

# MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

Seventy-Eighth Legislature

OF THE

STATE OF MAINE

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1917

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## SENATE

Friday, March 30, 1917.

Senate called to order by the President.

Prayer by Rev. Wm. R. Wood of Augusta.

Journal of previous session read and approved.

Mr. GILLIN of Penobscot: Mr. President, through our President I wish to extend to the senators here an invitation to go to the city of Bangor next Wednesday, when the Eastern section of the State is going to give a celebration, if that is a proper term, a patriotic one for the purpose of preparedness and the protection of our rights in the State and the strengthening of the hands of the executive, and as an inspiration to the members of the Senate and House of the national body.

We expect, fellow citizens, that the train will leave here probably at 9 o'clock on Wednesday morning. And we are in hopes to be able to entertain the members of the Senate, and the members of the House—they are getting a like invitation—in our Tarratine Club when you get over there. We feel that we can assure you that you will see a grand turning out of the whole people of the Eastern section of the State.

I have been earnestly requested by the leading citizens of my city, its bankers, its merchants, its mayor and the chairman of our committee on preparedness, to extend this invitation to the members of the Senate and to urge them to come over and join with us in instituting and spreading throughout the community a spirit of patriotism which is so much needed at this time in the interest, my fellow senators, of that splendid temple of justice which the people of this great government have built up; embedded in its meshes is the flesh and blood of human beings, and around its cloisters we see the smiling faces of little children, while oftentimes in the still, dark watches of the night we hear the clang of the master workman's hammer, while over all floats Old Glory out to the breeze, flinging defiance to its enemies,

protection over its people, and the symbol of the most matchless power that has ever been erected by the children of men upon any continent at any time in all the history of the world, to embed and imprint and implant it upon the tablets of the memory of your fellow citizens in the Queen City of the East, in the great county of Penobscot, with all its history of which you are familiar.

Fellow senators, we invite you to be with us on Wednesday next, to help inspire our people of the East by having the senators and the representatives, the representatives of all the people of this matchless State, that we may show the other states that we are not behind our splendid motto, that we still lead.

Mr. HOLT of Cumberland: Mr. President, I move a rising vote of thanks to the citizens of Bangor for this invitation tendered to us through Senator Gillin.

The motion was agreed to and a unanimous vote of thanks was extended.

On motion by Mr. Higgins of Penobscot the rules were suspended and that senator introduced the following order and moved its passage:

Ordered, the House concurring, that when the Senate and House adjourn they adjourn to meet Monday, April 2, at 3 o'clock in the afternoon.

The order was passed and sent down for concurrence.

Papers from the House disposed of in concurrence.

From the House: S. D. 103, An Act to amend Chapter 295 of the Public Laws of 1915, relative to compensation to employes for personal injuries received in the course of their employment and to the prevention of such injuries, by allowing the injured party to select his own physician and the hospital to which he shall be carried.

In the House the majority report was accepted ought to pass.

On motion by Mr. Davies of Cumber-

land the Senate voted to insist upon its former action.

From the House: Report of the committee on agriculture to which was referred An Act for better protection against adulterated products, etc.

In the House the bill was indefinitely postponed.

In the Senate, on motion by Mr. Grant of Cumberland, indefinitely postponed in concurrence.

#### House Bills in First Reading

H. D. 697. Resolve making appropriation for the support of the bureau of inspection for 1917 and 1918.

H. D. 566. An Act to amend Sections 85 and 87 of Chapter 2 of the Revised Statutes, relating to the state contingent fund.

H. D. 699. An Act to amend Section 108 of Chapter 16 of the Revised Statutes, of 1916, relating to teaching of the public schools.

H. D. 700. An Act to amend Section 85 of Chapter 16 of the Revised Statutes providing a maximum annual tuition in secondary schools of the State.

H. D. 510. An Act authorizing Fort Kent Electric Company, its successors and assigns, to erect and maintain a dam across Wallagrass stream in Wallagrass plantation at its power station as now located on said Wallagrass stream.

H. D. 644. An Act to amend Section 51 of Chapter 82 of the Revised Statutes, in relation to trial terms of the supreme judicial court.

From the House: Majority and minority reports of the committee on mercantile affairs and insurance, on An Act amendatory of and additional to Section 29 of Chapter 50 of the Revised Statutes entitled "The Workman's Compensation Act."

In the House the majority report, ought not to pass, was accepted.

On motion by Mr. Marshall of Cumberland, the majority report was accepted in concurrence.

From the House: Majority and

minority report of the committee on sea and shore fisheries on An Act to amend Sections 35 and 38 of Chapter 45 of the Revised Statutes, relating to the measurement of lobsters, with accompanying petitions and remonstrances.

On motion by Mr. Peacock of Washington, tabled pending acceptance of either report, and assigned for next Tuesday.

From the House: Majority and minority report of the committee on ways and bridges on An Act to amend Section 16 and 17 of Chapter 4 of the Revised Statutes relating to road commissioners.

In the House the minority report, ought to pass was accepted.

Mr. DAVIS of Piscataquis: Mr. President, I move that the minority report of the committee be accepted in concurrence.

Mr. BUTLER of Franklin: Mr. President, four years ago this matter came before the committee on ways and bridges, of which I was a member at that time. I think we formed the correct principle at that time, in handling road commissioner matters, but I can see that we were unfortunate in the time when this came up, as we seemed to be approaching a voting age.

I was in the other deliberative body at the other end of the building, yesterday, and most of the members prefer, as I could readily see, to vote on this proposition. And there is a great tendency for their wives and mothers to attend the meetings and vote with them. One of the causes why this law came about—which it seems that we could change a little at this time, even if the minority report is accepted,—four years ago there was a contention in the towns, in many cases, between the road commissioners and the selectmen. As far as the highway commissioners could determine there was nothing in the law which stated that the road commissioners had entire authority in the matter, or whether the selectmen had some rights to be considered.

I think it will be necessary, if we

adopt the minority report at this time, to make plain in an amendment whether these road commissioners shall be in any way under the control of the selectmen, or whether the selectmen shall be under the control of the road commissioners. I do not see as it makes any difference which way it is, as long as they can proceed along some lines and know what is to be done.

The popular way would be, I suppose, to appoint a non-partisan and non-paid commission on the towns.

I move that this report lie on the table, and let us see if we cannot form some amendment that will care for this particular feature, and determine as to what the rights are between the selectmen and the road commissioners.

The motion was agreed to and the report tabled.

H. D. 625. Resolve appropriating money to enable the town of Mexico in the county of Oxford to free the Mexico bridge to public travel.

The PRESIDENT: The Chair will state that the adjournment order has come back concurred in by the House, and when we adjourn we shall adjourn until Monday afternoon at 3 o'clock.

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

#### **Appropriations and Financial Affairs**

By Mr. Butler of Franklin: Resolve in favor of George Martin for services as clerk and stenographer of the committee on interior waters.

#### **Bills in First Reading**

S. D. 413. An Act to amend Chapter 25 of the Revised Statutes, relating to State, and State aid highways, and to provide a mill tax fund for their construction.

S. D. 415. An Act authorizing the selectmen of the town of Brooksville to grant a private way over tide-waters in said Brooksville.

S. D. 416. An Act to amend Section 16 of Chapter 84 of the Revised Statutes of 1916, relative to the tenure of office of county attorney.

S. D. 417. Resolve in favor of the reformatory for women for the construction of additional buildings and for other purposes for the years 1917 and 1918.

S. D. 418. An Act to amend Section 29 of Chapter 136 of the Revised Statutes, relating to copy of proceedings in murder cases.

#### **Reports of Committees**

Mr. Higgins from the committee on appropriations and financial affairs, on Resolve for the pay of the chaplains and certain employees and for typewriting and stenographical assistance for the official reported of the Senate, reported same ought to pass.

The same Senator from the same committee, on Resolve on the pay roll of the Senate, reported that the same ought to pass.

Mr. Walker from the committee on education, on An Act to amend Section 143 of Chapter 16 of the Revised Statutes, relating to the admission of students to State normal schools (Senate No. 303), reported same ought to pass. (Read first time under suspension of the rules on motion by Mr. Walker of Somerset.)

Mr. Walker from the same committee, on An Act to designate truant officers as attendance officers (Senate No. 330), reported same ought to pass. (Read first time under suspension of the rules on motion by Mr. Ames of Washington.)

Mr. Ames from the same committee, on An Act to establish military training in the public schools (Senate No. 86), which was recommitted to the committee, submitted the same in a new draft, under the same title, and that it ought to pass.

Mr. Wood from the committee on legal affairs, on An Act to provide for the transfer to the reformatory for women of women serving in the State prison, in any county jail, or in any house of correction, reported same ought to pass.

Mr. Wood from the same committee, on An Act to amend Section 38 of Chapter 72 of the Revised Statutes, relating to legal effect of adoption of child (Senate No. 324), reported same ought to pass. (Read first time under

suspension of the rules on motion by Mr. Wood of Hancock.)

Mr. Merrill from the same committee, on An Act to amend Section 23 of Chapter 115 of the Revised Statutes, relating to poor debtors (Senate No. 181), submitted the same in a new draft, under the same title, and that it ought to pass.

