

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

Wednesday, March 9, 1927.

Senate called to order by the President.

Prayer by the Rev. W. P. Bradford of Hallowell.

Journal of previous session read and approved.

Papers from the House disposed of in concurrence.

From the House: An Act to provide for the marking of the Maine and New Hampshire Boundary Line. (S. D. 109)

(In Senate, February 23, passed to be engrossed.)

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

In the Senate:

Mr. CARTER of Androscoggin: I would like to ask to have the title of that bill read again, Mr. President.

(The Secretary read the title)

Mr. SLOCUM of Cumberland: Mr. President, I would like to hear the original Section Five read.

(The Secretary read Section Five)

Thereupon, on motion by Mr. Granville of York, the Senate reconsidered its former action where-by this bill was passed to be engrossed and on further motion by the same Senator House Amendment A was adopted in concurrence and the bill as so amended was passed to be engrossed.

House Bills in First Reading

An Act relating to investments by Savings Banks in obligations of Steam Railroads. (H. D. 43)

An Act authorizing and empowering the Register of Deeds for the county of Cumberland to make a true copy of contents of Vol. 151 of the Cumberland County Records of Deeds and to certify that it is a true copy. (H. D. 312)

An Act relating to purposes for which a city or town may raise money. (S. D. 59)

Resolve for the purchase of one-hundred and fifty copies of "Two American Pioneers" (H. D. 269)

(On motion by Mr. Foster of Kennebec, tabled pending first reading.)

Resolve providing for the purchase of one hundred copies of "Province and Court Records of Maine, 1638-1668". (H. D. 306)

(On motion by Mr. Foster of Kennebec, tabled pending first reading.)

Resolve in favor of the Pownal State School for additions and improvements. (H. D. 305)

Resolve in favor of the Pownal State School for maintenance. (H. D. 304)

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

Agriculture

By Mr. Crafts of Piscataquis, An Act Relative to the Registration and Licensing of Dogs. (S. P. 438)

(500 copies ordered printed)

Sent down for concurrence.

Judiciary

By Mr. Spear of Cumberland, Resolve, Proposing an Amendment to Section Eight of Article Nine, of the Constitution of the State of Maine, Providing that no Taxes on Intangibles be Levied. (S. P. 439)

(500 copies ordered printed)

By Mr. Bragdon of Aroostook, remonstrance of Lillian Puffer and 17 others (S. P. 440); remonstrance of W. A. Leighton and 26 others (S. P. 441) against the repeal in any manner of our present Direct Primary Law;

By Mr. Carter of Androscoggin, remonstrance of Florence C. Day of South Durham, and 57 others, (S. P. 442) against same;

By Mr. Mitchell of Aroostook, remonstrance of Wm. B. Chase and 26 others (S. P. 443); remonstrance of Leon S. Howe and 30 others (S. P. 444) against same;

By Mr. Perkins of Penobscot, remonstrance of Harold C. Metzner and 22 others of Orono (S. P. 445) against same;

By Mr. Smith of Somerset, remonstrance of Emma B. Folsom and 27 others of Skowhegan (S. P. 446) against same.

Sent down for concurrence.

Legal Affairs

By Mr. Spear of Cumberland, An Act to provide for Licenses for Real Estate Brokers and Real Estate Salesman, and to fix Penalties for Violation of Provisions of this Act. (S. P. 447)

(500 copies ordered printed)

By Mr. Slocum of Cumberland, An Act Relating to Aircraft. (S. P. 448)

(500 copies ordered printed)

By the same Senator, An Act to amend the Law regarding Advertising Signs in Public Highways. (S. P. 449)

(500 copies ordered printed)

Sent down for concurrence.

Mercantile Affairs and Insurance

Mr. Woods of Penobscot presented bill, an act to amend Section 8 of Chapter 53, Revised Statutes of 1916, relating to reference of fire losses. (S. P. 450)

Which was referred to the committee on Mercantile Affairs.

(500 copies ordered printed)

Sent down for concurrence.

Reports of Committees

Mr. Holmes from the committee on Library, on Resolve for the purchase of 250 copies of "The Mother Church" (S. P. 304) reported that the same be referred to the next Legislature.

Mr. Miner from the committee on State Sanatoriums, on Resolve in favor of the Northern Maine Sanatorium for the construction of a vegetable cellar (S. P. 264), reported that the same ought not to pass.

The reports were severally read and accepted.

Sent down for concurrence.

Mr. Dunbar from the committee on Claims, on Resolve in favor of Myron H. Crocker compensating him for the destruction by deer of apple trees (S. P. 8), reported that the same ought to pass.

The same senator from the same committee, on Resolve in favor of Wallace W. Yates of Grand Lake Stream, Washington county, Maine (S. P. 9), reported that the same ought to pass.

Mr. Miner from the committee on State Sanatoriums, on Resolve in favor of Western Maine Sanatorium for maintenance, personal services, repairs and equipment (S. P. 259), reported that the same ought to pass.

The same senator from the same committee, on Resolve in favor of the Western Maine Sanatorium for the

construction of annex to reception room (S. P. 260), reported that the same ought to pass.

The same senator from the same committee on Resolve in favor of the Western Maine Sanatorium for a water tank (S. P. 261), reported that the same ought to pass.

