

MAINE STATE LEGISLATURE

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Legislative Record

OF THE

Eighty-Third Legislature

OF THE

STATE OF MAINE

1927

KENNEBEC JOURNAL COMPANY
AUGUSTA, MAINE

SENATE

Thursday, January 27, 1927.

Senate called to order by the President.

Prayer by the Rev. William R. Wood of Augusta.

Journal of previous session read and approved.

On motion by Mrs. Allen of Penobscot, it was

Ordered, the House concurring, that when the Senate and House adjourn, they adjourn to meet Tuesday, February 1, at four-thirty o'clock in the afternoon.

Sent down for concurrence.

Subsequently the foregoing order came back from the House, read and passed in concurrence.

Papers from the House disposed of in concurrence.

From the House: An Act granting to the Cumberland County Power and Light Company the right to exercise the power of eminent domain for certain purposes. (H. P. 17.)

In the House: Referred to the Committee on Legal Affairs.

In the Senate: Referred in concurrence and 500 copies ordered printed.

From the House: An Act to provide for the retirement of police officers and firemen, in the city of Westbrook, upon half pay. (H. P. 108.)

In the House: Referred to the Committee on Legal Affairs.

In the Senate: Referred in concurrence and 500 copies ordered printed.

From the House: An Act in relation to the breaking of roads in winter. (H. D. 38.)

In the House: Referred to the Committee on Ways and Brides.

In the Senate: Referred in concurrence and 500 additional copies ordered printed.

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

Appropriations and Financial Affairs

By Mr. Roberts of York: Resolve in favor of the York County Chil-

dren's Aid Society of Saco. (S. P. 62.)

Sent down for concurrence.

Claims

By Mr. Smith of Somerset: Resolve in favor of Mrs. Daniel Jewett. (S. P. 63.)

By Mr. Holmes of Androscoggin: Resolve in favor of the Maine State Agricultural Society for the State stipend for 1926. (S. P. 64.)

(500 copies ordered printed.)

Sent down for concurrence.

Inland Fisheries and Game

By Mr. Foster of Kennebec: An Act to regulate fishing in Bowler Pond in Palermo in the County of Waldo. (S. P. 65.)

Sent down for concurrence.

Judiciary

By Mr. Drake of Sagadahoc: An Act to amend Chapter 11 of the Private and Special Laws of 1925, incorporating the Bay Point Village Corporation. (S. P. 66.)

Sent down for concurrence.
(500 copies ordered printed.)

Sea and Shore Fisheries

By Mr. Case of Washington: Petition of F. W. Thurlow and 53 others, of Cutler, in favor of clam law for the town of Cutler. (S. P. 67.)

Sent down for concurrence.

Ways and Bridges

By Mr. Smith of Somerset: Resolve in favor of the town of Canaan to repair a road. (S. P. 68.)

By the same Senator: Resolve in favor of the town of Mercer for the repair and building of a road. (S. P. 69.)

By the same Senator: Resolve in favor of the town of Starks for a bridge. (S. P. 70.)

By the same Senator: Resolve in favor of the town of Cornville to repair a road. (S. P. 71.)

By the same Senator: Resolve in favor of the town of Athens to repair a road. (S. P. 72.)

By the same Senator: Resolve in favor of the town of Skowhegan to repair a road. (S. P. 73.)

By Mr. Granville of York: An Act providing State aid to towns in ploughing out snow from the roads in winter. (S. P. 75.)

(500 copies ordered printed.)

By Mr. Case of Washington: Resolve to aid the town of Perry in building a road. (S. P. 74.)

Sent down for concurrence.

Orders

On motion by Mr. Morrison of Franklin, it was

Ordered, that five hundred copies of each of the following bills be printed:

"An Act to allow amendment of reasons of appeal in probate cases." (H. P. 22.)

"An Act to amend an Act to incorporate the Division of Maine, Sons of Veterans." (H. P. 54.)

"An Act to repeal 'Acts incorporating the Kendall Mills Village Corporation and the Fairfield Village Corporation.'" (H. P. 55.)

"An Act to provide a better government for the town of Bar Harbor." (H. P. 52.)

"An Act to amend Section 87 of Chapter 86 of the Revised Statutes of 1916 relating to time of filing suit against surgeons, physicians and other." (S. P. 17.)

"An Act relating to pilots for Port of Portland." (H. P. 56.)

On motion by Mr. Oakes of Cumberland, it was

Ordered, that five hundred additional copies of Senate Documents 3 and 4 be printed and the Secretary of State be authorized to distribute same.

