

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

Seventy-Eighth Legislature

OF THE

STATE OF MAINE

1917

AUGUSTA
KENNEBEC JOURNAL PRINT
1916

SENATE

Thursday, March 15, 1917.

Senate called to order by the President.

Prayer by Rev. W. J. Layton of Augusta.

Journal of previous session read and approved.

Papers from the House disposed of in concurrence.

From the House: Resolve in favor of the town of Solon for repairing Robin's Hill in said town.

This resolve was introduced in the House under suspension of the rules and referred to the committee on ways and bridges.

In the Senate it was referred to the next legislature in non-concurrence.

In the House that body insisted upon its former action and asked for a committee on conference.

On motion by Mr. Burleigh of Aroostook the Senate voted to adhere to its former action.

From the House: An Act relating to municipal elections in the town of Mount Desert.

In the House this bill was passed to be engrossed, came to the Senate and was amended by Senate Amendment A, and as amended passed to be engrossed.

In the House that body refused to concur in the adoption of the amendment, insisted upon its former action and appointed a committee of conference.

On motion by Mr. Ames of Washington, tabled.

From the House: An Act to amend Sections 26 and 27 of Chapter 9 of the Revised Statutes of 1916, relating to state taxation of railroads, telephone and telegraph companies.

In the Senate the majority report of the committee on taxation on this bill, ought not to pass, was accepted. In the House the minority report of the same committee, ought to pass,

was accepted and the bill was passed to be engrossed.

Mr. SWIFT of Kennebec: Mr. President, I move that the Senate adhere to its former action.

The motion was agreed to.

Mr. RICKER of Hancock: Mr. President, I move that the rules be suspended and the Senate receive a public act at this time. In explanation I will say that in closing up the bills of the library committee we found it was necessary to amend a line in a section of this bill. I would like to have this bill accepted and not referred to our committee, as we have already considered it.

The motion was agreed to and the Senator presented An Act to amend Section 76 of Chapter 4 of the Revised Statutes 1916 relating to any town raising money to secure free use of library in adjoining town.

On further motion by the same Senator the bill was ordered printed under the joint rules and received its first reading.

House Bills in First Reading.

H. D. 531. An Act to provide electric lights on Old Town Indian Island.

H. D. 532. An Act to provide a common on Old Town Island No. 1 within the Indian Reservation, of the Penobscot Tribe of Indians.

H. D. 355. Resolve reimbursing Samuel N. Packard for the loss of two cattle.

H. D. 499. An Act relating to the May terms of the Supreme Judicial Court in the county of Oxford.

H. D. 301. An Act to amend Section 25 of Chapter 30 of the Revised Statutes, relating to inspectors of buildings.

H. D. 454. An Act to provide for a county law library at Rumford, in the County of Oxford.

H. D. 478. Resolve in favor of an appropriation for necessary repairs on the State Armory at Portland.

H. D. 479. Resolve in favor of an appropriation to purchase steel lockers for National Guard Armories.

House 235. An Act to amend Section 14 of Chapter 58 of the Revised Statutes, relating to the extension of charters of street railroads.

House 517. An Act amending Chapter 121 of the Private and Special Laws of 1915 establishing a closed time on lobsters in Machias bay and adjacent waters in the county of Washington.

House 518. An Act to amend Section 74 of Chapter 45 of the Revised Statutes of 1916, relating to fishing for smelts in West bay and West Bay stream, in the town of Gouldsboro, Hancock county.

House 521. An Act authorizing the American Realty Co. to erect and maintain piers and booms in the St. John river in the plantation of St. John and the plantation of St. Francis.

House 533. An Act for the relief of members of Passamaquoddy Tribe of Indians found destitute beyond tribal reservations.

House 215. An Act to amend Section 157 of Chapter 53 of the Revised Statutes of 1916 in relation to the payment of premiums of official bonds.

House 534. Resolve in favor of teachers' school and hospital on Indian Island, Old Town, Maine.

House 217. An Act to amend Section 24 of Chapter 5 of the Revised Statutes of 1916, relating to the registration of voters.

House 218. An Act to amend Section 19 of Chapter 5 of the Revised Statutes of 1916, relating to the registration of voters.

House 279. An Act to supply the town of Bucksport with water.

House 290. An Act to authorize Oxford Electric Company to extend electric lines to and within the town of Hebron and to purchase the electrical equipment and franchises of trustees of Hebron Academy.

From the House: Majority and minority report of the committee on taxation on An Act to repeal Section 35 of Chapter 49 of the Revised Statutes relative to contract requiring no-

tice of intention to quit work or discharge of employee.

Majority report, ought not to pass, and minority report, ought to pass.

In the House the majority report was accepted.