The same senator from the same committee, on Resolve in favor of the Northern Maine Sanatorium for maintenance, personal services, repairs and equipment (S. P. 262), reported that the same ought to pass.

The same senator from the same committee, on Resolve in favor of the Northern Maine Sanatorium for the construction and equipment of a men's cottage (S. P. 263), reported that the same ought to pass.

The same senator from the same committee, on Resolve in favor of the Northern Maine Sanatorium for the construction of a sprinkler system and standpipe (S. P. 265), reported that the same ought to pass.

The same senator from the same committee, on Resolve in favor of the Central Maine Sanatorium for the construction of a laundry and quarters for male employees (S. P. 266), reported that the same ought to pass.

The same senator from the same committee, on Resolve in favor of the Central Maine Sanatorium for maintenance, personal services, repairs and equipment (S. P. 267), reported that the same ought to pass.

The same senator from the same committee, on Resolve in favor of the Central Maine Sanatorium for the construction and equipment of a nurses' home (S. P. 268), reported that the same ought to pass.

The reports were severally read and accepted and the resolves laid upon the table for printing under the joint rules.

Passed to be Engrossed

An Act relating to the issue of prior preference stock by Boston and Maine Railroad in exchange for certain of its bonds. (S. D. 55)

An Act to assent to the purpose and provision of an Act of the Congress of the United States entitled "An Act to authorize the more complete endowment of agricultural experiment stations and for other purposes." (S. D. 183)

Resolve to reimburse recess committee for expenses. (S. D. 175)

Resolve for the purchase of seventy-five copies of "Matinicus Isle, Its History and Its People." (H. D. 270)

An Act to regulate fishing in the

outlet of Grand Lake, so-called, an unorganized township in the county of Washington. (H. D. 294)

An Act to protect pheasants in the town of Poland in the county of Androscoggin. (H. D. 295)

An Act relating to juvenile institutions. (H. D. 296)

Resolve in favor of Cora M. Perkins, providing for a State pension. (H. D. 297)

Resolve providing for a State pension for Mary J. French of Carmel. (H. D. 298)

Resolve providing for a State pension for Emily Noddin of Kenduskeag. (H. D. 299)

An Act relating to exemption from taxation of the estates of war veterans. (H. D. 300)

Resolve in favor of Louise D. Mayhew of Mount Vernon in lieu of teacher's pension. (H. D. 301)

Orders of the Day

Mr. DRAKE of Sagadahoc: Mr. President, I would like to ask unanimous consent to introduce an act.

The PRESIDENT: Does the Senator care to make any remarks?

Mr. DRAKE: Yes, Mr. President. This is an act authorizing the transfer of real estate used as a ferry landing at Woolwich, Maine. I previously introduced an act authorizing the transfer of the land on the Bath side of the river. Both of these properties were owned by the city of Bath and the town of Woolwich when the ferries were taken over by the State and this bill was delayed in some way so that I didn't receive it until this morning. The first bill has been referred to the Committee on Legal Affairs.

Unanimous consent being given, Mr. Drake of Sagadahoc introduced An Act authorizing the transfer of the real estate used as a ferry landing at Woolwich, Maine from the state of Maine to the town of Woolwich (S. P. 451), and on further motion by the same senator the bill was referred to the Committee on Legal Affairs and five hundred copies ordered printed.

On motion by Mr. Spear of Cumberland the Senator voted to take from the table An Act authorizing the transfer of real estate used as a ferry landing at Bath, from the

state of Maine to the city of Bath (S. P. 295) tabled by that Senator on February 17th pending reference, and on further motion by the same senator the bill was referred to the Committee on Legal Affairs.

Mr. PERKINS of Penobscot: Mr. President, I would like to ask unanimous consent to introduce a resolve out of order and I will say that this is a resolve calling for an appropriation of \$450 for the purchase of 300 copies of the "History of the University of Maine." This history was written by the late M. C. Fernald of the University who was with that institution forty-seven years as a professor and later as President and this bill has been side-tracked in some way so that I just received it this morning.

Unanimous consent being given, Mr. Perkins of Penobscot introduced resolve for the purchase of 300 copies of "History of the Maine State College and University of Maine" (S. P. 452) and on further motion by the same senator the resolve was referred to the Committee on Library.

The PRESIDENT: The chair will state that it seems proper that those matters which are especially assigned for today come off the table first. The Chair recognizes the Senator from Cumberland, Senator Speirs.

Thereupon, on motion by Mr. Speirs of Cumberland the Senate voted to take from the table An Act providing for improvement of conveyance of pupils to common schools (S. P. 391) tabled by that senator on March 3rd pending reference.

Mr. SPEIRS of Cumberland: Mr. President, I yield to Senator Carter of Androscoggin.

Mr. CARTER of Androscoggin: Mr. President, I would like to ask what the pending question is or whether there is a pending motion.

The PRESIDENT: The Chair will state that the pending question is on the motion of the Senator who now has the floor, Senator Carter, that the bill be referred to the Committee on Legal Affairs.

Mr. CARTER: I now wish to withdraw my motion, Mr. President, and will make the following statement:

This bill, as I understand it, as I read the preamble of it, is a bill which creates the judicial procedure by which appeal may be taken from the ruling of a body politic to the Supreme Court. It struck me that this was a matter that had to do particularly with the law and the judiciary and that a legal committee might be the proper reference. I now withdraw the motion made by me which was tabled by the Senator from Cumberland, Senator Speirs.