Mr. Butler from the committee on military affairs, on An Act to revise the military law (Senate No. 342), submitted the same in a new draft under the same title, and that it ought to pass. (Read first time under suspension of the rules on motion by Mr. Holt of Cumberland.)

Mr. Holt from the same committee, on Resolve proposing an amendment to Article seven of the Constitution, relating to military (Senate No. 367), reported same ought to pass. (Read first time under suspension of the rules on motion by Mr. Holt of Cumberland.)

Mr. Butler from the same committee, on Resolve for a memorial in honor of Major General Hiram G. Berry, reported same ought to pass.

Mr. Gordon from the committee on public health, on An Act to amend Chapter 19, Revised Statutes, in relation to the State Board of Health (Senate No. 246), submitted the same in a new draft under title of An Act to facilitate the care and treatment of certain infectious diseases, and to add certain sections to Chapter 19 of the Revised Statutes, relating to the State Board of Health," and that it ought to pass.

Mr. Holt from the committee on taxation, on resolve appropriating money for the purpose of obtaining information in regard to wild lands, for the purposes of taxation, submitting the same in a new draft under the same title, and that it ought to pass.

Mr. Baxter from the committee on ways and bridges, on An Act relating to the operation of motor vehicles, 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 were tabled for printing under the joint rules.

Mr. Holt from the committee on taxation, on An Act to establish a uniform tax on intangible personal property (Senate 232), reported that the passage of the same is inexpedient. The committee desires to go on record as favoring a change in the method of taxing intangible personal property. It believes that the present method results in a large amount of this class of property escaping taxation altogether. Under the present method some escape paying any tax, some pay what is considered a reasonable tax by an arrangement with local assessors, while others may be obliged to pay from one-quarter to one-half of the entire income. The committee believes that the most equitable and effective method of assessing and collecting taxes upon this class of property is to tax the income. The committee therefore recommends the passage of an amendment to our Constitution, to allow the Legislature to enact an income tax law, and appends to this report a resolve to carry out this purpose.

Mr. DEERING of York: Mr. President, I suppose this resolve contains the usual phraseology of these resolves, but I believe in a matter of this importance that it should lie on the table until we have an opportunity to read it and see what the provisions are.

Mr. HOLT of Cumberland: I ask first, Mr. President, that the resolve be received.

Mr. DEERING: Mr. President, I should expect that it would be received, of course.

Mr. HOLT: Mr. President, I was just about to move that the resolve be tabled and 1000 copies ordered printed.

Mr. DAVIES: May I inquire what the resolve is?

Mr. HOLT: Mr. President, I will say that there was an order put in near the opening of the session directing the committee on taxation to look into the question of the advisability of an income tax, and the committee has gone into the matter thoroughly in connection with the act introduced, in regard to intangible property, and from

our deliberations we recommend this resolve.

Mr. DAVIES: Mr. President, then I understand from what the senator has said that the resolve is not to be referred to any committee?

Mr. HOLT: Yes.

Mr. DAVIES: Mr. President, I understand further that a constitutional amendment is proposed and I suppose it is to be passed by the Senate without any hearing whatever on this important question.

Mr. HOLT: Mr. President, the committee advertised a hearing on the order which was introduced, and which I referred to, directing the committee to look into the advisability of having an income tax. The committee gave public notice of a hearing on that order, and an opportunity for anyone who desired to be heard to appear.

Mr. DAVIES: Yes, Mr. President, but notice on the order would not be notice on the amendment. It seems to me altogether too late in the session to be considering an amendment to the constitution for the taxation of incomes. Such an amendment should have been proposed some time before.

Mr. HOLT: Mr. President, I would say that this matter has been very freely and thoroughly discussed throughout the session in connection with An Act providing for the taxing of intangible property, to which this report refers, and the matter was discussed in the report of the committee appointed by the governor where they say under the constitution they doubted whether the Legislature had a right to pass an income tax on intangible property.

So that I think the committee thought something should be done to give the Legislature power in regard to this matter.

The question before the Senate being on the motion of the senator from Cumberland, Senator Holt, that the resolve be tabled for printing, and 1000 copies ordered printed, the motion was agreed to

### Final Reports

Mr. Butler from the committee on interior waters submitted its final report.

Mr. Gordon from the committee on public health submitted its final report.

### Passed to Be Engrossed

H. D. 539. An Act to amend Section 7 of Chapter 38 of the Revised Statutes of 1916, relating to licenses of agents and dealers in nursery stock.

H. D. 684. An Act to amend Sections 16, 39 and 40 of Chapter 26 of the Revised Statutes, relating to the speed of motor vehicles.

H. D. 686. An Act to amend Section 33 of Chapter 9 of the Revised Statutes, increasing the taxation of owners of parlor cars.

H. D. 687. An Act to amend Section 51 of Chapter 82 of the Revised Statutes, relating to trial list of supreme judicial court for Aroostook county.

H. D. 691. An Act to incorporate the Casco Water, Electric Light and Power Company. (House A Amendment A adopted in concurrence; House Amendment B indefinitely postponed, in non-concurrence.)

H. D. 693. An Act to amend Section 45 of Chapter 117 of the Revised Statutes, provided for clerk hire in the office of the county attorney of Penobscot county.

(Tabled pending adoption of House Amendment A on motion by Mr. Grant of Cumberland.)

H. D. 694. An Act to amend Section 72 of Chapter 82 of the Revised Statutes, increasing the annual appropriation for the attorney general's department. (Tabled by Mr. Bartlett of Kennebec, pending passage to be engrossed.)

S. D. 170. An Act to amend Section 23 of Chapter 26 of the Revised Statutes of 1916, relating to the registration of motor vehicles.

S. D. 411. An Act to repeal all special and private laws relating to the taking of migratory fish in Denny's River.

S. D. 412. An Act to amend Section 18 of Chapter 45 of the Revised Statutes, 1916, relating to regulation of lobster industry.

Mr. Walker of Somerset: Mr. President, I move that we reconsider the vote taken yesterday in relation to the clerk of courts in Knox county. The Senator from Knox was absent, and that is the reason I do this. I move we reconsider the vote whereby we moved to indefinitely postpone this matter.

The PRESIDENT: The Chair is informed that the papers are not before the Senate at this time. They will be sent for. (Senator Walker withdrew his motion.)

#### Assigned for Today

The PRESIDENT: The Chair lays before the Senate, majority and minority report of the committee on judiciary on An Act for the better protection of children and to amend certain sections of Chapter 64 of the Revised Statutes, tabled on motion by Mr. Grant of Cumberland.

Mr. GRANT: Mr. President, I yield to the Senator from York, Senator Deering.

On motion by Mr. Deering of York the majority report, ought to pass, was accepted in concurrence.

Tabled for printing under the joint rules.

The PRESIDENT: The Chair lays before the Senate, Reports A and B of the committee on judiciary on An Act to provide for the establishment of district almshouses or infirmaries and to repeal Section 15, 16 and 17 of Chapter 29 of the Revised Statutes.

Mr. GILLIN of Penobscot: Mr. President and senators, I would like to dispose of this matter this morning, but as a matter of courtesy to Senator Deering, if he desires to have it tabled until Tuesday morning, I will do so.

Mr. DEERING of York: Mr. President, the book of statistics I have in regard to this particular matter is not here this morning, and I would like to have the senator extend to me the courtesy of continuing it until Tuesday.

Mr. GILLIN: Which I will do, Mr.

President. I move that it be tabled until next Tuesday.

The motion was agreed to.

The PRESIDENT: The Chair lays before the Senate, H. D. 352, An Act to amend Section 11 of Chapter 117 or the the Revised Statutes, relating to the salaries of the stenographers of the superior courts.

Mr. WOOD of Hancock. Mr. President, I understand there is contemplated an additional amendment to this bill, and I move that it be tabled until next Tuesday.

The motion was agreed to.

The PRESIDENT: The Chair lays before the Senate, H. D. 653, An Act to provide compensation for injuries received by State employees.

On motion by Mr. Holt of Cumberland, tabled.

The PRESIDENT: The Chair lays before the Senate, Reports A and B of the committee on labor, on An Act relative to the hours of labor of conductors and motormen.

Mr. GOOGIN of Androscoggin: Mr. President, I move the acceptance of Report B. ought to pass in new draft, and move that when the vote be taken it be taken by a rising vote.

Mr. GILLIN of Penobscot: Mr. President, as some of the senators who are interested in this matter are necessarily absent this morning, I hope the senator will withdraw his motion and allow the matter to lie on the table until next Tuesday. This was indefinitely postponed, and while those senators were out of the chamber, that vote was reconsidered. I would ask the senator if he will not allow it, as a matter of courtesy to those interested to go over until next week?

Mr. GOOGIN: Mr. President, I withdraw my motion.

On motion by Mr. Gillin, tabled and specially assigned for next Tuesday.

Mr. BUTLER of Knox: Mr. President, I rise to make an inquiry as to the condition of the record on a motion made



Wednesday afternoon in regard to this matter. It is reported in the press that Senator Butler of Knox moved to indefinitely postpone it, and that was while Senator Butler of Knox was acting as President of the Senate. I presume the record is right, and if it is not right I would like to have it corrected.

The PRESIDENT: We will have the journal brought in and read.

(The journal was brought in and read, showing that the motion was properly recorded.)