Mr. STANLEY of Oxford: Mr. President, I move that the majority report be accepted in concurrence.

The motion was agreed to.

From the House: An Act to amend Section 1 of Chapter 204 of the Public Laws of 1915, relating to the salary of register of probate in Piscataquis county.

In the House the bill with the report of the committee on salaries thereon, ought not to pass, was recommitted to the committee.

On motion by Mr. Davis of Piscataquis the Senate recommitted the bill to the committee in concurrence.

The following bills, petitions, etc., were received and on recommendation of the committee on reference of bills were referred to the following committees:

Education.

By Mr. Walker of Somerset: An Act to designate truant officers as attendance officers. (Ordered printed.)

Ways and Bridges.

By Mr. Goggin of Androscoggin: An Act to amend Section 24 of Chapter 26 of the Revised Statutes, relating to registration of motor vehicles.

Orders.

On motion by Mr. Wood of Hancock, it was

Ordered, the House concurring, that Resolve in favor of Mrs. Mabel G. Sanborn of Augusta for money expended in the support of Kate C. Robins, be recalled from the committee on pensions and referred to the committee on claims.

Sent down for concurrence.

Bills in First Reading.

S. D. 308. An Act in relation to the salary of the recorder of the municipal court of the city of Biddeford.

S. D. 309. An Act providing for transfer of boys and girls from State juvenile institution to other institutions, and amending certain laws pertaining to State juvenile institutions.

S. D. 310. Resolve in favor of the juvenile trustees for per diem and expenses for the years 1917 and 1918.

S. D. 311. Resolve in favor of the State juvenile institutions for maintenance and other purposes for the years 1917 and 1918.

S. D. 312. Resolve in favor of the State school for girls for furnishings and equipment for the new central building for the year 1918.

S. D. 313. An Act to amend Section 38 of Chapter 117, Revised Statutes of 1916, relating to compensation of judge of probate of county of York.

S. D. 314. An Act amending Section Fourteen of Chapter 56 of the Public Laws of the State of Maine, Revision of 1916, relating to the construction of extensions of railroads.

S. D. 315. An Act to incorporate the Dirigo Water Co.

S. D. 316. An Act to extend the charter of the Harmony Water Co.

S. D. 317. An Act to amend Chapter 218 of the Private and Special Laws of the State of Maine, for the year 1911, entitled "An Act to supply the town of North Haven with pure water."

S. D. 318. An Act to extend the charter of the Brewer Water Co., as extended and amended by Chapter 98 of the Private and Special Laws of 1915.

S. D. 319. An Act to grant powers to Arcadia landing.

S. D. 320. An Act to extend the charter of the World Standard Insurance Co.

S. D. 321. An Act to permit savings banks to invest in certain railroad bonds.

S. D. 322. An Act additional to Chapter 52 of the Revised Statutes of 1916 with reference to limitation of actions to recover money paid on forged signatures.

S. D. 323. An Act relating to the term of office of bank commissioner.

S. D. 325. An Act to incorporate the Birch Point Village Corporation.

S. D. 326. An Act to amend Section 34 of Chapter 145 of the Revised Statutes, relating to temporary leave of absence of patients from insane hospitals.

S. D. 327. An Act to refund a certain bond issue in favor of the trustees of the Maine Insane hospital.

S. D. 328. Resolve in favor of the General Knox Chapter of the Daughters of the American Revolution, of Thomaston, Maine, and the Knox Academy of Arts and Sciences.

Reports of Committees

Mr. Walker from the committee on education, on An Act to amend Section 30 of Chapter 16 of the Revised Statutes of 1916, relating to the age of pupils allowed to attend the public schools (Senate No. 274), reported same ought to pass. (Read first time under suspension of the rules on motion by Mr. Walker of Somerset.)

Mr. Davies from the committee on judiciary on An Act authorizing the appointment of the United Baptist conventive of Maine as executor, trustee and assignee and to excuse said corporation from furnishing surety on its official bonds (Senate No. 106), submitted same in a new draft under title of "An Act authorizing the appointment of the United Baptist conventive of Maine as trustee, and to excuse said corporation from furnishing surety on its official bond," and that it ought to pass.

The same senator from the same committee on bill An Act to repeal the Act incorporating the town of Perkins, (Senate No. 147), submitted the same in a new draft under the same title, and that it ought to pass.

The same Senator from the same committee, on An Act to ratify the doings of the Town of Winthrop, submitted the same in a new draft under the same title, and that it ought to pass.

The same senator from the same committee, on An Act to amend Chapter 150 of the private and special laws of 1903, relative to Alumni trustees of Colby College (Senate No. 128), reported same ought to pass. (Read first time under suspension of the

rules on motion by Mr. Davies of Cumberland.)