The PRESIDENT: The Senator from Androscoggin, Senator Carter, withdraws his motion that this bill be referred to the Committee on Legal Affairs.

Thereupon, on motion by Mr. Speirs of Cumberland the bill was referred to the Committee on Education.

The President laid before the Senate Resolve in favor of providing suitable headquarters for Stephen W. Manchester Post, American Legion (S. P. 330) tabled by Mr. Speirs of Cumberland on March 2nd pending reference and specially assigned for today.

Mr. SPEIRS of Cumberland: Mr. President, this matter has been taken care of in another bill and I now ask leave to withdraw the bill.

Thereupon, consent was given to the senator to withdraw the bill.

The PRESIDENT: The Chair lays before the Senate, House Document 58, An Act to obtain the benefits of credit allowed under federal estate tax, the pending question being passage to be enacted. The Chair recognizes the Senator from Androscoggin, Senator Holmes.

Mr. HOLMES of Androscoggin: The Chair has just stated that the question is passage to be enacted. It has never been clear in my mind, as a matter of parliamentary law, if one may then address himself to that question without making a motion or stating the fact that he intends to make a motion at the end of his remarks. I should like an opinion from the Chair.

The PRESIDENT: The Chair is of the opinion that the senator from Androscoggin, Senator Holmes, is perfectly right and the senator is accorded the privilege of making any motion which he desires.

Mr. HOLMES: I am still in doubt whether it is necessary to make any motion or am I in order to speak to

the question of passage to be enacted?

The PRESIDENT: The question before the Senate when a bill comes into this branch is automatically "passage to be enacted" unless some other motion is made.

Mr. HOLMES: The President has made it very clear and I thank you.

So, Mr. President and members of the Senate, I wish you would refer to House Document 58 because it is not long and in the course of discussing it I shall want to refer to different sections and words in different sections, and in the course of discussing I may find myself under the necessity, in my own mind, of referring to the next measure which is tabled and due to come up following. House Report "A" "ought to pass"; House Report "B" "ought not to pass," on concurrent resolution memorializing Congress to abolish federal estate (inheritance) tax. (H. D. 11) Not that I would be intending to speak on that question, but the two matters in my mind, and I think you will agree, are intertwined and as I look at them, one report or the other will stand or fall, or, I will say, ought to stand or fall with House Document 58, to which I am now addressing myself. Mr. President, I will say that I am opposed to the passage to be enacted of House Document 58, An Act to obtain the benefit of credit allowed under federal estate tax, and I propose with your patience and indulgence to tell you why, in the hope that you may, or some of you may agree with me, but at any rate to place myself on record in a position which I believe is sound in constitutional law and sound in public policy.

This bill, entitled An Act to obtain the benefit of credit allowed under federal estate tax, has rolled along smoothly from the time it was introduced, through its course in the committee on taxation and its public hearing therein, and through the House and passed to be enacted in the House and now along to the Senate on its final passage to be enacted.

It is almost remarkable, it is to me at least, that such an important measure, establishing, so far as my slight knowledge of the history of the State of Maine goes, an entirely unsound policy, both a new policy of taxation and a new public policy, as I hope to show. It is remarkable to me that this measure should have gone along without opposition in the committee and without opposition in the House or Senate until now.

Of course it is fair to say that it is an administration measure. It is, I presume, the kind of legislation called for or recommended by the chief executive in his inaugural message at the opening of this legislature, but for myself, I do not bask in the sunlight that beams about the executive throne and administration measures are of no concern to me, unless in my opinion, as one of the members elected to this high office, it coincides with public welfare and public policy.

This measure is proposed to be passed under the emergency clause of the constitution. That emergency clause is familiar to you all, and let me say now, that in referring to other laws such as the Maine inheritance or succession tax law, and the trend of decisions in our courts and Massachusetts, I am not at all intending to didactically address this Senate or to endeavor to teach the members of the Senate in law, and far from that, in my mind, with such learned lawyers as we have present, but to remind you, these, the lawyers who are members of this legislature, of certain laws and certain decisions and so with the prayer for indulgence, I refer you to Section 16 of Article 31 of the Constitution, entitled "The Direct Initiative of Legislation and Optional Referendum",—"No act or joint resolution of the Legislature except such orders or resolutions as pertain solely to facilitating the performance of the business of the Legislature, or either branch, or of any committee or officer thereof, or appropriate money therefor or for the payment of salaries fixed by law, shall take effect until ninety days after the recess of the Legislature passing it, unless in case of emergency, (with the facts constituting the emergency shall be expressed in the preamble of the act), the Legislature shall, by a vote of two-thirds of all the members elected to each house, otherwise direct." That is the only important part, with certain other provisions regarding legislation.

This bill contains an emergency preamble which undertakes to set out what the emergency is and I shall maintain and ask you senators to agree with me that, first, an emergency is not set out so that one can understand from reading the English words, what the emergency, is and second, that no emergency exists.

An emergency bill shall include only such measures as are immediately necessary for the preservation

of the public peace, health or safety and shall not include certain things such as an infringement of the right of home rule for municipalities; and this emergency preamble says, "Whereas, under the provisions of the Federal Revenue Act relating to the assessment and collection of the estate tax the return must be filed within one year after the death of the decedent, and whereas, the deferred operation of this act would be inconsistent with its profitable, proper and efficient administration and may cause great loss of revenue justly due the state, and whereas, in the judgment of the legislature these facts create an emergency within the meaning of the constitution and require the following legislation as immediately necessary for the preservation of the public peace, health and safety, Now therefore—we go on to pass a law.