Orders of the Day

The Secretary read the following letter, written to Mrs. Bert M. Fernald, widow of Senator Bert M. Fernald, in which the President conveyed to the bereaved family the sympathy of the Senate.

Augusta, Maine

January twenty-seventh

Nineteen Hundred Twenty-seven

My dear Mrs. Fernald:

The Senate of the Eighty-third Legislature of the State of Maine wishes to extend to you and your family an expression of deepest sympathy in the loss of your distinguished husband, the late United States Senator Bert M. Fernald. I have been requested to convey to you and your family, in behalf of this body, its message of sympathy in your bereavement.

Many members of the Maine Senate were privileged to enjoy the personal friendship of your late husband, which friendship they valued highly, and the shock of his untimely

passing brings to them very keen regret.

Very sincerely yours,

FRANK H. HOLLEY,

President of the Senate.

Mrs. Bert M. Fernald,
West Poland, Maine.

Mr. HOLMES of Androscoggin: Mr. President, as a Senator from Androscoggin and as a member of the opposite party and a very old and dear friend of Senator Fernald, I move that the letter which has just been read be spread upon the records.

The motion prevailed.

On motion by the Senator from York, Senator Granville, it was voted to take from the table an act tabled by that gentleman on January 19th pending reference to a committee and entitled "An Act to Amend the Charters of All Corporations Making, Generating, Selling, Distributing and Supplying Electricity," being Senate Document No. 6.

Mr. GRANVILLE of York: Mr. President, I now move you that this be referred to the committees on public utilities and inland waters jointly and will say in support of that motion that several other bills dealing with this same subject have been introduced and as their subject matter has to do with public utility and storage problems it seems to me that the proper reference would be that which I suggest. It is true that they have many legal phases, but so has any subject which comes before us. A layman committee has free access to legal advice and in any instance these matters have to be referred back from that committee to a layman legislature and finally have to pass the censorship of a layman electorate.

Mr. CARTER of Androscoggin: Mr. President, to me, in the organization of a legislature, the purpose of the appointment of the joint standing committees of a legislature is that certain matters offered for the consideration of the Legislature during its session may be referred to certain committees, that those committees may after due notice set a time at which all parties may be heard relative to a bill and its subject matter, for the reason that it is impossible in joint convention of legislature to hold such hearings, take out evidence, call people before it, that the Legislature may

get before it the facts, be they practical, physical facts or be they legal facts.

Now, the Legislature in its wisdom,—I trust its wisdom—has created many different committees. Their purposes and their jurisdiction are not stated in precise language anywhere that I know of but amongst other committees that have been created and, I think, in existence since the foundation and organization of this State, has been a committee on judiciary to which committee have been referred those bills involving questions of law, and the law must be respected even though a Legislature might be unfortunate in the number of the profession which are members of the Legislature, for our government could not exist a minute without law. It seems to me that the prime requisite of every bit of legislation introduced into this Legislature or any other is that it should be acted upon in accordance with the law as the law is laid down in its respective places in the state and nation. If that is true—the preamble which I have gone over—the purpose of these committees and reference of bills to these committees is greater than a personal interest in the subject introduced, is greater than a committee fight in the Legislature, is greater than jealousy between joint standing committees. We, sitting here in the halls of the Legislature of the State of Maine, elected to give our best service to the State, have a bigger thought to consider than the jealousies of the personal members of different committees.

Now, this Senate has the privilege, the constitutional right and the power, to refer any bill submitted to it to any committee it sees fit and if after I explain this bill a little and what is involved, this body should wish to send this bill to a committee on commerce, or mines and mining, or the feeble minded, it has the power so to do and it is the privilege of the Senate to exercise that power. But if these different committees, appointed by the Chair and elected by this Senate, are to serve this Senate and this Legislature with any degree of efficiency, it seems to me that to the different committees should be referred the matters which those committees were appointed to consider. The Judiciary Committee I happen to be a member of, and I am proud to be a member of the

Judiciary Committee of the 83rd Legislature, the committee which considers bills relating to the laws of the State of Maine. If that committee is to function, matters pertaining to law or involving as a primary requisite decisions on legal questions, or at least an examination of legal questions and recommendations to the Senate and House—mostly of laymen—should be referred to that committee. The Public Utilities Committee is a most important committee, a committee which should pass on the physical side of laws relative to the public utilities of the State of Maine. It is composed of laymen entirely. The committee on interior waters has to do with, and should have consideration of, all matters which affect the thousands of lakes and the great rivers and streams in our state. It is also a committee of laymen. To this joint committee on interior waters and public utilities—composed of twenty laymen—is referred a bill that has no question in it other than questions of law. If this reference as carried out in the House meets with the approval of this Senate it is the privilege of the Senate to concur. It is this Senate's privilege to refer this bill to any committee it sees fit.