The same senator from the same committee, on An Act to amend Section 4 of Chapter 62 of the Revised Statutes relating to corporations, without capital stock (Senate No. 162), reported same ought to pass. (Read first time under suspension of the rules on motion by Mr. Davies of Cumberland.)

The same senator from the same committee on An Act to confirm and make clear certain powers of the Bangor Railway and Electric Company, reported same ought to pass.

Mr. Gillin from the same committee on An Act to make uniform the law of bills of lading (Senate No. 109), reported that same ought to pass. (Read first time under suspension of the rules on motion by Mr. Deering of York.)

The same senator from the same committee, on An Act relating to the probate and foreign wills (senate No. 165,) reported same ought to pass. (Read first time under suspension of the rules on motion by Mr. Davies of Cumberland.)

The same Senator from the same committee, on An Act to amend Section 59, Chapter 4, of the Revised Statutes of 1916, relating to towns, their meetings, officer, powers and duties. (Senate No. 186), reported same ought to pass. (Read first time under suspension of the rules on motion by Mr. Deering of York.)

Mr. Davies from the same committee, on An Act to repeal Chapter 101 of the Private and Special Laws of 1911, relating to the Phillips Village Corporation, reported same ought to pass.

Mr. Gillin from the same committee, on An Act to make uniform the law of warehouse receipts, (Senate No. 105), reported same ought to pass. (Read first time under suspension of the rules on motion by Mr. Merrill of Somerset.)

Mr. Davies from the same committee, on An Act to repeal Chapter 373 of the Private and Special Laws of the year 1833, entitled "An Act to

regulate the survey of lumber in the County of Penobscot" (Senate No. 145), reported same ought to pass. (Read first time under suspension of the rules on motion by Mr. Marshall of Cumberland.)

The same Senator from the same committee, on An Act to amend Section 1 of Chapter 199 of the Private and Special Laws of 1899, regulating caucuses in the City of Biddeford (Senate No. 133), reported same ought to pass. (Read first time under suspension of the rules on motion by Mr. Deering of York.)

The same Senator from the same committee, on An Act to amend Section 7 of Chapter 100 of the Revised Statutes, relating to bastard children and their maintenance (Senate No. 161), reported same ought to pass. (Read first time under suspension of the rules on motion by Mr. Deering of York.)

Mr. Marshall from the committee on legal affairs, on An Act to amend the charter of Coburn Classical Institute, reported same in a new draft under the same title, and that it ought to pass.

Mr. Wood from the same committee, on An Act regulating the appointment of the members of the police force of the city of Brewer, reported same ought to pass.

Mr. Merrill from the same committee, on An Act additional to Chapter 139 of the Revised Statutes of 1916, relative to the disposal of insane criminals (Senate No. 229), reported same ought to pass. (Read first time under suspension of the rules on motion by Mr. Merrill of Somerset.)

Mr. Wood from the committee on sea and shore fisheries, on An Act to repeal Section 24 of Chapter 45 of the Revised Statutes, relating to violations of the lobster law (Senate 93), submitted same in a new draft under title of "An Act to amend Section 24 of Chapter 45 of the Revised Statutes, relating to violation of the lobster law," and that it ought to pass.

Mr. Butler from the same committee, on An Act to amend Sections 1, 8 and 12 of Chapter 126 of the Public Laws of 1844,

relating to the preservation of salmon, shad and alewives in Georges river and tributary streams (Senate 172), reported same ought to pass. (Read for time under suspension of the rules on motion by Mr. Butler of Knox.)

Mr. Baxter from the committee on ways and bridges, on An Act to require certain vehicles to carry lights at night and to control the glare of head lights (Senate 36), which was recommitted to the committee, submitted the same in a new draft under the same title, and that it ought to pass.

The reports were accepted and the several bills and resolves tabled for printing under the joint rules.

Mr. Ames from the committee on education, on An Act to define and amend the laws in regard to tuition (Senate 251), reported same ought not to pass.

Mr. Davies from the committee on judiciary, on An Act to regulate the duties of any visiting nurses in the State of Maine, acting under any charitable organization (Senate 160), reported same ought not to pass.

Mr. Davies from the same committee, on An Act to repeal Section 27, Chapter 51, of the Revised Statutes of Maine, relating to the duties of cashiers to return list of stockholders to the secretary of State (Senate 199), reported same ought not to pass.

Mr. Davies from the same committee, on Resolve relating to amendment to the constitution authorizing the dividing of towns into voting districts (Senate 44), reported same ought not to pass.

Mr. Davies from the same committee, on An Act to amend Chapter 95 of the Revised Statutes of 1916, relating to liens on lands (Senate 163), reported same ought not to pass.