Now my learned colleagues who are members of the Bar and practicing lawyers and good constitutional lawyers, will say perhaps, that the question of whether or not an emergency exists is a political question. I use that question now in the broadest sense, as a question for the legislature to decide and not for the judiciary. That is a fair statement of the trend of the decisions in states where there is an initiative and referendum clause in the constitution, the same as Maine but the courts of the other states have decreed in applying the doctrine but the court in our state has not yet, so far as I know, and I will be pleased to be corrected if I am wrong, decided that it will not go so far as to consider whether or not an emergency exists as set out.

It has taken two steps, the court of Maine. After the adoption and ratification of the initiative and referendum amendment, the first case that I know of that went to the Law Court of the state was a case from the city of Lewiston where the legislature of 1917 had imposed, as I believe, a police commission appointed by the governor, upon the city of Lewiston without consulting the people and the legislature took action whereby it became impossible even for the people of Lewiston to appeal to the people of the state by getting a petition of 10,000 signers to hold up, that is to say, the legislature of 1917

passed that police commission bill under the emergency clause of the constitution and the city of Lewiston by its mayor, appealed to the court and the legislature adjourned in April and the bill was signed in the month of March some time, and if the emergency preamble was correct, it became a law at once and there was a hearing before one justice of the supreme court in bill of equity and is to be found in 116 Maine, entitled Lemaire against Crockett (Lemaire was mayor at the time). The report begins on page 263 and there in an opinion handed down July 3, 1917, the court held that the legislature had violated the constitution, that the legislature had undertaken to pass, under the emergency clause, an act involving the right of home rule, but the court held that as to the rest of the act, it was constitutional. The court had taken one step. Now later it took another step.

In the year 1919, reported in the 118 Maine Report is the case of Payne vs Graham, and that case involved the emergency clause. Now in the year 1919 while we were under the shadow of the Great War and still in a war mood, the legislature passed a law in regard to public health and put the emergency clause on and in the preamble it stated that this was the emergency. Now, I want you please, to listen to it and compare it in your mind with the emergency preamble stated in House Document 58 which we have before us,

The preamble, the courts say of Section 112 of the act in regard to public health which was then before the court is as follows, "Whereas, owing to the necessity of preserving the public health in general, the enactment of more stringent laws prohibiting prostitution, lewdness and assignation and providing punishment therefor, is an emergency measure immediately necessary for the preservation of the public peace, health or safety."

That sounds to me pretty strong, something like a real emergency. Now what do we say in House Document 58 is the emergency? "Whereas, the deferred operation of this act would be inconsistent with its profitable, proper and efficient administration, and may cause great loss of revenue justly due the state," Would the legislature consider this an emergency?

Now the court said that in the

public health law which is under discussion, the case of Payne versus Graham, the legislature had not set out an emergency. The court says that the preamble contained "an assumption that there is a necessity of preserving the public health in general and a conclusion that the enactment of more stringent laws is an emergency measure." It contains no statement of facts as required by the Constitution and no facts that are even suggestive of an emergency. In argument, indeed, facts are presented which give the act an emergent character. In argument it is said that a great World War had been raging; that while an armistice had been declared large bodies of troops were still assembled; that for preventing the spread among these troops of sexual disorders, destructive of military efficiency, existing laws were inadequate and that the Federal authorities had requested the cooperation of the State in meeting these conditions. But these facts are not, as the Constitution requires, expressed in the preamble.

The Court had taken the second step. Will it take the third step? Will it, with this measure, House Document 58, before it or with some other which may come up, similar or involving the same question, will it say that the plain meaning of plain English words does not show an emergency existed and therefore no emergency was set out by the legislature.

I do not know but the court expressly held the question back, leaving to itself, in my opinion, the door open to take that step through, if, in the opinion of the court, the welfare of the State demanded.

In the same case from which I have quoted, Payne versus Graham, the courts say "We are mindful of the long established rule that the question of constitutional law should not be passed upon unless strictly necessary to a decision of the cause under consideration. We, therefore, defer expressing a final opinion upon the question concerning which, as appears above, courts are at variance, because, for another reason, not touched upon we hold that Chapter 112 did not take immediate effect as an emergency act."

That is to say, that the court is discussing the question as to whether or not it can go into that question or whether this legislature had an

emergency before it and discussed conflicting decisions and left itself open to take action in the future.

If that were all, Mr. President and Members of the Legislature, I could of course, present before this body a motion in the form of an amendment to strike off the emergency clause, but it seems to me almost as if the drafters of this measure were so full in their mind of emergency, that emergency runs through the whole measure to the exclusion of sound law and sound public policy and that not only should the passage of this bill be denied by this Senate on the ground that the emergency preamble is unconstitutional but also on the ground that the whole measure is of doubtful constitutionality both under the Constitution of Maine and the Constitution of the United States and is of doubtful constitutionality and is also of unsound public policy.

I have said that so far as I know, this is the first time in the history of Maine that a measure such as this has been presented to the people. I say "presented to the people" because you and I do not make the laws today. We start the legal machinery but as the court in Massachusetts and Maine have both said, "the laws are made by the legislature and the people" and when they are enacted they bear the clause, "Be it enacted by the people of the State of Maine."