The PRESIDENT: The Chair lays before the Senate majority and minority report of the committee on judiciary on Resolve in favor of DeForest Keyes.

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

The pending question being the acceptance of either report.

Mr. DEERING of York: Mr. President and gentlemen of the Senate: This is a matter which is not new, and I desire to say that probably this is one of the most unique matters that this State or any other state has ever had to deal with. It seems that it has had a history about which most of the Senate and most of the House of Representatives and those who are interested here from year to year know.

To be brief, in regard to its history, because I think most of you have had some experience with it, I will simply say that in the year 1902, a young man named DeForest Keyes of Oneonta, New York, a man 22 or 23 years old, came to the State of Maine in pursuance to a printed advertisement which he received, for the purpose of purchasing the tax titles which the State of Maine represented that it had in certain wild lands in the State of Maine, which had been forfeited to the State for non-payment of taxes, and in the beginning before we go very deeply into the argument, I desire to read to the Senators the notice which induced this young man to come to Maine.

He received a notice which said that Maine was offering to sell and convey to the highest bidder all the interest of the State of Maine to all lands hereinafter described, said lands having been forfeited to the State for non-payment of taxes.

Now this young man received a notice similar to that, and that notice was signed by Oramandal Smith, who was then treasurer of the State of Maine, and the point that we make is that any man, no matter where he is, when he receives a document signed by any officer of any state, that document in his mind bears the dignity and the honesty of the whole state back of it. If you receive a document signed by the secretary of State, you pay attention to it and you believe that what is contained in that document is an official document and has the State sanction back of it. In the same way every document which you receive, signed by any State officer, bears the sanction in your mind of the dignity of the State of Maine back of it.

Now pursuant to that notice this young man came to Maine, and there have been for years and years accumulating in the treasury department these unpaid tax deeds. I think in one particular instance there were 21 deeds of the same piece of land which this young man bid in. He came here and talked first with the treasurer and at some time the treasurer warned him that the State of Maine did not stand behind the title. They had some more conversation and finally traded and Mr. Keyes paid to the State treasurer \$18,000 and was to go back home and wait until the papers were made out and receive them from the State treasurer. When he received the papers he looked them over and found that they did not comply exactly with what they were going to comply with, and so he sent an investigator to the State of Maine to investigate the lands and locate them upon the face of the earth.

After the man had been here sometime he went back and made his report that some of the lands did not even exist. Others were under water, and others were in the possession of certain people who claimed that they were theirs, and that the State had no right to sell them and had no business to convey them to Mr. Keyes or anybody else, and they intended to keep them.

After this report, Mr. Keyes employed Mr. Staples of Buffalo, of the

firm of Staples and Staples, and I want to say, gentlemen of the Senate, right here, that there is no question in anybody's mind about the honesty and integrity and good standing of either the claimant in this matter, or any of his attorneys.

Mr. Keyes is a man who is a cashier, I think of a small bank in the town of Oneonta, New York, and Staples and Staples are attorneys in Buffalo, where they have one of the finest clienteles in that section of the State, and before the judiciary committee or the committee on claims, no question ever has been raised in regard to the honesty and integrity of the men back of this claim.

So Mr. Staples came to Maine and on his visit to Maine he found out, what was satisfactory to him anyway, that the State of Maine had never conveyed to Mr. Keyes anything, based upon the following reasons:

First. There was no land described in any one of them which could be held under the description, even if it existed.

Second. The deeds were absolutely void, as required by statute, if the description had been sufficient and the land had existed.

This second is backed up by the law of the State by the decision in Millett vs. Mullin in the 95th of Maine, in which case, I think my distinguished brother from Penobscot was a counsel, if I am not mistaken.

Now, gentlemen, the first thing they did was to ask the attorney general's opinion about reforming the deeds to see if this land could not be conveyed to Mr. Keyes for which he had paid his money. After various consultations it was decided that the attorney general of the State had no right to reform the deeds, but the treasurer must convey the lands to Mr. Keyes according to the descriptions that were made in each particular assessments, so that the deeds could not be reformed and Mr. Keyes could not get good deeds of the particular lands which he had bought.

Then he appeared at the legislature, I believe in 1905, to ask the legislature to pay him back the money, the \$18,000 that he had put in to the State

treasury for which he had received absolutely nothing. When he appeared before that judiciary committee it was absolutely hostile to him. It could not conceive that such a thing had happened. It did not believe that the State of Maine took his money and gave him nothing, and it rather laughed him out of his case. But still he came back again in 1907 and got a further hearing in which he got a part report of the committee, and in 1909 he appeared before the judiciary committee and I desire at this time to read to you who that judiciary committee was. In 1909 the chairman of the judiciary committee was Henry Hastings, who used to be the chairman of the Republican state committee; William H. Looney, a prominent lawyer of Portland; Percival P. Baxter, whom we all know; Ira G. Hersey, now a member of Congress; John A. Peters, now a member of Congress; Charles L. Andrews, a member of the Kennebec Bar; Lewis A. Burleigh, a very prominent attorney in this city; Joseph H. Montgomery, a man whom we probably all know, a prominent attorney from Camden; Howard Davies, who is a member of this honorable body; and George C. Wing, Jr., of Auburn, who did not vote on the subject. He would have voted in favor of it, but refused to sign the report because his father was one of the counsel for Mr. Keyes.

That, gentlemen, was the judiciary committee for that particular year, and of course I am not going to say that that is the best judiciary committee that ever was, but I will say perhaps that it is the second best judiciary committee the State ever had. Those gentlemen signed a unanimous report for the DeForest Keyes resolve, and reported it to the House and Senate, and it was carried through the House and Senate, that year, to pay DeForest Keyes back the money which he had paid into the State treasury. That was the year that Governor Fernald vetoed it, and the language of his veto message was that he did not think the people of the State sufficiently understood it. The people of the legislature, backed up by ten of the best

lawyers in the State of Maine, believed in it, but Ex-Governor Fernald did not think the people of the State had sufficient information about it, and so he vetoed the bill, notwithstanding that it had been passed through both branches of the legislature of that year.

Now that is the history of the case up until 1909, and since then it has appeared before the committee on claims and never has it had an adverse report wholly against it. Every year, I think, except this year and 1905, has the majority report of whatever committee before which that claim appeared been in favor of paying this claim. It has been admitted by every newspaper in the State of Maine to be a just claim, such newspapers as the Portland Express and Press, the Lewiston Journal and Sun, the Bangor News and Commercial, the papers of Augusta, and every single paper of any prominence in the State of Maine is in favor of the payment of this claim, and if you will look back through the files of all newspapers of the State of Maine, the newspapers which you and I read and believe in, you will find that they stand squarely behind the State of Maine paying this claim.

Now, gentlemen, whatever difference of opinion there may be in regard to this claim, there is absolutely no difference in anybody's mind in regard to two particular things, and those two things are these: The first one is that the State of Maine got \$18,000 of this man's money and the second one is that this man got absolutely nothing from the State of Maine. Now, gentlemen, that is the kind of a trade it was and there is not a man within the sound of my voice and no man in the State of Maine that can consistently and honestly deny those facts. But I do not expect the opposition to this resolve is going to rely on those facts, they are going to admit, perhaps, that this man in spite of these facts being true, that this man came here for the purpose of speculation, that he came here as a gambler, that he put his money in to buy this land, so if he could get a title to it, he would make a great clean up. That

is the principle upon which the opposition stands.

They also say that the man came here and gambled, he took his chances when he came here and bought these titles of the State of Maine. I want to say to you, gentlemen, if this man gambled the State of Maine gambled—one person cannot gamble alone, it takes more than one to do that sort of thing. And it is said that for the fair name of the State of Maine, for the honesty and integrity of its people and the refutation of that charge that the State of Maine gambled with a man from New York, that that reason alone is enough to convince this Senate that this payment should be made.

Now the law in regard to the matter: the second proposition in regard to the law, the deeds were absolutely void as required by statute even if the description had been sufficient and the land had existed. The statute which is going to be invoked in defence of this particular claim, was passed in 1842, and since 1842 after the passage of this statute there has been paid to people who were not exactly in the same circumstances, but in circumstances that were similar,—I think 21 resolves have been paid by the State of Maine to people who have been in trouble, because they dwelt within the State of Maine, and when the titles of the property that they got failed, and I desire to read to the Senate some of the resolves that we have here because you will see that the State of Maine pays back to the people of its own state the money that those people put in, when they cannot get their title, and you will see the names of the people.