Now, in Senate Document No. 6 there are five questions which at once present themselves, even to the laymen, upon a casual reading of the bill. The first question is the construction of the Federal Constitution, particularly relative to that clause of it which says that the sole jurisdiction of commerce between a state and nation shall be in Congress. That is a document that the greatest minds in this country, since it was signed and this country was started, have been given to and men have become great or small constitutional lawyers. That first question, the construction of the United States Federal Constitution, is referred by the House in its wisdom to a committee of twenty laymen. Undoubtedly those twenty laymen can construe the Federal Constitution as well as the Judiciary Committee. The House says so. The Senate is at perfect liberty to say so.

The next question which arises in relation to this bill now under discussion and its reference is the construction of the Constitution of the State of Maine, particularly relative to Section 14 of Part 3 of Title 4. The

same argument applies and the same reasoning. Can your legal committee assist laymen of the 83rd Legislature more with reference to the construction of the Constitution of Maine than twenty laymen? That is the question before you gentlemen.

The next proposition that arises in the consideration of this bill by any committee is Section 2 of Chapter 51 of the Revised Statutes of Maine. Undoubtedly the twenty laymen on these two committees are well able to read the law and apply it. Yet this state in its wisdom says that before a man can practice law he must give three years of his life to the study of it and must pass an examination. But undoubtedly the House was right—undoubtedly—in its reference of these three legal questions that we have so far, to twenty laymen instead of the lawyers of the 83rd Legislature, or part of them.

The next question which is involved, and which your committee will have to hear and decide upon, in this Senate Document No. 6 are the cases—the unwritten law of the land—the cases of the United States Supreme Court at Washington, the court of last resort in this country. There is a case, an opinion, that has just been handed down—January 3, 1927—that is the last vital step from any court affecting the subject matter and legal matters brought up in this bill. It was in a way not revolutionary but it is the first time the law has been stated relative to hydro-electricity and its transmission between states. Now, undoubtedly, that case can be read by twenty laymen, the law picked out from that case by twenty laymen and applied to the problem before us here in the 83rd Legislature so that their report will be of more help to this 83rd Legislature than the report of a legal committee.

The next question that we find in this bill is the consideration of the unwritten law and cases of the State of Maine, the court of last resort of Maine, the Supreme Judicial Court of Maine, yet this court says that before a man is even capable of reading these cases and applying the law and practicing before this very court he must spend three years of his time in preparation and pass an examination. But the House of the 83rd Legislature says that twenty laymen are better able to read the opinions of

the justices of the Supreme Judicial Court of Maine and apply that law than any legal committee of the 83rd Legislature.

Now, I say to you men—I ask you to do nothing—but I say to you Senators of the 83rd Legislature that if, considering the efficiency of this body, forgetting jealousies of a personal nature, if this Senate believes that five legal propositions as contained in Senate Document No. 6 can be more helpfully discussed and the law found and a report made by twenty laymen, by all means support the motion of the Senator from York, Senator Granville. If the Senate believes that the lawyers of the 83rd Legislature—of the Judiciary Committee—can pass more efficiently and helpfully upon these five legal questions, then I believe the Senators will vote against the motion of the Senator from York, Senator Granville, and permit this bill to go along, and sustain its reference by the committee on reference of bills.

The PRESIDENT: The question is on the motion of the Senator from York, Senator Granville, that Senate Document 6 be referred to a joint committee composed of the committee on public utilities and the committee on interior waters. As many as favor the motion of the Senator from York, Senator Granville, will say "Aye". Those opposed "No".

A viva voce vote being had, the Chair was in doubt, and a rising vote was taken. Sixteen having voted in the affirmative and fourteen in the negative, the motion of the Senator from York, Senator Granville, prevailed and the bill was referred to the committee on public utilities and the committee on interior waters jointly.

On motion by the Senator from York, Senator Granville it was voted to take from the table an act tabled by that gentleman on January 19th pending reference to a committee and entitled "An Act to Amend the Charters of Maine Corporations Incorporated for Transmission of Electricity and to Limit the Rights of Foreign Corporations Authorized to do Business in Maine for Similar Purposes" being Senate Document No. 7.

Mr. GRANVILLE of York: Mr. President, I move that this bill be referred to the committees on public utilities and inland waters jointly.