A new policy is presented to the people of the State of Maine. For the first time in the history of Maine, so far as my reading goes, the State of Maine proposes to surrender to the federal government its sovereign power. Every member of this Senate whether he be trained in the law or not will agree with me when I say that the power of taxation is the very highest function of sovereignty. The doctrine is immemorial. It was laid down in the clearest and most definite language by the great Chief Justice John Marshall. It is the one power of a sovereign government of which that government is most jealous.

The power of taxation under the Constitution of the United States is carefully preserved by decisions of the Supreme Court of the United States. The Supreme Court of the United States time and again has indicated by its decisions invalidating cases of the legislature of the state, that the state must not interfere with the constitutional power of

the federal government to collect its taxes for national purposes. Likewise, the State of Maine, as a sovereignty; it is not, in the fullest sense an independent state, but it is in every sense a sovereign state, and without the power of taxation unimpaired and unlimited except by the Constitution of Maine and the Constitution of the United States, it cannot exist as a sovereign state and it ought never to surrender or limit in the slightest respect its power of taxation to the federal government or any department, any bureau, any commission of revenue.

Now what does it say that we, the people of Maine propose to do when we pass this measure? Well, in the first place, we, the legislature, give it a title, and we say that it is an act to obtain the benefit of credit allowed under federal estate tax, but in Section 4, we say that it is a tax law. Now which is it? It can't be both. Section 4: "It is hereby declared to be the intent and purpose of this act to obtain for this State the benefit of the credit allowed under the provisions of said Title II, section three hundred one, sub-section (b) of the federal revenue act of nineteen hundred twenty-six to the extent that this state may be entitled by the provisions of this act, be imposing additional taxes, and the same shall be liberally construed to effect this purpose."

We, the legislature say on one hand we are inaugurating a new tax law, something of the kind never before known in the state, an estate tax law. On the other hand, we say it is only an act of emergency. We are reaching out to get the benefit of credit allowed under the federal estate tax. To be sure, we have an inheritance tax law in the State of Maine. We are all very familiar with it. It will be found as Chapter 69 of the Revised Statutes, there entitled, "Succession taxes." We have no estate tax. The federal government has an estate but no inheritance tax. There is a vital difference although I do not believe the difference is material in this matter but as before, in order that I may keep my own thoughts clear, let me take a moment only to say that an inheritance tax such as we have and most of the states have, is a tax upon acts of transmission. It is a tax upon those who receive something under the will or under the intestacy laws, but an estate tax,

such as the federal government has, is a tax upon the thing transmitted. It taxes the whole estate, the property, real, personal and mixed, subject to the exemptions in the act of Congress creating the estate tax.

This bill proposes, it says, to take advantage of Title 3 of this act of 1926.

Briefly, let us run over the history of federal estate taxation. The first federal estate tax was passed in the year of 1797 and repealed five years afterwards, in 1802 then no other was passed until the country again entered war, in 1862.

Now, Mr. President, I am not intending to discuss House Report A or House Report B on the concurrent resolution. I am mentioning the history.

The act of 1862 was repealed in 1870 and in 1894 a statute was passed but held unconstitutional by the supreme court of the United States. In 1898, again in the shadow of war, an estate tax was passed and repealed in 1912. In 1916 what is the present act of Congress was passed but in 1918 it was re-enacted to practically its present form and amended in 1926. The only amendment that concerns us is the amendment of 1926 in this past sixty-ninth congress which has just expired in which the amount of the exemption which the state gets is increased from \$50,000 to \$100,000.

I will read section 303. Section 301 to which our house document 53 refers contains the words in regard to the credit. The tax imposed by this section shall be credited with the amount of any estate, inheritance, legacy or succession taxes actually paid to any state or territory or the District of Columbia, in respect of any property included in the gross estate. The credit allowed by this subdivision shall not exceed 80 per centum of the tax imposed by this section, and shall include only such taxes as were actually paid and credit therefor claimed within three years after the filing of the return required by section 304.

Section 304 provides for filing and returning and it says that the tax shall be paid within one year. It doesn't say when the return shall be filed. It leaves that to rules and regulations to be made by the Commissioner of Internal Revenue from time to time.

But our emergency preamble says

part of the reason why an emergency exists is that assessment and collection of the estate tax returns must be filed within one year after the death of the decedent.

The Commissioner of Internal Revenue may change the rules and regulations from time to time.

Section 304 says, "The executor, within two months after the decedent's death, or within a like period after qualifying as such, shall give written notice thereof to the collector. The executor shall also, at such times and in such manner as may be required by regulations made pursuant to law, file with the collector a return under oath in duplicate, setting forth, the value of the gross estate of the decedent at the time of his death, various examinations et cetera."

In subdivision "a" of 305, "The tax imposed by this title shall be due and payable one year after the decedent's death, and shall be paid by the executor to the collector," but subdivision "b" says that "Where the Commissioner finds that the payment on the due date of any part of the amount determined by the executor as the tax would impose undue hardship upon the estate, the Commissioner may extend the time for payment of any such part not to exceed five years from the due date."