Mr. Davies from the same committee, on An Act to amend Chapter 181 of the Private and Special Laws of 1911, relating to the Cumberland County Farm for Inebriates (Senate 166), reported same ought not to pass.

Mr. Davies from the same committee, on An Act to amend Chapter 7 of the Revised Statutes relating to the regula-

tion and conduct of elections (Senate 187), reported same ought not to pass.

Mr. Davies from the same committee, on An Act to amend Section 2 of Chapter 65 of the Revised Statutes of 1916, and Section 80 of Chapter 82 of the Revised Statutes of 1916, relating to the jurisdiction of the superior court for Cumberland county (Senate 146), reported same ought not to pass.

Mr. Bartlett from the committee on mercantile affairs and insurance, an An Act to establish a commission to investigate sickness and accident not compensated by workmen's compensation, of employed persons and their families (Senate 177), reported same ought not to pass.

Mr. Bartlett from the same committee, on An Act relating to health insurance (Senate 193), reported same ought not to pass.

Mr. Gillin from the same committee, on An Act to amend Section 10 of Chapter 53 of the Revised Statutes of 1915, relating to compensation for personal injuries to employes (Senate 104), reported same ought not to pass.

Mr. Butler from the committee on sea and shore fisheries, on Petition of Willard L. Carver and 58 others of Jonesport in favor of retaining the present lobster law and for enforcement of same, reported that the same be placed on file.

Mr. Peacock from the same committee, on bill "An Act to amend Section 35 of Chapter 45 of the Revised Statutes, relating to length of lobsters" (Senate No. 79), reported same ought not to pass.

Mr. Peacock from the same committee, on An Act to amend Section 38 of Chapter 45 of the Revised Statutes, relating to length of lobsters that may be canned (Senate No. 78), reported same ought not to pass.

The reports were accepted and sent down for concurrence.

Passed to Be Engrossed

H. D. 495. Resolve in favor of Joseph A. Underwood. (Tabled on motion by Mr. Deering of York, pending acceptance of House Amendment A in concurrence.)

H. D. 530. An Act to authorize Ward

and Bradbury, Inc., to erect and maintain piers, piles and booms in the Saint John River.

Passed to Be Enacted

An Act to enable the Town of Presque Isle to assume the obligations of the Prsque Isle Village Fire Department arising out of a contract with the Presque Isle Water Company.

(This bill carrying an emergency clause required a two-thirds vote of the Senators elected. A rising vote was had, and 26 Senators voting in the affirmative and none opposed, the bill was passed to be enacted.)

An Act to annex certain islands in Casco Bay to the County of Sagadahoc and the town of Phippsburg.

An Act to extend the charter of the Androscoggin Valley Railroad Company.

An Act to amend Section 48 of Chapter 56 of the Revised Statutes, relating to inspection of railroads.

An Act to amend Section 34 of Chapter 68 of the Revised Statutes, relating to special administrators.

An Act to amend Section 27 of Chapter 9 of the Revised Statutes, relating to returns by railroad companies for purposes of taxation.

An Act requiring the placing of warning signs at grade crossings.

An Act to amend Section 76 of Chapter 16 of the Revised Statutes, relating to the inspection of secondary schools.

An Act to amend Section 34 of Chapter 24 of the Revised Statutes relating to highway crossings of railroads.

An Act to authorize the town of Richmond to acquire the property of Richmond Water Works, and to construct and maintain a system of water works within said town.

An Act to amend Section 39 of Chapter 30 of the Revised Statutes, relating to the inspection of safe-guards and repairs by town officers or fire engineers.

An Act to extend the Charter of the Bluehill Water Company.

An Act to revive and extend the charter for the Penobscot Bay Water Company.

An Act additional to Chapter 7 of the Revised Statutes relating to the purity of elections.

An Act additional to Chapter 82 of the Private and Special Laws of 1903, entitled "An Act to incorporate the Gardiner Water District."

An Act to amend Section 1 of Chapter 177 of the Private and Special Laws of 1899, relating to the taking of smelts in the Saco river.

An Act to authorize the National Camps & Hotel Co. to construct and maintain a wharf in Sebago lake.

An Act to legalize the doings of the Fairfield Center Cemetery Association.

An Act to change the name of Marsh Island.

An Act to repeal Chapter 276 of the Private and Special Laws of 1911, relating to the construction of public buildings on public grounds by the city of Portland.

An Act to extend the charter of the Waldo Street Railway Co.

An Act to provide for physical connection and certain auxiliary service between steam railroads and electric railroads.

An Act to extend the charter of the Lincoln Sewerage Co.