Mr. MAHER of Kennebec: Mr President and members of the Senate speaking to that motion and promising to be extremely brief and agreeing in all that the Senator from Androscoggin, Senator Carter, has said I desire to supplement his remark with a few practical suggestions that occur to me. Having been a member of this body two years ago and not being entirely oblivious to happenings with reference to this and kindred measures, and knowing that whatever we do in this Legislature will of course be of interest to our constituencies, and knowing that we are all interested in it and affected by the import of particular conditions which may be existing, I recall that two years ago the Senate did not select the distinguished Senator from Androscoggin, through the then president, to serve upon the judiciary committee. To me that was a matter of personal regret and I believe it was a loss to the state, recognizing his distinguished service and his well known ability. But he was put upon the committee on public utilities, if my memory serves me aright. My memory is not so short as to not recall that upon this and kindred measures at that time there was a very different tone taken in this and our coordinate branch with reference to matters similar. Then, the precedent was followed—having been established a long time prior—of not referring these kindred matters to the public utilities committee because they involve very serious questions of law. I cannot believe, of course, that there was any immediate connection in the legislative mind with the fact that the Senator from Androscoggin then happened to be serving upon the public utilities committee. However, he now serves upon the judiciary committee, and, of course, the Legislature, the same as an individual, may change its mind.

Members of the Senate, I do not expect to change your vote but for the purpose of the record I wish to comment upon certain phases of this matter in connection with possible legislation. I believe in operating on this and analogous matters in such a way that we can say to our constituents that we are meeting all propositions as they arise, as square shooters. This state is not unaware of the very deep interest which the Senator from Androscoggin has in

questions of this type and the state at large is not unaware that he has given a large portion of his time to an exhaustive study of the economic and legal problems herein contained, and I here and now simply desire to add my feeble suggestion that this is not the opportune time to depart from precedent in these matters lest the idea should get broadcast in some particular locality that because of the mere fact that the judiciary committee this year happens to have the senior senator from Androscoggin and the public utilities committee has not, that therefore the legislative mind will take a change.

I hope this Senate will be consistent, not with your vote of a few minutes ago. I care nothing about where these measures go. When the measures come up before this body I expect to differ most radically with the Senator from Androscoggin but if I can not differ with him fairly and meet his arguments fairly and give him the opportunity of full acquaintance with things which he is peculiarly fitted to pass upon then I will not say anything at all on the subject.

The PRESIDENT: The question is on the motion of the Senator from York, Senator Granville, that Senate Document No. 7 be referred to the joint committee composed of the committees on public utilities and interior waters.

Mr. MAHER: Mr. President, when the vote is taken I ask that it be taken by yeas and nays.

The PRESIDENT: The Senator from Kennebec, Senator Maher, has asked for a yeas and nays vote which requires one-fifth of the Senate to so order. As many as are in favor of taking the vote on this matter by yeas and nays will rise and stand in your places until counted.

A sufficient number having arisen, a yeas and nays vote was ordered.

The PRESIDENT: A yeas and nays vote has been ordered. As many as favor the reference of this bill, Senate Document No. 7, to the joint committee on public utilities and interior waters, upon the motion of the Senator from York, Senator Granville, will answer "Yes" when their names are called. Those who are opposed will answer "No." The Secretary will call the roll.

The Secretary called the roll. Those voting "Yes" were Senators

Allen, Buzzell, Case, Crafts, Douglass, Drake, Dunbar, Granville, Lord, Miner, Mitchell, Nickerson, Roberts, Smith, Slocum, Woods—16. Those voting "No" were Senators Bond, Bragdon, Carter, Dwinall, Foster, Harriman, Holmes, Maher, Morrison, Oakes, Perkins, Pinkham, Spear, Speirs—14.

Sixteen Senators having voted in the affirmative and fourteen in the negative, the motion of the Senator from York, Senator Granville, prevailed and the bill was referred to the committees on public utilities and interior waters jointly.

On motion by Senator Carter of Androscoggin, it was voted to take from the table an act tabled by that gentleman on January 25th pending reference to a committee and entitled "An Act regulating the exportation of hydro-electric power from Maine," being Senate Paper 28.

Mr. CARTER of Androscoggin: Mr. President, I would like to ask the document's parliamentary standing; whether it is now upon reference?

The PRESIDENT: It is now upon reference.

Mr. CARTER: And may I ask for information—the reference suggested by the reference committee?

The PRESIDENT: You may. The committee on reference of bills suggests that this bill be referred to the committee on judiciary.

Mr. CARTER: I now move you, Mr. President, that this bill be referred to the committee on judiciary.

Mr. GRANVILLE of York: Mr. President and fellow Senators, this bill has to do with the same subject as the two bills which have recently been referred and I think any remarks that the Senator from Androscoggin may have made with reference to the two previous bills have, if anything, less force with this than with the others. This is an act regulating the exportation of hydro-electric power from Maine and I can but repeat myself in saying that I think it is considered by this Legislature and the people of the state of Maine that the main question involved in this is the policy of the state with reference to such matters. I hope that the motion of the Senator from Androscoggin will not prevail.