That is to say, six years from the death, and we have in the emergency preamble here "within one year," and under that very law there is six years before the tax must be paid after the time of the death and we all know, who make income tax returns and who handle such business under the U. S. tax laws, we all know it is easy, with any reasonable excuse, to get extension of time.

We also all know that the Commissioner of Internal Revenue is issuing new regulations, new regulations, new rules and new blanks from time to time so that even an expert public accountant has hard work to keep up with them and we are undertaking to pass a law which would bring us under, to a greater or less extent—but I cannot say how much because no one can foresee what will happen—will bring to a greater or less extent under the authority of the secretary of the treasury and the commissioner of internal revenue in his rules and orders and regulations and blanks.

Now, how will we figure the tax?

Will the Legislature under the bill just shift the trouble off its shoulders onto the shoulders of the attorney general; but under our old inheritance tax law the Judge of probate was the judge of these questions but this act provides for no court. Oh, it needs no court, that must be the idea,—there is money to get so let's go get it.

Now Mr. President and members of the Senate, this is not the way to pass laws in the State of Maine. Disputes will arise. They will arise constantly under the federal estate tax. Everybody knows that, everybody who reads the papers. They are appealing from the commissioner's rulings to a Board of Appeals and appealing to the courts and the whole subject is one of the most fruitful sources of litigation in the country and we propose to step into that thing blindly and drag in our State and estates of deceased persons in the State, into that great maelstrom of litigation and uncertainty of how much tax an estate should pay and how much exemption it is entitled to.

This is the way the law proposes to get at it. "There shall be assessed by the attorney general in addition to the inheritance tax as now provided by chapter sixty-nine of the revised statutes, an estate tax upon all estates which are subject to taxation under the present federal revenue act of nineteen hundred twenty-six. Said tax is hereby imposed upon the transfer of the estate of every person, who at the time of his death was a resident of this State. The amount of said tax so assessed shall be the amount by which eighty per cent of the estate tax, payable to the United States under the provisions of the said federal revenue act of nineteen hundred twenty-six, shall exceed the aggregate amount of all estate, inheritance, legacy and succession taxes actually paid to the several states of the United States "(not to the State of Maine but to the several states)" in respect to any property owned by such decedent, or subject to such taxes as a part of or in connection with his estate."

Will you tell me please, those who are in favor of this kind of legislation, how, to say nothing about the attorney general or any other functionary or official of the State of

Maine, how is any lawyer or certified public accountant going to figure out how much is actually coming to the State of Maine? It is not merely credit for what is paid under our inheritance tax and under our new tax law, which is not a tax law and which is a tax law but it is a credit for money paid in estate, inheritance, legacy and succession taxes actually paid to the several states of the United States, and they differ from the United States and they differ among themselves and some have reciprocity laws in their inheritance and estate taxes and some do not.

One of the widest and most confusing subjects today in the field of law is this modern law and practice of taxation in the United States of America.

And so I say, not only on the ground of constitutional law, not only on the ground of public policy but also on the ground that this bill is indefinite, vague and uncertain as to just how much tax it expects to levy.

Assuming, now, it is a tax bill, it should not be passed by this Legislature or the time will come when we will be sorry and ashamed that we did.

Section 7 undertakes to save this law, save it if it goes to the court, and it certainly will go there if we ever enact it.

"If any portion of this act is held to be unconstitutional, such decision shall not invalidate the portions unaffected thereby. In the event that any part of the federal revenue act or federal estate tax law, hereinbefore referred to, shall be declared to be in violation of the constitution of the United States" (and only the Supreme Court of the United States can do that) "such declaration shall not be construed to affect the provisions of this act."

Does it mean that after the whole act or law is written, that it is not an act to retain the benefit of credit allowed under the federal estate tax law but that it is a new form of taxation and does it mean that it will continue to exist and that in order for the courts and for executors, and probate courts and then the Supreme Court to find out how much tax under this act the estates shall pay, that you must in years to come refer back to the federal law of 1916, 1921

and 1926 or the rules regulations, books and forms made under it which was on some day in 1928, 1929 or 1930 declared unconstitutional and went out of business? Is that what we propose to do?

And so I have taken more time that I ought to, but the subject, Mr. President, I think you will all agree, is very, very important.

As I said in the beginning, it is one of the strangest things in the world to me that like on timken bearings and on pneumatic tires this bill went through this Legislature until it has reached this point, and this is my excuse for taking up so much time. It should be considered carefully and not passed by you because it is an administrative measure, as we have passed so many times. About this I have no knowledge but am merely expressing an opinion. After we go out of this Legislature we will not be responsible for our acts to the executive but we will be responsible to the people of Maine and we should bear them in mind.

Therefore, I am opposed to this, Mr. President, and I shall vote on the question of "passage to be enacted", "No". First, for the reason that the preamble is so badly unconstitutional that it is, in my opinion, a joke. Second, because the whole act is of doubtful constitutionality both under the Constitution of Maine and the Constitution of the United States. Third, because it is bad public policy. Fourth, because there is a potent insincerity between the title and body of the act. Fifth, because it will only open up another prolific source of disputes and litigation, if it becomes law.

The PRESIDENT: Does the senator from Androscoggin, Mr. Holmes, wish to make a motion to indefinitely postpone? Does the Chair take that inference?