In 1859, Vida Hayford was paid \$11.13, by Chapter 245 of the Resolves of 1859; in 1860, Chapter 328, resolve in favor of Josiah D. Pulsifer, \$25 by State through mistake of requirements of law; 1860, Chapter 349, resolve in favor of George Walker \$18.55 for land sold by State where title failed; 1860, Chapter 341, resolve in favor of J. W. Porter and John Appleton, \$26.20, failure of title; 1860, Chapter 365, resolve in favor of Charles D. Gilmore, \$50, misapprehension of law; 1863, Chapter 268, resolve in favor of W. H. McCrel-

lis, \$161.95, taxes paid by him on wild lands, title failed; 1870, Chapter 143, resolve in favor of William Brown, \$136.30, for timber cut on his lands by deputy land agents; 1871, Chapter 236, resolve in favor of Prentiss M. Fogler \$26.75, State tax on wild lands, title failed; 1871, Chapter 242, resolve in favor of Stockwell & Chalmers \$19.08, taxes, failure of title in State; 1871, Chapter 272, resolve in favor of Jane A. Weeks, failure of title; 1877, Chapter 261, resolve in favor of Shaw, Weber and Porter, \$99.20 with interest, taxes by reason of defective title; 1881, Chapter 9, resolve in favor of Henry Nash, failure of title, \$7.50; 1885, Chapter 192, resolve in favor of Blake, Llewellyn Powers & Shaw, \$400, failure of title; 1878, Chapter 67, resolve in favor of Carver and Ames, payment of amount sufficient to reimburse them for moneys paid to the State for Laselle island with interest, title failed; 1878, Chapter 69, resolve in favor of George W. Black, \$14, Mahoney's island, title failed; 1879, Chapter 118, resolve in favor of James Cousins \$33.10, Conary's island, title failed; 1880, Chapter 172, resolve in favor of Alfred Veazie, \$100, title failed, money paid without consideration; 1887, Chapter 74, resolve in favor of Eugene Michaud, \$73, title failed; 1907, Chapter 134, resolve in favor of Harry A. Furbish \$1207.12, reimbursement for damages, costs and expenses by reason of failure of title of land in the State; 1903, Chapter 18, Bernhard Pol of Bangor received back \$17.81, failure of title.

Now it is useless for me to discuss all of those, but I have read them over to show the Senate that in all cases where people have come before the State of Maine that we have been able to find, where the title in the State failed, the State has paid back the money to the man who lost it. This very recent one, Harry A. Furbish of Rangeley, \$1207.12, has been paid since this man from New York has been coming here after this money and has been denied it.

Mr. MERRILL of Somerset: Mr. President, will you allow me to ask the Senator from York whether that Fur-

bish matter was for an amount paid on a tax title?

Mr. DEERING: This is what it said.

Mr. MERRILL of Somerset: Haven't you seen the resolve?

Mr. DEERING: Yes, but I have not got a copy of it here. I do not claim, Bro. Merrill, that every one of these payments to these particular individuals is exactly on all-fours with the case which I am discussing, and I am going to take that up in a way which you will comprehend a little later. Now there is not to my knowledge a single state in the Union which has not paid back to men who dealt with it the money that they lost from dealing with it. In the state of New York, they pay back the money there, and I have a citation from the state of New York, where this young man came from, and where he got his advice about coming here to buy tax titles. In the hearing in 1907, I think, Mr. Staples, attorney for the claimant, said the following: "I would like to have this citation in New York to show further the attitude, and experience as well, of that state in dealing with a problem exactly like this, and as a precedent to be weighed by you as you think best to weigh it. I would like to state the facts here. I called on the comptroller of the state of New York and asked him about the tax laws, and if they had a case like this. He stated to me the facts in a case as follows: He said that in the year 1828 the state sold at public sale a parcel of land for non-payment of taxes; that land subsequently was decded and re-decided for half a century, down to 1873, when it was brought in the courts contesting the validity of the title, going way back to the first title, and the courts held there that the title was not good because of indefiniteness in the description. The state of New York, when these facts were presented to the legislature, not as a matter of following some statute, but upon the presentation of the facts and the merits of the case, passed a law—and it will be found in the Session Laws of 1873, page 1134. The title of the act is an Act making an appropriation for cer-

tain expenses of government and supplying deficiencies in former appropriations. And following that up where it makes provisions for various things, it says: It reimburses the following named persons for losses sustained by reason of failure of title of lands derived from the State; to Seth Walls, \$2,985.06; to Jesse Parks, \$2,412; Samuel Lewis, \$2,077."

Gentlemen, I have examined this particular law of New York state and those appropriations are certainly there.

"To answer a question properly raised as to the discrepancy between the amount asked back and the amount originally paid; the amount originally paid in this case for the tax deed was something in the neighborhood of ten dollars. I think it was less than ten dollars, certainly not more than fifteen dollars. I state this example in New York to show you what has been done in that state, and as a precedent. I can tell you of many other cases of direct reimbursement in other states. I have found citations to that effect. I will show you how it comes that the state of New York came to do it. I will also show you how you can pay back all that we have asked for, without curtailing the revenue of the state at all."

Now immediately after this resolve became lively in the State of Maine, the State of Maine began to cruise and bound and describe and find its wild lands. Never until the time of this Keyes claim came up, did they begin to get out and find their lands for purposes of taxation. Now in order,—and anticipating what is going to be said in regard to this particular resolve by gentlemen on the judiciary committee who disagreed with me in the report, I desire to read the decision in Millett vs. Mullen, which is following all the cases which have been decided in the State of Maine down to the present time in regard to the legality of these particular titles. Now they are going to say that this man came here and he had notice and he should not have bought. Well, if he came here and had notice that the State did not stand behind their titles, who gave

him notice? It must have been the State of Maine that gave him notice that they didn't stand behind their tax titles. Then if the State of Maine gave him notice, it had knowledge at that time that it was selling him something that was absolutely useless, and to prove that, before the State sold this man these lands, the decision of Millett v. Mullen was written in 1902. 95 Maine, 400, an opinion written by Emery, July 26, 1901, on page 420 of that report: "We may add that we think the defendants must be mistaken in their belief that in reliance upon *Hodgdon v. Wight* many and large investments have been made in tax titles based upon sales and deeds like those in this case. We do not see how the case of *Hodgdon v. Wight* should lead such investors to believe that it was not necessary for them to take care that the sale and deed from the State to themselves and their predecessors were effectual to convey to them the State's title. It is a familiar and long-known legal principle that if the description in a conveyance be so uncertain that it cannot be known what land was intended to be conveyed, the conveyance is void. If such investors did not acquire even the State's title, they are not injured in the least by any decision of this court holding that the original owner, notwithstanding his default, still had a heritable and conveyable interest in the land, which continues in him." Now he says, "What claims such investors may have upon the State by reason of the inefficacy of the sales and conveyances to pass its title, are matters solely between them and the State."

Now gentlemen, in that very decision, Judge Emery says where the title fails, or practically these words as I interpret it,—wherever the title fails, what claims such investors may have upon the State by reason of the inefficacy of the sales and conveyances to pass its title, are matters solely between them and the State. And this matter has come to the committee several times when people have refused to understand that the inefficacy of those particular conveyances are matters which Keyes is taking up with the State year after year.

I have read to you various resolves taken from the books of the State of Maine, to prove to you that men have received back money for purposes similar to this. I do not claim that those resolves are exactly on all fours with this particular case, but I do claim that some of them are, and they even go further in one or two particular resolves, copies of which I have not here but can get. It has not only paid back the principal to the men who lost their money by buying bad tax titles of the State of Maine, but it has paid back the interest and the costs of that sale.

Now, gentlemen, this man has absolutely no lawsuit against the State of Maine that he can bring. He is precluded by a particular statute from bringing a law suit, and at this time, where the State has delayed so long as it has I think perhaps they would invoke the statute of limitations. But you gentlemen, who are going to argue on the other side, you know that when they found in England that a great many of the common laws did not apply to certain cases which they had which ought to be paid, they adopted from the civil law of Rome a certain method of jurisdiction which has now become our courts of equity. If we did not have our equitable courts now, we certainly could not get justice in the State of Maine or in any other State. Based upon the civil law of Rome is a method of jurisprudence which is to be invoked when law-suits fail.

I defy any lawyer within the sound of my voice—I think there are ten of them—I will defy them all—just as easy to defy ten lawyers all at once as it is one—to say that a law-suit can be brought by this man and be brought to a successful conclusion. I want to ask the distinguished members of the legal fraternity. Suppose the man was allowed by statute to sue the State of Maine, and recovered judgment by that particular allowance, and got an execution against the State of Maine for his judgment of \$18,000, what sheriff is going to serve that writ upon the State of Maine to ask the treasurer to give him \$18,000? Is there anybody authorized by the State of Maine to serve an execution upon itself? We all know that there is not, and all you people

here know that no officer of the State of Maine can serve a writ upon the creator of him. Now if he gets an execution against the state, the only way he could collect his execution would be to go before the same judiciary committee, or some other committee, and ask for an appropriation for this money to pay that execution, and you are right straight back in the place where you are now. We have dallied along and let the claim run because we want lots of roads down in York county, and a bridge in Wallagrass, and a road to Bar Harbor, and something across the Dennys river, and all those things we want so badly, and I believe that in the last days of all these sessions, when people were trying to get their appropriations for their home improvements and their interests at home, that they have neglected this honest claim of this man for the purpose of putting it over to one more legislature, so that they might go home and take home with them the results of their appeals here in the legislature in regard to their own particular home matters.

But, gentlemen, the question is simply this. It has been said in a great deal more dramatic way than I can ever say it,—shall the State of Maine be honest? Shall it keep a man's \$18,000 for which he got nothing, and pay its bills with it, and let him stay out in the state of New York regardless of whether it is right or wrong. Gentlemen, the state can keep this money if it wants to. It has the power to keep it. But there is a difference between the power to keep money and the right to keep money. To cite the particular example that was cited before the judiciary this year,—Germany had no right to go through Belgium, but it had the power to do so and did it. That particular instance was cited as comparable to the instance of the power and right of the state in this particular case.