An Act to amend Chapter 8 of the Private and Special Laws of 1887, and to set off certain real estate of Theodore B. and Addie S. B. Weston from the Madison Village Corporation.

Resolve, in favor of the Bath Military and Naval Orphan Asylum, for maintenance and other purposes, for the years 1917 and 1918.

Resolve, in favor of the several State Normal schools and the Madawaska Training school for the construction of new buildings and for permanent repairs and improvements.

Resolve providing for a commission to investigate the advisability of making improvements in Portland harbor.

Resolve in favor of the Board of Dental Examiners, for equipment, printing and postage.

Resolve appropriating money for expenses of the Electoral College.

On motion by Mr. Bartlett of Kennebec, S. D. 142, An Act to amend Section 27 of Chapter 52, Revised Statutes of Maine, relating to invest-

ment of deposits, was taken from the table, and on further motion by the same senator was passed to be enacted.

On motion by Mr. Butler of Knox, H. D. 403, An Act to authorize the Public Utilities Commission to investigate any proposed changes in the rates of any public utility, and to suspend the same pending investigation, was taken from the table, and on further motion by the same senator was passed to be enacted.

Orders of the Day

On motion by Mr. Stanley of Oxford, the vote was reconsidered whereby the report of the judiciary committee, ought not to pass, was accepted on a resolve relating to an amendment to the constitution authorizing the dividing of towns into voting districts, and on further motion by the same senator the resolve and the report thereon were laid upon the table.

Mr. Peacock of Washington presented the following order and moved its passage:

Ordered, that the use of the Senate Chamber be granted to the committee on sea and shore fisheries for its hearing this afternoon at 2 P. M.

The motion was agreed to.

Mr. DAVIES of Cumberland: Mr. President, I ask the unanimous consent of the Senate that I may print in the Record the opinion of Hon. L. A. Emery relative to the rights of the public and riparian owners in the rivers of Maine above the flow of the tide, to be considered by the Senate in connection with House Bill No. 211.

Consent was given and the Senate received the opinion, and on motion by the same senator the same was ordered printed in the record.

The opinion:

"Hon. William T. Cobb.

My dear Sir: I have received your request for my opinion as to the respective legal rights of the public and the riparian owners in the rivers (large and small) of Maine above the flow of the tide; and as, incident

thereto, to consider whether the taking by legislative authority of a 'water power' on such rivers for the purpose of furnishing hydraulic or electric power to manufacturers, &c. is a taking for a 'public use' in the constitutional sense of that term.

In complying with that request I desire it should be noted and constantly borne in mind that I am not stating any right one riparian owner may have against another riparian owner on the same river above, below or opposite. I am assuming they are in accord.

The riparian owner is he who owns land bounded by such a river and, to exclude from the mind all questions between opposite riparian owners. I shall assume he is also the owner of the land upon the opposite side and also bounded by the river. It should also be borne in mind that I use the word 'river' as including any actual water course above tide water, however small.

Prima facie, all such rivers are the private property of the owners of the land through and over which they flow. Prima facie, the only limitation upon the proprietary rights of the riparian owners is the public right that the water be permitted ultimately to flow to the sea after reasonable detention and use by them. Whether the public has any other right depends upon the character of the river in question. If it can be shown that the river in its natural state was capable of use for the transportation of persons or property, then the public has the right to make that use of it as against the riparian owners. And if it can be shown that migratory fish were wont to, or could, ascend the river in its natural state, the public has the right to require the riparian owners to allow them passage up and down. If, however, the condition of the river in its natural state was such that it was not capable of use for passage and transportation and did not permit the ascent of migratory fish, then, to quote the language of the court in *Wadsworth v. Smith*, 11 Maine, at p. 281, the river is 'wholly and absolutely private.'

Even if the riparian owners at their

own expense make the river floatable and even convenient for the transportation of persons and material, the public does not thereby acquire any right in it. And the State in behalf of the public cannot make such river floatable and public, or open it to the migration of fish, by artificial means except by the exercise of its power of eminent domain and making 'just compensation' to the riparian owners. *Wadsworth v. Smith*, 11 Maine, 278; *Holden v. Robinson Co.* 65 Maine at p. 217; *Pearson v. Rolfe*, 76 Maine at p. 385. On the other hand, to establish the public character of a river, it is not necessary to show that in its natural state it was, or would be, floatable at all seasons. If it was floatable at certain seasons only, as in the spring or fall while too shallow in summer, the public have the right to make at least that use of it. Nor does the circumstance that the floatation of logs may require some use of the banks bar the public right. *Brown v. Chadbourne*, 31 Maine, 9.

The Rights of the Public.