Mr. HOLMES: It was having that in mind, Mr. President, that I asked my parliamentary question in the beginning. If such a motion is necessary, if the Chair so rules—

The PRESIDENT: The Chair will state that the motion is not necessary but the senator may make it and if made it takes precedence over the pending question of passage to be enacted.

Mr. HOLMES: If not necessary, Mr. President, I prefer simply to present my views to the Senate and then to vote "no" on the pending question.

Mr. CARTER of Androscoggin: Mr. President, it is with temerity that I would undertake to argue the opposite side of a legal question with the senator from Androscoggin, Senator Holmes, as no one has had a better opportunity of knowing the closeness with which the senator argues and the preparation which he puts into those matters which he lays before us or before the court. The difference, perhaps, that I might hold with the senator from Androscoggin, senator Holmes, is, possibly, from the angle with which we approach this bill and the original premise upon which we act.

I can see no place where Maine has given up a particle of her sovereign rights, the rights of taxation, which I agree with my brother senator is one of the biggest sovereign rights which the State has. If my premise is right the United States central government under the Federal Constitution has a right of taxation for certain purposes and that is a sovereign right to the nation. It is a right that we as a state gain from the nation under our national constitution.

Now, under the right of the federal government to tax, Congress saw fit to pass what we call the estate tax. Maine had nothing to do with that. We could not have anything to do with it. It was not an exercise of our jurisdiction in any way. Congress, the central government, created that tax law under its Federal Constitution. Having that law in effect Congress says of this estate tax to the states that have inheritance taxes and estate taxes—I cannot quote the exact words—that credit will be given, where the taxes have been given to the state, credit will be given on the federal tax, as I understand the law. Now, in Maine we have an inheritance tax which was Chapter 69 of our statutes. That inheritance tax, if my recollection is correct, is in all instances, particularly on larger estates, way below what the federal estate tax is, way below 80 per cent. of the federal estate tax so that Maine gets but half of that tax, we will say, that other half going to the federal government. Now, the central government in creating this credit law wishes of course to treat all states alike and the law does treat all states alike if each state takes advantage of the credit to an equal extent which is given under the federal law. We have no estate tax in Maine. So what happens? I think we changed no policy of the State, I

think we gave no sovereign rank. Section 1 of this bill says, "There shall be assessed by the attorney general in addition to the inheritance tax as now provided by Chapter 69 of the Revised Statutes, and estate tax upon all estates which are subject to taxation under the present federal revenue act of 1926." It refers only to estates that come under that act. "Said tax is hereby imposed"—upon what? Upon the estates, which would be a departure from our present policy of taxation? No! The tax is not imposed upon the estate. The tax is imposed upon the transfer of the estate the same as our inheritance tax is today imposed. It is the same policy. I see no change in the policy of the State. I see absolutely no infringement upon our sovereign rights. The entire tax is under the Federal Constitution and the federal right of revenue.

Now, without this bill we are credited simply with what amounts to an inheritance tax. Other states taking advantage of this provision get the full 80 percent of the federal act. And on those estates only which the federal tax touches this law says that the Attorney General may assess so much of the estate tax as will bring Maine's tax up to 80 percent of the federal act which will permit Maine to participate on the general tax of the government upon any equality with the other states which now she does not do. Maine is paying upon her estate under the federal revenue act just twice as much tax as the states which take advantage of that act. This is an equalizing act only which puts Maine an equality with the other states of the union and does not in any way, from my premise, encroach in the slightest degree on Maine's sovereign power because the entire act is under the federal act and if we should not pass this bill the federal estate tax would be enforced just the same. We cannot abolish the federal estate tax in this Senate.

Now, as to the emergency. As I said in my opening remarks I hesitate always to differ with my colleague in a matter of law but to me, as my mind sees this this morning, perhaps I am arguing the bigger principle, and I have no law books with me, there is an emergency of business, health and other things, as the statute says, which gives this

legislature the right to act. This country could not operate one moment, or this state could not operate one moment, without income, without revenue, with which to carry on all branches of its government. This act indirectly is an act producing revenue to the state by taking advantage of a national credit. Revenue is always an emergency when by delay that revenue would be cut down. Estates closed within ninety days after the adjournment of this legislature, on those estates the credit would be lost to us. After that, if I understand the bill correctly, it makes no difference. By passing this as an emergency act, on any estates closed within ninety days after the adjournment of this legislature, Maine would be entitled to participate in the credit offered by the Federal Government, and I am very much in favor of the act passing in its present form with the preamble and emergency clause.

Mr. OAKES of Cumberland: Mr. President, at the risk of repeating something that my brother, Senator Carter, has said, I would like to bring one thought to the attention of the Senate. Whether we should pass this Resolution No. 11 which memorializes Congress to remove the present law is a matter for us to consider later. I am inclined to think that if perchance Congress is encroaching on the state's rights—and that may be a fact—we should pass that resolution, but that does not affect the situation that exists at the present moment. Right now Congress has this law enforced and we are under that law. If there are in taxations any question of confusion that exist or will exist they are already before us because of that law. If there are any questions of computation or of income tax experts or accountancy experts, those questions are before us already. As I understand it, the only question on this bill—eliminating the question of whether it is properly drafted—is the fundamental question as to whether we want to take the 80 percent of the money which our people are bound to pay to the Federal Government. It does not cost us any more to take it. Our people, or our estates, are going to pay it to the Federal Government anyway and the only question is whether we want to take the 80 per-

cent back and take advantage of it or whether we will let it all go to the Federal Government.

