mentioned the change of law in regard to collecting insurance. I remember some years ago, when the honorable President was in the House of Representatives, he tried to change that rule, and I did all I could to help him. I want to say if we are going to make a change in this existing law in regard to the burden of proof, which will cause as much dissatisfaction, as much discontent and as much hard feeling as that law, in Heaven's name, let us not do it, because that law took away from the man whose buildings were destroyed by fire the right to go before a court and jury, and he had to leave it to three arbitrators who might be fair or who might not be fair. And I say that change was neither salutory nor wise.

The senator refers to the federal act in regard to common carriers, in the treatment of the question of negligence between the common carriers and their employees, which says that the negligence shall be divided. Gentlemen, I will go farther than that, and say as we have said in our Workmen's compensation Act, that the defense of contributory negligence in such cases shall be entirely wiped out. He cited the case of the workman in the mill. The same principle in the Workmen's Compensation Act, which I hope will pass and which I believe will pass, will do away with the doctrine of contributory negligence entirely, and that instance cited by the Senator has no application here.

He spoke of the boy riding in the automobile that was killed, and he spoke of the surrounding circumstances. Those circumstances were just as open, just as easy of observation to the representatives of the boy as they were to the defendant party.

I do not wish to say anything about this lobby or these corporations because anybody in the city of Bangor knows me and how I feel in regard to those matters, and whether the gentleman from Aroostook insinuates that I was influenced by the lobby or by a member of a corporation or not, I do not care.

The gentleman spoke about the bridge case, where a man went upon the bridge and no one saw what he did there. He might have been driving his horse with one hand and looking behind him, and the horse went off the bridge. He might have been driving in the warm night air, and became drowsy perhaps, and let his reins drop down, or perhaps a muskrat jumped in the water and frightened his horse. We do not know. He might have been guilty of contributory negligence. There was no one to say whether he was or not. The

means of information were just as open to that man's representatives as they were to the town. The facts and circumstances were just as reasonable and just as open to observation to that man's representatives as to the town.

The gentleman spoke about the case of McLean vs. Perkins, but I think the senators are already wearied with these matters.

I want to say in closing that I do not oppose the judiciary committee in these matters except upon principle, and I hope that any committee I am on, if any gentleman has a matter of principle and disagrees with me, he will oppose it, for I believe as the senator from York says, that we want full discussion on these matters.

I rest my case on the unbroken line of decisions handed down by our supreme court, and I ask you whether you will stand upon the decisions of the supreme court, or whether you will suppot the gentleman of the judiciary committee?

Mr. MOREY: Mr. President, the senator from Hancock asked a question. I understood that he wanted to know if this rule would apply to physicians. By the terms of the Act, "In actions to recover damages for negligently causing the death of a person or injury to a person who is deceased at the time of the trial of such action, the person for whose death or injury the action is brought shall be presumed to be in the exercise of due care."

Suppose a person has brought a physician to have an operation performed. The person is lying upon the operating table and the operation is performed. Of course the doctrine of his contributory negligence does not apply to anything of that sort. There is nothing he could do to contribute to it. He would be there and the physician would be operating upon him. That does not bring it within the scope of this Act.

Mr. PATTEN: Mr. President, I would like to ask another question of the senator through the Chair. If I am attending a person, and the person dies, and I do not exercise due care or due skill in his treatment, am I liable to prove that I did or did not?

Mr. MOREY: Mr. President, the burden of proof would be upon the person seeking to establish the action. It is not this kind of a case at all, that this bill covers. The mere fact that there has been a mal practice suit brought, showing there was an injury done, it may not be a question of contributory negligence, for how could the man contribute toward it? If you cut off his arm and blood poisoning sets in, how can he contribute to your unskillfulness in cutting off the arm? It would not be anything in the way of contributory negligence on his part. That is not what it means.

Mr. BOYNTON of Lincoln: Mr. President, we are liable to go on here all the afternoon. Now I have other things to attend to and I want my dinner.

I move the previous question.

The PRESIDENT: The question being, shall the main question be put now, all those in favor will say aye, and those opposed will say no.

The ayes had it, and the previous question was ordered, the motion of the senator from Penobscot, Senator Bailey, that the bill be indefinitely postponed.

The yeas and nays were called for by the senator from Penobscot, and a sufficient number arising, were ordered.

Those voting yea were: Messrs. Allen, Bailey, Burleigh, Chase, Cole, Conant, Hagerthy, Maxwell, Patten, Reynolds, Smith, Walker, Wing—13. Those voting nay were: Messrs. Allan, Boynton, Colby, Flaherty, Hastings, Hersey, Jillson, Mansfield, Morey, Moulton, Murphy, Packard, Richardson, Stearns—14. Absentees, Messrs. Clark, Dutton, Emery—3.

Thirteen voting in favor of indefinite postponement and 14 voting against the motion of the senator from Penobscot was lost.

The bill was then given its first reading.

On motion by Mr. Moulton of Cumberland,

Adjourned until tomorrow morning, at 10 o'clock.