It is going to be said by gentlemen on the other side, that Oramandal Smith, who was then State treasurer, warned this young man not to put his money into this particular deal. I am going to say one thing in regard to that, and it is this: This judiciary

committee signed a report ought to pass by three of its members. The other seven members signed ought not to pass. But when the judiciary committee of 1909 was in session, when such men as I have read to you were members of that committee, Peters, Hersey, Davies, Wing, Montgomery and those men whom we all know and respect as lawyers—when they were on the committee and signed a majority report of the committee, who appeared before it? Oramandal Smith appeared before that committee and testified in person. He was alive then and he was well. Wiswell came before the committee. He is not here this year. He lives in Brewer but he didn't appear before the committee. Seiders, the attorney general, now dead, did not appear this year before the committee. Keyes and Staples appeared. It is strange to me, that in this particular year, when those men are all dead and gone, that our committee should report against him, but when those men were alive and before the committee and able to be cross-examined and cross-questioned at any length, that that committee that heard their testimony when they were living signed a majority report in favor of this particular resolve. Does that mean anything to you? That when they could come there and be cross-examined, when their testimony could be analyzed, when they were through, the committee considered all the facts in the case and decided almost unanimously that the bill ought to be paid? After the men are dead and they can't be examined, we make a report upon this written statement—if we want any explanation of it we cannot get it because they are dead. Gentlemen, I ask you if that means anything to you? When everybody is alive and well and understands the proposition and appears to explain it, that the committee reported unanimously about it, but when they are all gone and we cannot get any explanations that the committee goes the other way partially and says the claim ought not to be paid?

Perhaps it may be brought out by some of these gentlemen who are going to speak, just what Oramandal Smith

did say, so I will read you a little that he said. Of course I want to say everything there is to be said, because I do not want to leave anything for Brother Gillin or Brother Davies to say; so I am going to say all of their side as well as all of my own, so much as I can.

I take these to be questions and answers between Judge Cornish—now Judge Cornish—and Mr. Smith.

“Q. You have never had another case like this come up? A. No, sir.

Q. This is the only case since you have been treasurer? A. Yes, sir, and I am starting on my third term; I have just been elected to the new term.

Q. This question has never arisen before in any way, shape or manner, has it? A. In the four years I have been connected with the office, nothing of the kind has come up before.

Q. You have sold land for taxes every year? Yes, sir, the law requires it.

Q. As a matter of fact, in our talk, Mr. Smith, this matter of Mr. Keyes was frequently brought up as an injustice to Mr. Keyes? A. Well, the matter was considered. The way I considered the matter was that if better description could be given, then they ought to be, for the reason if these deeds were worthless, I thought the State ought to take some measures to arrange so I could give a deed.”

That is something Mr. Smith said that they are going to rely upon to defeat this claim.

“Q. Also that the State ought to reimburse? A. No, sir, you never mentioned the matter to me of reimbursement. I have no recollection of it whatever. You will remember, too, that I called your attention to it as soon as you put in that notice.

Q. You really thought something ought to be done about the matter, didn't you? A. I did.

Q. For what purpose? A. I thought it should be done for the benefit of the State of Maine; that the State of Maine ought not to go on obliging a State officer to make these sales year after year if there was nothing to it. I thought if possible, the State ought to give a description that would stand in court, and I think so now.”

That is what Oramandel Smith said. "Q. You assumed of course, it was simply your duty to follow the description given by the assessors? A. I did, certainly.

Q. When did that first come up?

A. That came up—I think it came to my consideration only during the year, or sometime during my discussion of the matter with you. I think it was broached after and before the opinion.

Q. You didn't know anything about it before that time?

A. Mr. Staples, I did not know when I first saw you that I was obliged to follow exactly the description given by the assessors."

Inasmuch as it is not going to be argued—that is, I am assuming it is not going to be argued that the descriptions in these deeds are absolutely uncertain and void for indefiniteness and uncertainty, I do not think it is necessary for me to take up that branch of the case with you, because I do not think my distinguished friends are going to claim that the descriptions in the deed are sufficient.

But I am going to say that there are only two things in this case for you to decide, or perhaps three. Has the State done a wrong to this party? And next, Is there any way for the State to right that wrong? Not a legal wrong, not an equitable wrong, perhaps, only so much as these particular cases represent an equity between an individual, and as this particular decision which decided just before this was brought out that the inefficacy of the sales are matters solely between them and the State. That is enough to convince me. But I leave it to you now, gentlemen, with those matters before you, those equity cases taken from the resolves, that hint of equity in the case of Millett v. Mullen, and ask you what this State is going to do to right the wrong that it has done this man? The State has \$18,000 and the man has absolutely nothing. My distinguished friends are going to claim that the State has a right to that \$18,000 because the man has not got the power to get it back. That is the law in a nut-shell, and I ask you gentlemen who are represen-

tatives in the highest body that this State elects, if you are going to stand for it, to take your pay from a treasury that holds \$18,000 of another man's money for which the State gave absolutely nothing? When we take our pay from that treasury a part of what we take is DeForest Keyes' money.

Gentlemen, I am going to leave it with you to decide.

Mr. GILLIN of Penobscot: Mr. President and fellow Senators: In as much as I am one of the lawyers who signed the majority report, the references of the distinguished Senators probably to some extent may be applicable to me.

I am not going to make a long or exhaustive argument, I pledge you in advance. I am also going to say to the distinguished Senator that never yet have I ever been able to have my argument stated in advance by any other attorney and have it satisfactory to myself. (Laughter.)

Now I have no doubt that the distinguished and learned Senator and lawyer could much better state my argument than I could, but for the few moments I am going to talk to you I will ask you to let me state it in my own way. And I presume the distinguished lawyers in this Senate, or in this State will remember these two words that we all learned as students, "caveat emptor" let the purchaser beware.

I am first going to discuss the legal proposition, and then the equitable ones.

In the purchase of all kinds and classes of personal property "caveat emptor" always applies where there is no warrant. Every civilian knows that as well as the lawyers, and it is as a rule applied to personalty, but not to realty, but every lawyer will admit that in the purchase of real estate where there is no warranty or no guaranty, that to a certain extent, at least, the language of the phrase may well apply, let the purchaser beware.

It is unnecessary for me to state either to the lawyers or to the learned business gentlemen in whose presence I am speaking, that when a man gives



a naked release deed even on this State House, without any covenants or warrants in it whatever, that the purchaser who pays even \$18,000 cannot recover back the purchase price.

I presume there are lawyers as distinguished as the lawyer who has just addressed us who would say that in a quit-claim deed given on property in which the seller is in possession, that the quit-claim warrants against nothing except encumbrances put upon it by him, and his title in it, and if he wants a deed which will secure him against the equities of other parties he must have a warranty deed, and not a quit-claim deed.

As I understand it a warranty deed will warrant against everybody and everybody's claim, but a quit-claim deed warrants the title in the party who gives it.

I will further state that no one single case that the distinguished lawyer has cited is applicable at all to this particular case. Need I state to the distinguished lawyer and Senator who argued this case so ably and so well, that all law depends upon facts, except statutory law, which is supposed to be the written law of the state and then is to be construed by the judges, by the test of the common law itself. So that this case and the equities in this case, and the justice of this case depends upon the facts and the facts alone.

The distinguished Senator said that the State of Maine was gambling. I say not only was the State of Maine not gambling, but it was warning his client from New York not to gamble. And that evidence will be read to you by my distinguished colleague, the Senator who will also address you and has the testimony, and I will not take up your time to call your attention to it.

It is admitted by the distinguished Senator that these cases which he has read from in the newspapers and cited to you are not parallel cases. Why? He examined them as every member of your judiciary committee examined them with great care, and we ascertained they were not at all parallel cases with the case under our advisement and under our consideration.

The facts, my fellow Senators, upon the majority of this committee were that Mr. Keyes was a real estate gambler, so to speak,—if that is the term they wish to inject into the record,—of the State of New York, as the evidence disclosed, buying up titles to property, and nobody knows better than the distinguished Senator who argued this case that if the tax titles he bought had been good they would have been worth one hundred to three hundred thousand dollars. Keyes knew it, and Keyes was gambling. I think the distinguished Senator,—from the term he has put into the record, what would your distinguished friend from York say to that proposition? And the evidence that was before him and before the committee showed that this man came down here to gamble, and showed that the man who was selling it to him advised him when he came in to buy this property, not to buy it. That is not all. He did not read all of the evidence to you. If he had it there I challenge him to read it in your presence to refute the statement I am now going to make. Not only did he advise him to buy, not to invest when that property was put up at public auction for him to purchase, but he said in the presence of Mr. Keyes and everybody else that the State guaranteed nothing.

So that this gambling gentleman from New York, who was doing that business in his own state, came into the State of Maine with that warning ringing in his ears, before and at the time of the sale, and invested his money. I want to ask you, fellow Senators, if the title to the one hundred thousand or three hundred thousand dollars worth of land that he was speculating to get had been good would not this gentleman who is now so good have come into the State of Maine to wrest the title away from our citizens. He is the gentleman who crossed Belgium! He is the gentleman who crossed Belgium! He is the gentleman who came into the State of Maine to invest \$18,000, and to take away from it three or four hundred thousand dollars. And it does not lie in the mouth of the distinguished Senator to say that is not so, or anybody else.