Mr. MAHER of Kennebec: Mr. President, may I ask through the Chair, of the Senator from Androscoggin, if this is Senate Paper 28 and bearing my name on introduction?

Mr. CARTER: I will answer through the Chair that I think it is but it has not been printed and is not in my files. However, I so understand it.

The PRESIDENT: The Chair will clear the situation by stating that this is the bill which bears the name of the Senator from Kennebec, Senator Maher, and one thousand copies have been ordered printed.

Mr. MAHER: May I ask through the Chair, of the Chairman of the Public Utilities Committee, who seems to be so thoroughly conversant with what is intended and what is encompassed by this measure, what his interpretation is of Section 1 of this bill with reference to the recent Supreme Court decision as to the power of a state agency to fix rates?

The PRESIDENT: The Senator from York, Senator Granville, may reply to the Senator from Kennebec, Senator Maher, through the Chair if he desires to do so.

Mr. GRANVILLE: Mr. President and Senators, I don't know as I just understand the scope of the question of the Senator from Kennebec. I was basing my opinion of this from the title.

Mr. MAHER: The answer of the Chairman of the Committee on Public Utilities in regard to the primary legal question involved in this bill is as entirely satisfying to its author as it is illuminating to 'he Senate.

Mr. OAKES of Cumberland: Mr. President, I, too, have the honor to be on the judiciary committee from the Senate with the two gentlemen who have spoken although I have not the knowledge of the water power question that they have. However, I feel that I should state that it seems to me logical and consistent, according to my understanding of the duties of the judiciary committee, that that committee should act upon this type of question and I feel that I would be remiss if I did not so state.

The PRESIDENT: The question is on the motion of the Senator from Androscoggin, Senator Carter, that Senate Paper 28 be referred to the Committee on Judiciary. As many as favor the motion of the Senator

from Androscoggin, Senator Carter, will rise and stand in their places until counted. As many as are opposed will then rise and stand until counted.

The vote was taken and fourteen having voted in the affirmative and sixteen in the negative the motion of the Senator from Androscoggin, Senator Carter, that the bill be referred to the Committee on Judiciary, failed of passage.

Mr. CARTER: Mr. President, I now move that we take from the table—

The PRESIDENT: The Chair will state that Senate Paper 28 has not yet been referred.

Mr. CARTER: I beg your pardon.

Mr. MAHER: I move, Mr. President, that Senate Paper No. 28 be laid upon the table.

The motion prevailed.

On motion by Senator Carter of Androscoggin it was voted to take from the table an act tabled by that gentleman on January 25th pending reference to a committee and entitled "An Act to Incorporate the Maine Water Storage and Power Transmission Company, being House Document No. 10.

Mr. CARTER: I now move you, Mr. President, that House Document No. 10 be retabled.

The PRESIDENT: Will the Senator from Androscoggin, Senator Carter, assign a date.

Mr. CARTER: At the request of the Chair I will assign the date one week from today, February 3rd.

The PRESIDENT: The Senator from Androscoggin, Senator Carter, moves that House Document No. 10 now be retabled and assigned to the date of one week from today. Is this the pleasure of the Senate?

The motion prevailed.

Mr. MAHER: Mr. President, rising to a point of parliamentary inquiry, is there now any rule established that matters must come up automatically the next day?

The PRESIDENT: There is not.

Mr. MAHER: And so Senate Paper 28 stands unassigned?

The PRESIDENT: The Chair will state that there was intervening business between the time that Senate Paper 28 was taken from the table and the time that it was asked to be retabled. It is now unassigned and does not come off unless a motion is made to take it from the table.

On motion by Senator Carter of Androscoggin it was voted to take from the table, an act tabled by that gentleman on January 26th pending reference to a committee and entitled "An Act Relating to the Charter of the Norway Water Company," being House Paper 99.

Mr. CARTER: Mr. President, this is an act relating to the Norway Water Company?

The PRESIDENT: It is.

Mr. CARTER: I will say, Mr. President, that at the time the bill was tabled by me yesterday I understood the title to be read the Norway Power Company instead of Norway Water Company and I will therefore now move that House Paper 99, an act relating to the Norway Water Company, be referred in accordance with the suggestion of the committee of reference of bills to the committee on public utilities.

The motion prevailed.

On motion by Mr. Dunbar of Hancock,

Adjourned until Tuesday afternoon, February 1st., at four-thirty o'clock.