The original public character of the river being established, the public, as against the riparian owners, have the right to use it and its waters and their flow for the transportation of persons and property to the full extent they could have used it had it remained in its natural state. They may also use, without making compensation therefore, all the additional facilities created or provided by the riparian owners at their own expense. The manner of the exercise of these rights, however, is subject to some rights of the riparian owners to be hereafter stated.

The public have the further right, themselves through legislative action, to create additional facilities, to make easier the use of the river for passage and transportation, even though in so doing they occasion incidental damage to a riparian owner, if not to the extent of appropriating or destroying any property right. *Brooks v. Cedar Brook Co.*, 82 Maine 17.

Rights of the Riparian Owner.

Subject only to the public rights above stated, the riparian owner, assuming him to own the land upon both banks,

owns the land under the water. In the language of the court in *Pearson v. Rolfe*, 76 Maine at p. 385, 386 'He owns the bed of the river. He owns all the rocks and the natural barriers in it. He owns all but the public right of passage. The right of passage does not include any right to meddle with the rocks or soil in the bed of the river * * *. The owner may maintain trespass quare clausem for an unlawful invasion of land covered by water. Ice formed upon a fresh water floatable stream is the property of the riparian proprietors.' Further, he owns more than the land under the water. He also owns, not the water itself, but the right to have it flow upon and through his land in its natural course and also the right to the use of it and the exclusive use of it, as it flows past, (except of course the public right of passage). This right 'is inseparably annexed to the soil and passes with it, not as an easement not as an appurtenance, but as parcel'—(see language of Chief Justice Shaw in *Johnson v. Jordan* 2 Met. at p. 239). It is an integral part of the riparian owner's estate.

Among these rights is that to use the water in reasonable degree for domestic and agricultural purposes, and also the right to make use of the momentum of the water. *Blanchard v. Baker*, 8 Maine 266. If, in flowing through his land the water suddenly or rapidly falls naturally to a lower level, such falling water is potential of mechanical power and constitutes what is called a 'water power' and that power is an integral part of his estate. He and he alone has the right to use that power, and he has the right to construct such appliances, dams or other structures, as may be necessary to utilize that power and make it serviceable for propelling machinery and for other uses. Since to utilize the power there must be some detention of the water to raise a sufficient head he can so detain it, but of course only for a time reasonable under all the circumstances. *Gould v. Boston Dam Co.*, 79 Mass. 412; *Springfield v. Harris*, 86 Mass. 494. For the same purpose, and to make the power more constantly available and serviceable, he may, as against the public, erect

dams to hold back surplus water from freshets to be let down in time of drouth. Of course he must so construct his dams and other structures and appliances that there shall be opportunity for the passage past them of migratory fish, and of persons and material, to the same extent they could have passed that point at that time with the river in its natural state, unaided by the riparian owner's structures or accumulations of water.

If this right of passage is not substantially impaired the public have no ground of complaint.

This right to erect dams, mills, &c., for the utilization of 'water powers' on rivers had long been recognized in England at the time of the settlement of New England and was at once exercised by the settlers here. Indeed, statutes were early enacted authorizing a riparian owner of a water power to erect a dam and mill on his own land and flow the land of upper riparian owners against their will by making them a compensation adjudicated to be just. Nevertheless, the right to utilize water power by the erection of dams, &c., by the owner thereof on his own land is not conferred by legislative grant but is inherent in his ownership. It cannot be confiscated, nor interfered with, by the public so long as their right of passage is provided for. The only new right given by the 'Mill Act' is the right to flow the lands of upper riparian owners against their will by a process of condemnation under the power of eminent domain. The Act might be repealed without affecting his rights as against the public, though it would confine his right of flowage to his own land and to such land as the owner will voluntarily permit.

When there are several owners in common of a water power they frequently apply to the legislature for a charter of incorporation with the right, as a corporation, to build and maintain dams, &c., on the corporate property. What they ask for is the privilege of doing that as a corporation, not for the right as individuals. That right they already possess by virtue of their riparian ownership through with the limitation that provision must be made for the reasonable

exercise of the public right of passage as above described.

I am unable to state any more definitely what I think are the respective rights of the public and the riparian owners in our public rivers above the flow of the tide, and I could not of course meet many questions that may arise or be mooted in particular cases. The respective rights as stated are not necessarily conflicting. The exercise of one right does not necessarily exclude the contemporaneous exercise of the others. The right of passage through a dam may be exercised at the same moment that the owner is using the head of water to turn his wheels. Each right must be exercised reasonably under the circumstances of each case, and both as to time and manner, so as to avoid as far as practicable any injury to the others. For instance, the log driver having brought his logs down to a mill dam must sluice them through with all practicable speed so that the mill owner may not lose his necessary head of water. On the other hand, the mill owner cannot require the log driver to await his convenience in opening his sluices.