What was he here for? He was not here for his health. He was here to buy something and he knew, gentlemen, what he was buying. And now I will take the learned counsel to the definition of equity. The Maine court, the Massachusetts Court, the United States Court, the House of Lords, every single Roman decision that has ever been read in the Latin for civil law declares that he who calls for equity must show clean hands. That is the very elemental, fundamental, basic principal of equity. The man who calls for equity must do equity, and he must come into a court of equity with clean hands. This gentleman comes into a court of equity; you are a court of equity on these admitted, undisputed facts which I am now going to state. Keyes was warned not to buy. Admitted, says the distinguished Senator. Keyes was advised not to buy by the man who was going to sell for the State and because there was no title. Admitted, says the distinguished Senator. Keyes was advised when that man stood upon the rostrum to put this property up at public auction not to buy. Admitted, says the distinguished Senator who made my argument in advance.

Then tell me, I pray you, wherein lies equity, when he comes into any tribunal and says now after all these warnings that were given him, "Still I want it back. I gambled; I lost and I want the innocent people of the State of Maine who have nothing to do with my speculating tendencies, to dig up now some \$31,000 and give it back to me."

What about the State of Maine? The State of Maine is represented by its officials. The State of Maine was represented by a man and the man only who sold that land. He represented you and me and everybody when the contract was made, my fellow senators. Was he honorable? Was he upright? Did he as he represented the whole body of the State of Maine, and by act, by word of mouth, try to protect this citizen from another State? Admitted, says the distinguished counsel who argued in his interests. He did, and he admitted it. He read it and he must admit it. It is in the record that he told this man in private conference,

mark you, gentlemen, he told him "Don't you buy it, because it is no good." And then he told him from the public rostrum "Don't you buy it, it is no good".

Did he represent you and me and everybody like an upright, honorable man,—a man whose lips are now sealed with the seal of death? Did he, my fellows Senators, and are you not proud of your representative, Mr. Smith, and the distinguished Senator must admit that is the truth, the whole truth and nothing but the truth.

Have done with this appeal to our sympathies! Have done with the gambling proposition. Because the State of Maine represented by the only means by which it could be represented acted honorably, acted uprightly and warned the gambling client of these men who come in here before our committees to try to get this back, not to get us into this trouble.

I think there is one distinguished member who did not get at the whole meat in the cocoanut. It is a matter over which we can have our honest disagreements. No man in this Senate has greater respect for the great abilities of the distinguished Senator from York, who argued this case, and to whose sense of justice and splendid manhood the equities, as he says, have appealed. But another distinguished Senator the chairman of our judiciary committee, who signed the majority report will give you facts and figures to back up what I am saying to you. It becomes necessary for me as a member of that judiciary committee to lay before this Senate the facts for the faith that lead me to sign the majority report, ought not to pass. And before we did it I believe that every single member of that committee examined every statute, read every piece of testimony, examined every case. I know they did. And if you gentlemen have before you, and I presume the distinguished Senator from Cumberland will tell you of it, the learned opinion of one of your present justices of the supreme court, than whom there is no more eminent justice presiding within any court within the realms of New England, Justice Cornish of the supreme court of Maine,

who analyzed these facts, examined all the questions of law and advised that this claim neither rested upon law, equity or justice.

My fellow Senators, when a man signs a report of a committee, and when he is challenged "Why did I do it?" I am now telling you why I signed that majority report, trying to bar my fellow citizens from coughing-up more than \$31,000 to a speculator who came into our state to buy up lands, whereby for \$18,000 if its title had been good, he could take from the State of Maine at least \$300,000 dollars worth of property. And everybody knows it.

Now in conclusion this is not a case of caveat emptor, let the purchaser beware, it is a case where the splendid people of the State of Maine, represented by a splendid man, who represented his manhood and brushed away the definition of the law, let the purchaser beware, and told this innocent, unsophisticated Mr. Keyes, "Don't you purchase this property, the title is no good. Go back to New York and keep your money."

And that is not all, for in conclusion, from the public rostrum and the public auction, he who sold it—the evidence is in the possession of the distinguished Senator who signed the minority report of the committee—he again told him that the title was no good, and he told everybody so.

Now then, I am going to ask this question of every single man in this Senate: I want to know what we have done here that is wrong? Have you, all of you, as members of a committee when those facts were put up to you—if I have stated them accurately—that the State of Maine had done everything it could to save-guard the interests of the man would you say now that you ought to hand him \$31,000 under the present state finances? I say, No. I say he was a gambler, and I would not have used the term if the distinguished Senator had not first put it in the record.

I say that all the arguments that can be evolved from the brain of any man whoever stood in the presence of an intelligent audience of a deliberative body, cannot take it from your

minds that he came down here for the sole, express purpose of gambling, of gambling in buying something for nothing, gambling in trying to get \$300,000 worth of property for \$18,000. And who is the State and what could the State do?

Now in conclusion let this sink deep in the mind of every Senator here—who is the State? We were not in that deal, we were not keeping his money. Your representative at that time told him that we did not want it, warned him to go back to New York and keep his money, and I say to you, Mr. President and members of this Senate, that I hope and trust that you will endorse the majority report of this committee that this resolve ought not to pass.

Thank you for your attention.

Mr. BUTLER of Knox: Mr. President, will the Senator from Penobscot answer a question?

Mr. GILLIN: Any you ask.

Mr. BUTLER: Did it appear at the time of the hearing before the judiciary committee that this young man—and so far as I am concerned I haven't learned his age—had made a business of buying tax titles prior to coming to Maine?

Mr. GILLIN: As I understand it from reading the record. The evidence is disclosed, right in his hands. I read it in the record. I sent for it and got it.

Mr. SWIFT of Kennebec: Mr. President, I do not pretend to argue or go into any question which is being discussed by the able lawyers here, but the Senator from Penobscot has asked this question. What has the State of Maine done that is wrong? Judging from my knowledge of the case, the arguments I have heard here, they have taken \$18,000 of this man's property and given him nothing in return.

Mr. MERRILL of Somerset: Mr. President, I was on the judiciary committee in 1905 and this case was first brought before that committee. I remember distinctly the hearing, and I remember distinctly asking Mr. Keyes

if he had ever had any experience in buying tax titles in New York state, and he said he had, that he had done it for some years. And he said that he had bought there down as small as six-inch frontage on a block, that is, strips six inches wide, and that he did it for the purpose of selling it whenever the titles were wanted to be passed; that he did it for the purpose of speculation and speculation alone. I asked him if he came down here with the intention of buying several thousand acres of land for the taxes that had been assessed against them and expected to hold them, and he said that is what he did it for and if they had proved good he should have held the lands in spite of anybody and everybody. That was the express purpose that he came into the state of Maine for, to buy these lands for a trifle and hold them if he could. I think that anybody that invades our domain for that purpose, with his eyes open, knowing by his very deed that he had nothing but a quit-claim deed—he knew there was nothing promised in the deed, it was simply what the state held and no more—I think we better let him stay where he is. I think we better let the money stay where it is, in the treasury of the state of Maine.

The PRESIDENT: The question before the Senate is on the motion of the Senator from York, Senator Deering, that we adopt the minority report of the judiciary committee. As I understood it, they ask for a division on that question.

Mr. DEERING: Mr. President, if the question is going to be put, I desire to say one or two words, perhaps, in answer to my distinguished friend from Penobscot county. I think that the Senate will probably get the impression from his argument that he is in favor of the state's keeping the money; and also, that he claims and maintains through his argument that the person has gambled with the state of Maine. If he wants the Senate to believe that this man is a gambler, and says that I admit that he is a gambler, perhaps we could proceed upon that proposition the same way as we do when other peo-

ple lose money in gambling. If I gamble with any person here and I lose I have got an absolutely valid lawsuit against the person I lose to, to get my money back, and the gentleman from Penobscot can read the Revised Statutes, if he has need to, to show him that an individual can recover back money at any time that he loses by gambling.

Mr. GILLIN: Not when you gamble with the state. We have got no such statute.

Mr. DEERING: I am saying that when one person gambles with another he can recover from another. Now Brother Gillin says, not when you gamble with the state. I thought I covered about this gambling with the state business, but in order not to have any misapprehension I will state it again. One person cannot gamble alone. It takes two or more to gamble. And if this man gambled he gambled with the state of Maine. If he speculated, the state of Maine sold him some speculative goods. And I do not believe we want the impression to go out over the state of Maine that we admit that the state of Maine is gambling with people that come here to answer notices. So much for the gambling, gentlemen.

Now he says that Judge Cornish brushed aside all the law and the equity and the justice of this case. That is true. Judge Cornish was not then a member of the supreme court. He was employed to go in before the judiciary committee to represent the attorney general's department on that day, and he went in there presumably employed by the state of Maine to represent them, and of course he could represent them in a very able manner; and the only defense that there is in Judge Cornish's argument is the statute that was passed in 1842. And here are twenty-one resolves passed by the state of Maine since that time, giving men their money back, and here is the Millett-Mullen case decided in 1901. So, gentlemen, the argument of Judge Cornish was nothing but an argument which any lawyer would make, in which he tried to belittle and brush aside the claim.