The incident question embodied in the request may be in other words correctly stated thus: Can the legislature authorize the riparian owner's water powers to be taken from him under the law of eminent domain for the purpose of furnishing hydraulic or electric power to factories or other private industrial plants?

I think this question has been answered authoritatively and decisively in the negative by our court in *Brown vs. Gerald*, 100 Maine 351. In that case the legislature had assumed to authorize the defendant under the law of eminent domain to take land upon which to erect and maintain poles and wires for the transmission of an electric current to a customer for use by him as power for the manufacture of pulp and paper. The plaintiff sought to enjoin the defendant from taking his land for that purpose. The question whether the attempted taking was for a 'public use' in the constitutional sense of that term, was directly presented and met. After full argument

by able counsel, the court, in an elaborate, comprehensive and exhaustive opinion prepared by our present Chief Justice Savage, decided that the attempted taking was not for a 'public use.'

In the opinion the case was carefully considered in its every aspect. It was clearly shown that 'public benefit', 'public welfare', &c., are not synonymous with 'public use.' It was further declared that 'something more than mere public benefit must flow from the contemplated use' and that 'neither mere public convenience nor mere public welfare will justify the exercise of the right of eminent domain.' Eminent judicial authority was cited in support of these declarations. Illustrations may be given. The establishment and maintenance of manufacturing industries in the state have long been regarded as for the public welfare, and as of great public benefit, but it has not been claimed that private property could be taken under the law of eminent domain for the erection of mills, factories, or other private industrial plants. Another difference is this: Electric Lighting Companies, Water Companies, railroad, telegraph, telephone companies, ferries, &c., must serve all persons in their territory without discrimination and be prepared to serve them. Manufacturers are not under that obligation, not even manufacturers of an article of such common use and need as paper. They may sell all their product to few or even one customer. They may send it all out of the state.

Should future industrial conditions and the future needs of the people come to be such that private enterprise will become inadequate, and the decision in *Brown v. Gerald* become inapplicable, that time has not yet come. The law as settled in *Brown v. Gerald* is as yet the law of our state.

LUCILIUS A. EMERY.
March 10th, 1917."

On motion by Mr. Holt of Cumberland, unanimous consent being given, that senator presented a public act at this time.

On further motion by the same senator the bill was ordered printed and referred to the committee on judiciary.

Mr. DEERING of York: Mr. President, may I inquire of the senator through the Chair the title of this act?

The PRESIDENT: It is An Act to amend Section 20 of Chapter 144 of the Revised Statutes of 1916, relating to the commitment of girls to the state school for girls.

On motion by Mr. Deering of York, H. D. 501, An Act to provide for a non-resident fishing license was taken from the table. On further motion by the same senator the bill was passed to be engrossed in concurrence.

On motion by Mr. Higgins of Penobscot, S. D. 300, An Act relating to annual or biennial reports of State charitable and correctional institutions was taken from the table.

Mr. HIGGINS: I desire to offer Senate Amendment A to Senate bill 300, and by way of explanation, Mr. President, and senators, I will state that this amendment does not in any way change the meaning of the bill. It strikes out surplus words in the bill.

Mr. DAVIES of Cumberland: Mr. President, I would like to have the amendment read.

The PRESIDENT: "Senate Amendment A to Senate bill No. 300.

Strike out at the beginning of Section 1 the words, "for the purpose of simplifying and making uniform the accounting of the several State charitable and correctional institutions, namely," and insert in lieu thereof the words, "the books of account and record of the;" strike out in the eighth and ninth lines, "the books of account and record of said institutions."

So that the said section as amended shall read as follows:

Section 1. The books of accounts and records of the Maine State prison, the Reformatory for Women, State School for Boys, State School for Girls, Augusta State hospital, Bangor State hospital, School for the Feeble Minded, the State Sanitoriums for the Treatment of Tuberculosis and the Bath Military and Naval Orphan Asylum, shall hereafter be closed on the 30th

day of June of each year, and the annual or biennial reports which are now required by law to be made by the inspectors, commissioners, trustees and officers having charge of the said institutions shall hereafter be made annually to the Governor and Council on or before the 30th day of September, for the year ending on the 30th day of June preceding. Said reports shall be printed biennially for the use of the Legislature in such numbers and in such form as the Governor and Council may determine."

Mr. HIGGINS: Mr. President, I move the adoption of Senate Amendment A to S. D. 300.

The motion was agreed to.

On further motion by the same senator the bill as amended was passed to be engrossed and sent down for concurrence.

On motion by Mr. Fulton of Aroostook, H. D. 505, An Act to incorporate the Gould Electric Company, was taken from the table.

The same senator then offered Senate Amendment A to H. D. 505, "Amend Section 8 by striking out in lines 2 and 3 the words 'the provisions of Section 1, of Chapter 60 of the Revised Statutes, and to'."

Mr. DAVIES of Cumberland: Mr. President, may I inquire through the chair of Senator Fulton just what language that strikes out?

Mr. FULTON: Mr. President, answering the senator from Cumberland, Senator Davies, I will say that Senate Amendment A strikes out the words so that Section 8, which it amends, reads as follows: "Upon organization of the said Gould Electric Company it shall be subject to all the duties, liabilities and limitations to which electric companies organized under the general law are subject, and shall have and possess all the rights and privileges of such companies."

Mr. MARSHALL of Cumberland: Mr. President, I would like to inquire through

the chair of the senator from Aroostook what the effect is of striking out the words "shall be subject to the provisions of Section 1, Chapter 60 of the Revised Statutes?"

Mr. FULTON: Mr. President, in answering the senator from Cumberland, it seems to me that it does not change it, but only strikes out surplus words.

I would say in explanation that I was requested by His Excellency, the Governor, yesterday morning to table this bill. Since that time the parties interested in the bill have had a conference with the Governor and have together agreed upon this amendment A and upon amendment B, which will follow.

Does that answer the question?

Mr. MARSHALL: Yes.

Mr. FULTON: Mr. President, I move the adoption of Senate Amendment A to House bill 505.

The motion was agreed to.

Senator Fulton then offered Senate Amendment B to House Bill No. 505.

Amend by adding to said bill the following:

"Section 9. It shall be unlawful for said corporation to transmit electric current, generated within this State, for sale or use beyond the limits of this State, or to contract with any person, firm or corporation for the transmission or sale of electric current, generated within this State, beyond the limits of this State, and said corporation shall not be permitted to acquire in any manner the franchises of or consolidate with or transfer or lease its property, rights and franchises to any other corporation, firm or person now transmitting or having the right to transmit electric power beyond the confines of the State, without express authority of the Legislature."

Mr. DEERING of York: Mr. President, I move that the amendment and bill be tabled.

Mr. DAVIES of Cumberland: Mr. President, may I ask the senator from York, Senator Deering, to withhold that motion for a moment?

Mr. DEERING: Mr. President, if I knew what was going to happen I might. (Laughter)

Mr. DAVIES: Mr. President, this is the first time in my life, and I have known Senator Deering for a long time, that he could not read a senator's mind. He generally is in a position to know precisely what is going to happen some time before it does happen. But I will relieve him, in a general way, by saying I desire to ask one or two questions of Senator Fulton before the amendment is tabled.

Mr. DEERING: Mr. President, I withdraw my motion until that is done.

Mr. DAVIES: Mr. President, one of my questions is—I rise for no other purpose—I should like to inquire of the senator from Aroostook, Senator Fulton, if he thinks this amendment is necessary to cover the purposes of the amendment, for which it is ostensibly offered, having in mind the general law which prohibits the same thing?

Mr. FULTON: Mr. President, answering the senator from Cumberland, and directly giving my own opinion I do not think it is necessary.

Mr. DAVIES: Then, Mr. President, why should the senator present the amendment if he thinks it is not necessary?

Mr. FULTON: Mr. President, answering the senator from Cumberland, I will say that I am not a lawyer and make no pretensions to a knowledge of the law. I simply introduced this amendment at the request of those interested in the bill, they having had a conference with the Governor as I said before. I am not accountable for these

amendments, I simply introduced them after the parties had a conference with the Governor and requested me to do so. If the amendments are unnecessary that is for this body to decide.

Mr. DAVIES: Mr. President, I merely desire to say—and I am not breaking my agreement with Mr. Deering—it seems to me we are considering in these electrical matters amendments which are absolutely unnecessary. It has been the general law and the settled policy of this State for years, that no electricity shall be transmitted beyond the limits of the State. And it was for that reason that I wanted to inquire of Senator Fulton if he thought the amendment was necessary.

Mr. BURLEIGH of Aroostook: Mr. President, the Gould Electric Co. is peculiarly situated. The power that it uses is brought from without the limits of the State, and its organization may be different from that of any other electric company. This power that they are using and selling within the State, is generated at Aroostook Falls in Canada, and is brought into this State, and not carried out of the State.

Mr. BUTLER of Knox: Mr. President, I understand that is exactly the situation in this particular case, as I remember the facts. This is really a tempest in a teapot.

Mr. DEERING: Mr. President, if all the questions have been asked and answered that are proposed to be, I would like to renew my motion that the amendment lie on the table.

The motion was agreed to.

On motion by Mr. Stanley of Oxford, Adjourned.