Another thing I noticed in Brother Gillin's argument, that he fell flat when

he got in the last part of it. He said, "Gentlemen, do we wish to pay this money back at the present state of finances of the State of Maine?" Gentlemen, has that got anything to do with it? The present state of Maine's finances has got nothing to do with its being honest or paying it back if it really owes it. It makes no difference to any man about my state of finances—if I commit a wrong against any person he will not consider that but he will make me settle. That is the way it is with the State of Maine. The finances have got nothing to do with it. The present budget is absolutely to be disregarded. It is simply an absolute question of honesty, and if the State of Maine wants to be honest. It has got this man's money in its treasury, and it has the power to keep it, but we claim not the right.

Mr. GILLIN: Mr. President, I wish to answer two points made by the distinguished senator in one breath. He says that this man was a gambler, he now admits it, and then he states the individual case. He also admits that when he gambles with the State of Maine he cannot recover it back. I also wish to say that prior to getting to the time when I made the last statement, I had attempted to show in my argument that it was unjust, inequitable, and unlawful for the State of Maine to ever attempt to pay this bill, and at this time in particular we did not want to pay back unlawful, unjust, outlawed claims to gamblers, when my distinguished brother and the distinguished senator now admits on his feet that he was gambling, and if he was gambling with the State of Maine, there is no law, human or divine, by which he can recover his money back unless you give it to him through this body. That is all.

Mr. FULTON of Aroostook: Mr. President, I do not attempt to make an argument on this question. I just want to simply say that I was in the deliberative body at the other end of this corridor in 1905 and 1907. This same matter came up and I at different times went in to listen to the arguments before the com-

mittees, and I have thought very much about the claim. It seems to me, without attempting to make any argument, stripped of all legal verbiage and of all circumlocution and argument, it simply resolves itself into this one principle of right and wrong. If it is wrong for the individual to get your money or your labor or your property and not pay back to you an equivalent, it is wrong for the State of Maine. I believe in the eternal principles of justice and right, and I could not make myself vote against giving back to this man the \$18,000 which the State of Maine got and has never returned.

Mr. LORD of York: Mr. President, I just want to say two or three words as to the way this thing appears to me. It seems to me that we lawyers are a little bit inclined to think about things in propositions that are presented to us from a legal standpoint, and we are likely to try to meet distinction with some other distinction, and argument with counter argument. But when we get down to the principle involved in this case it is the same principle that my brother, the senator from Kennebec, Senator Swift acts on, when he sells goods to one of his customers. If for any reason they are found not to be satisfactory the customers either get their money back or they get it made right, because it is right. If he has represented himself as selling something, and there was no value, he wants to make it right, and he makes it right. It is just a plain question of business honesty on the part of the State, and it seems to me that the pending question is whether we wish attached House amendment A to the business principle of the State of Maine.

Mr. HOLT of Cumberland: Mr. President, just a word: As between individuals, as has been pointed out, when land is sold under a quit claim deed there is no right whatever to recover back. A man takes his chance. As between the State of Maine and Mr. Keyes, if he has any right, legal or equitable, I should be in favor of giving him an opportunity to prove his right to recover in an action against the State of Maine. In answer to the objection of the senator from York

that that could not be collected, I would make provision for drawing on the State treasury to pay in case he recovered a judgment. But until that is done I cannot see that he is justly entitled to this sum.

Mr. DAVIES: Mr. President, perhaps it is appropriate that I should say a word too in connection with this matter, particularly as I signed the majority report that the resolve ought not to pass.

I find myself, sir, in somewhat of an anomalous position. In the legislatures of 1907, 1909 and 1911. I voted that the resolution of Mr. Keyes asking for the appropriation of this sum of money ought to pass. You know that it is a matter of common knowledge that a wise man sometimes changes his mind.

I did not have before me at that time, as I remember it, Mr. President, a transcript of the testimony of Mr. Oramondal Smith, who was then the State treasurer. He may have appeared before the committee either in 1907, 1909 or 1911, but if he did I feel confident, knowing myself as well as I do, that I could not have been present at the time that he offered his testimony. I found during this session of the legislature the testimony offered by the State treasurer at that time, and I have here a transcript of it. I desire to read a portion of it because the matter shapes itself in my mind just this way: Did Mr. Keyes when he came to the State of Maine for the purpose of buying these tax titles have a perfectly fair, square, equitable deal? It does not seem to me that there is anything any further than that. And bearing precisely on that point, Mr. President, I desire to read from the transcript of the testimony.

First, I do not share the opinion of Bro. Gillin from Penobscot, or Senator Deering, if I understand his position correctly, in regard to Mr. Keyes or the state of Maine, or both of them, being gamblers. I hold the position, sir, that the state of Maine should not be in the gambling business. Neither was it in the gambling business. There is not a single word of testimony that has been presented in this case that

would indicate that the state of Maine was in the gambling business. Adopting, if I may, Senator Lord's suggestion about Senator Swift in regard to the way that he conducts his business in the store or shop,—suppose I went into Senator Swift's store for the purpose of buying some article, and Senator Swift said to me, I don't know anything about this article. I make you absolutely no representation about it. If you take it, you take it on your own responsibility. I make no recommendation, no representation. I only say to you that I know nothing about it, and if you take it you must protect your right in the court. That is a case in analogy with this one. That is almost word for word what was said to Mr. Keyes when he went down into the state treasurer's office for the purpose of buying that title. Can there be anything wrong in that? Is that not the common practice of almost every business man? I desire a little later, Mr. President, to discuss in a very few words in regard to the matter of giving the authority to Keyes to sue the state.

Question, by the gentleman who is now Mr. Justice Cornish of our highest court, made to Mr. Smith before the judiciary committee in 1905, which testimony has been referred to by Senator Merrill from Somerset county:

"Q. Will you state to the committee, Mr. Smith, in your own way, what conversation you had with Mr. Keyes?

A. When I came into the office on that day, I found Mr. Keyes in consultation with the wild land clerk, Mr. Wiswell. I didn't know anything about who he was. Afterwards Mr. Wiswell introduced Mr. Keyes to me in the private office, and I had a little talk with him. He told me that he came down for the purpose of taking some part in the sale, and in the talk, the matter of deeds, the matter of titles, was mentioned. I saw that Mr. Keyes was a new man entirely in our business; I saw he was a young man, and I said to him: 'Mr. Keyes, the state does not stand behind these titles, and every one of them may be contested and brought into our courts, and you will be subject to the decisions of the court.'

Could he give him any better notice than that? In view of those facts was there any liability on the part of the state of Maine to pay back to Mr. Keyes his money? Was there anything about that testimony, my friends, that would suggest to you that either Mr. Keyes or the state of Maine was in the gambling business? "You may have to defend any one of those titles in the courts." Does that sound like gambling? Let me quote a little further from the testimony that was taken on the same day. Testimony of Melvin W. Wiswell, treasurer's clerk, before the judiciary committee in 1905: By Mr. Justice Cornish:

"Q. State in your own way what talk was had between you and Mr. Keyes?

A. He informed me that he had come down here to purchase tax titles, and he wanted me to go over the matter with him and explain to him the whole system, which I did, and I emphasized the fact that to my knowledge there had been no decisions in our law courts in favor of the men that purchased tax titles."

If you are going to pay this money back, what are you going to do with this testimony—Mr. Wiswell told him that there had been no decision in our courts in favor of the men who purchased tax titles? And in view of that fact he stood up before the auctioneer and bid them off, and now comes here, as he has come repeatedly before, to ask the state of Maine to reimburse him for his money. Instead of being a gambler he is a beggar and there is a difference between those two.

Mr. President, may I discuss in just one short word the question of his suing the state? What fairer proposition could be put up than was suggested at the committee board this year? "If the counsel for Mr. Keyes, Mr. Staples from Buffalo, decides to have us do so, we will recommend to the legislature that he have a right to sue the State." That was true, was it not, Bro. Deering? The Senator from York, or somebody else said—I do not remember who said it, but I am absolutely sure that the remark was made, "He does not care to be given the oppor-

tunity to sue the state." Very well, sir. Then could it be said that his claim is on precisely the same plane as an individual if he don't care to sue the state? Indeed it is not. The moment he says that he is not willing to trust the equities of his claim in the hands of the judicial department of the state of Maine, he must admit, sir, that there is something the matter with his claim. May I be allowed just one minute in regard to what the distinguished senator from York, Senator Deering, has said in regard to his being obliged to go to the legislature to collect his execution, and the most excellent suggestion made by Senator Holt? Do you mean to tell me, Mr. President or anybody within the sound of my voice, providing the courts of the state of Maine decided that DeForest Keyes had a fair, just and equitable claim against the state of Maine that was shown by an execution, that the legislature would not pass the enabling act for him to get it?

His right is in the court, and I certainly would be only too glad, Mr. President, to vote to give him the right to seek his justice in the courts of Maine, provided he desired to do so, but he did not. He preferred to come again and again, and still again, and then some, to legislature after legislature for the purpose of getting if possible payment of the amount of money which he paid the state treasurer, fairly, with no misconception and no doubt,—there could not have been any—in his own mind, as to the circumstances, hoping that some legislature would grant it together with accrued interest thereon.

Mr. DEERING: Mr. President, I am very well aware that I am outside all the rules, but I wish to make a short statement.

Mr. DAVIES: I move that the rules be suspended.

Mr. DEERING: Thank you, I don't think brother Davies knew what he was doing when he moved to suspend the rules.

Mr. DAVIES: I don't care.

Mr. DEERING: Mr. President, at

the time when this testimony which was read was given brother Davies was a member of the judiciary committee and signed the report in favor of the resolve.

Mr. DAVIES: I certainly did.

Mr. DEERING: Mr. President, now at the session of the legislature at which this particular resolve he was in favor of was discussed he said "The following titles have been forfeited to the State for unpaid taxes. It always takes two or more people to enter into a gamble, one man cannot do it alone, he must have someone else. Now are we going to put the State of Maine in a position as gambling with Mr. Keyes from New York state? That is the question we are obliged to answer here. Never mind about what Mr. Keyes opinion might be. The question is shall the State of Maine be honest in this matter. We have got \$18,000 down stairs in the treasurer's department which was paid by this young man for which he has received nothing, and the attorney general told us when he defended the case that he bought a chance. I do not think that the State of Maine should be in the chance business. I believe it should give value received for every single dollar which is paid into its treasury. I think the only fitting thing for this house to do is to see that that sum of money is returned to him."

Mr. DAVIES: Mr. President, I endorse every single word that I said there. It was true then and true now. Since that time I have seen the light. I have known more about the case. I did not have at that time the testimony before me which I have read this morning. I did not know what the precise conversation was between the Treasurer of State and Mr. Keyes, and the conversation between those two people goes to make up this contract.

I acted at that time upon the evidence that was before me. Could I do anything better than that? Is that not what I am sent here for by my constituents? Would I be true to them and to myself, provided that I had this additional testimony and had

changed my mind, to have continued in the old rut? Not by any means. My duty was to express the light as I saw it and that is precisely what I have done, and I am a long way, Mr. President from being ashamed of it.

The PRESIDENT: The question before the Senate is on the motion of the Senator from York, Senator Deering, that we adopt the minority report, ought to pass.

Mr. SWIFT of Kennebec: Mr. President, before the vote is taken I wish to state as a matter of senatorial courtesy that I am paired with the senator from Hancock, Senator Wood. I shall vote in favor of the minority report, and if he were here he would vote against it.

Mr. CHICK of Kennebec: Mr. President, I also wish to state that on this question I am paired with the senator from Washington, Senator Peacock. I shall vote in favor of the minority report. The senator from Washington, Senator Peacock, if present would vote in favor of the majority report.

A rising vote was had and 8 senators voting in the affirmative and 15 in the negative, the motion of the senator from York, Senator Deering, was lost.

On motion by Gillin of Penobscot the majority report, ought not to pass, was accepted.

The PRESIDENT: The Chair will read at this time a telegram:

"Bath, Maine, March 29, 1917.

"Mrs. Paul Sargent,  
"Augusta, Maine.

"Following message wired today from national headquarters: Pacifists plan great demonstration Washington Monday. Make every effort to secure editorials local papers counter-acting this. Urging unqualified protection of the American rights and universal military training. Have as many individual telegrams as possible sent to your senator and congressmen. Emergency great.

(Signed) "MAUD WETMORE,  
"National Chairman,

"105 West 40th St., New York City.



"Have your women follow these instructions.

"EMMA EAMES DeGOGORZA,  
"State Chairman."

Mr. Ames of Washington: Mr. President: In answer to that telegram I offer the following order:

Ordered, the House concurring, that the legislature of Maine urge the members of Congress to be assembled, to use their best offices to urge unqualified protection of American rights and universal training, and that the President of the Senate be instructed to convey this action by wire to our Senators and Representatives in Washington.

Mr. SWIFT of Kennebec: Mr. President, I do not wish to oppose the passage of this resolve, but wish to go on record as opposed to compulsory universal military service and training as the future policy of this nation.

I am in favor of preparation in every possible way to meet the present crisis, but do not believe the United States should embark upon any policy which will tend in any way to make this nation a military power.

Mr. HOLT of Cumberland: Mr. President, I would simply call the attention of the Senators to the fact that we have already passed a joint resolution here in favor of universal military training, and I may say I am heartily in accord with the resolution presented at the present time.

Mr. DEERING of York: Mr. President, I would like to inquire if there is the word "compulsory" in the present order? I understood Senator Swift to say that he was opposed to compulsory military training.

The PRESIDENT: The order reads "protection of American rights and universal training."

The resolution was passed and sent down for concurrence.

On motion of Mr. Butler of Knox a recess was taken until 2.30 o'clock this afternoon.

#### After Recess

Senate called to order by the President.

The PRESIDENT: The Chair lays before the Senate, report of the committee on salaries and fees, ought not to pass, on An Act to amend Section 38 of Chapter 117 of the Revised Statutes of 1916 regarding the compensation of the judge of probate for Somerset county.

(Tabled on motion by Mr. Walker of Somerset.)

The PRESIDENT: The Chair lays before the Senate majority and minority reports of the committee on salaries and fees, on An Act to fix the salary of the judge of probate in the county of Androscoggin.

On motion by Mr. Marshall of Cumberland, (in the absence of Senator Grant) tabled.

The PRESIDENT: The Chair lays before the Senate majority and minority reports of the committee on salaries and fees on An Act to amend Section 43 of Chapter 117 of the Revised Statutes relating to the salary of the register of deeds of Kennebec county.

On motion by Mr. Chick of Kennebec, (in the absence of Senator Grant) tabled.

The PRESIDENT: That finishes the matters specially assigned for today.

Mr. BUTLER of Knox: Mr. President, S. D. 243, resolve relating to the equestrian statue of Major General Oliver O. Howard, and a standing statue of Brevet Major General Joshua L. Chamberlain at Gettysburg, was tabled by the senator from Cumberland, Senator Holt, March 28, and the pending question is reference to the next Legislature in concurrence.

I will say that the senator is absent, Senator Holt, and we had a conference this morning on the matter and it is entirely to his satisfaction that I make these motions in regard to these two memorial matters.

In this one where we insisted on our former action and asked for a committee of conference, with a view, Mr. President, that in these times of stress and possible peril to the nation, when a great wave of patriotism is sweeping over our country, a wave which will

not recede until American life and property is safe on any land or on any sea, I believe the members of this body and the members of the other body, when they think of it calmly, want to give more consideration to matters of this kind than they would to the matter of a bounty on bears, and not simply move to postpone without debate, without any expression of approval, and I believe the majority of the members of this Legislature are in hearty accord and recognition of the distinguished and valued service rendered to this country by these men in similar times and of greater stress and peril.

With the view that these matters may be considered carefully and some means devised, possibly, by a committee of conference of this body and the body at the other end of the house, I ask that this Senate insist on its former action and appoint a committee of conference, and see if something cannot be worked out that will be satisfactory to all the parties in interest.

I move that the Senate insist and appoint a committee of conference.

The motion was agreed to and the Chair appointed on such committee on the part of the Senate, Messrs. Butler of Knox, Walker and Holt.

Mr. BUTLER of Knox: Mr. President, in the absence of Senator Holt, knowing that it is satisfactory to him, I move to take from the table, 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.

The motion was agreed to.

Mr. WALKER of Somerset: Mr. President, I move to withdraw my motion to concur with the House in the indefinite postponement of this resolve.

The motion was agreed to.

Mr. BUTLER of Knox: Mr. President, I now move that the Senate insist on its former action and appoint a committee of conference.

The motion was agreed to, and the Chair appointed on such committee of conference on the part of the Senate,

Messrs. Butler of Knox, Walker and Holt.

On motion by Mr. Ames of Washington, H. D. 534, resolve appropriating money for the repair of Teachers' Old Home on Old Town Indian Island No. 1, was taken from the table.

On further motion by the same senator, the resolve was finally passed.

Mr. MARSHALL of Cumberland: Mr. President, I move to take from the table, S. D. 341, 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, tabled by Senator Grant at my request, and I know it is agreeable to him to have it taken up at this time.

The motion was agreed to.

The same senator then offered Senate Amendment A.

Mr. MARSHALL: Mr. President, the amendment is simply to make clear certain provisions of the act. I move its adoption.

The motion was agreed to, and the amendment was adopted, and the bill as amended was passed to be engrossed.

Mr. FULTON of Aroostook: Mr. President, I move to take from the table 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.

The motion was agreed to.

Mr. FULTON: I now move that the bill be indefinitely postponed. In explanation I will say that that agreement has been reached with the committee which voted to allow the amount, and also with the trustees of this institution after the conference with the Governor.

The motion was agreed to and the bill was indefinitely postponed.

Mr. FULTON of Aroostook: Mr. President, I move to take from the table S. D. 296, Resolve in favor of the reformatory for women for permanent improvements

of grounds and other purposes for the year 1917.

The motion was agreed to.

Mr. FULTON: I now yield to the senator from Somerset, Senator Walker.

On motion by Mr. Walker the resolve was finally passed.

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On motion by Mr. Higgins of Penobscot: H. D. 596, An Act to amend Section 78 of Chapter 45 of the Revised Statutes,

relating to smelts, was taken from the table.

On further motion by the same senator House Amendment A was adopted in concurrence and the bill as amended was passed to be engrossed, in concurrence.

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On motion by Mr. Googin of Androscoggin,  
Adjourned until 3 o'clock next Monday afternoon.