As I understand it, the only question of confusion that is involved is the question of figuring the 80 percent of the amount of money that is assessed by the Federal Government and that seems to me to be a very small confusion. On the other side, we get a large amount of revenue which we are not now receiving.

Mr. MAHER of Kennebec: Mr. President, may I just contribute a thought that occurs to me in connection with this matter, although I am very much impressed by the Senator's (Mr. Holmes of Androscoggin) criticism of the emergency clause. As I understand it there is a desire for unanimity in the matter of taxation. Some states have not exercised their sovereign taxing powers, which they had a right to do or to refrain from doing, and those states are Alabama, Florida, Nevada, and the District of Columbia. All the rest have a state inheritance tax. The Federal Government, in order to encourage uniformity of taxation and systematic handling of the matter, provided that any state inheritance taxes imposed by the sovereign states up to 80 percent of the tax fixed by the Federal Government should be credited to the state and deducted from the payment, but that in any and all events 20 percent of the tax would be collected.

Now, so far as the State of Maine is concerned, federal taxes are not imposed upon estates, under this federal estate tax, unless the estate is a hundred thousand dollars in amount. Small estates are not affected at all and do not come under it except as the sovereign state taxes and when you get into a hundred thousand you get something like this—and my figures are not exact but are approximately correct—the State of Maine under its varying taxes would get about four hundred dollars and there would go to the Federal Government one hundred dollars. The State is very well taken care of. But by the shifting of rates under the federal schedule, as you get up into estates of four hundred and fifty or five hundred thousand and away up into millions, then the disparity between the amounts—dollars actually payable into the treasury of the State of

Maine because of the rate in the State of Maine and the rate of the Federal Government—is very, very considerable and the State is a potential loser.

Now the Federal Government, in its wisdom and desiring to equalize and make fair this matter of the tax burden, has said in its act to the various states, "You may take advantage by state act and if your amount does not come up to that you may impose the tax in this way." Now, it is simply a matter of accommodation of rates. On estates up to one hundred thousand dollars the State gets four hundred dollars and the Federal Government gets one hundred dollars, but on large estates, as I said before, operating the way we are today, the State is a big loser. There is a marked inconsistency between this and the next measure. House Document No. 11 memorializes Congress to repeal the federal inheritance tax. Of course it would be perfectly absurd to vote for this measure with an emergency clause attached and then in the next breath memorialize Congress to do away with the tax. That is a *reductio ad absurdum*.

I am very much impressed with the argument of the Senator from Androscoggin (Mr. Holmes) with reference to the emergency clause phase but in regard to the substance of the bill I think that the measure is sound and in accord with recognized economic views on taxation and it is in accord with the attitude of the Federal Government. However, it would seem to me that it would not be inappropriate to table this measure at this time in order that there may be a very careful examination made of the very trenchant objection which is made to the emergency clause of the measure and after Senator Holmes has replied I shall make a motion, which the Senate may entertain or not, to table this measure.

Mr. HOLMES: Mr. President, assuming that all who are interested to speak on this matter besides myself have spoken and realizing that the Senator from Kennebec, Mr. Maher, will offer a motion to table this matter, I then, will take but a few moments to close the case—if I may use that word—for the opponent—because, I presume, the Democratic minority will vote as a body alone. (Laughter)

I will say that I was impressed by the argument of the Senator from Kennebec, Senator Maher, because it seemed to me he so beautifully and clearly and limpidly presented the proposition which this measure presents to the legislature and the people, that this is not an act of taxation but an act of charity, that perhaps we do not all agree with the United States Congress in passing estate laws but if there is any swag coming we want our share.

Now I want to reply in a word to the argument of my colleague from Androscoggin, Mr. Carter, that the act is probably constitutional leaving out the question of the preamble. I had never maintained that I would go so far as to venture an opinion—I am getting too old—that the act as a whole is unconstitutional. I have only maintained that it is of doubtful constitutionality and that the legislature should go slow in passing measures of doubtful constitutionality. And I will say that on that point my colleague from Androscoggin (Mr. Carter) of course is very familiar with the decisions of the Massachusetts court and of the Maine court upon the right of a legislature to refer to and embody some other law, such as an existing law of Congress, in the legislation of Maine, in one instance, and the legislation of Massachusetts in the other. But the court has distinctly shown the limits to that, and rightly. We may, for instance, refer to the existing law, or even a regulation issued by the treasurer's department, in ascertaining how much is due on one thing or another, whether it be a revenue law or something else, but we cannot delegate to Congress, and much less to any executive department of the United States, the right to make new laws or new rules which will vary our own law and in my opinion much less can we delegate the authority to repeal any particular law or laws.

If we pass a law which is contrary to the Constitution of the United States the Supreme Court of the United States will declare it invalid. But it does not repeal our law. The court says that such a law as ours never existed. The legislature of Maine failed when it attempted to pass such a law. But not even Congress can repeal a law of Maine. Nor can we delegate to Congress the right to repeal a law of Maine.

Now the court in Massachusetts has said, in the opinion of the justices which will be found in the *Northeastern Reporter*, Volume 133 on Page 454, "In re Opinion of the Justices" under date of November 22nd, 1921, and which involved the Volstead Law—but the discussion of the court is just as applicable to taxation—the court says: "It is attempted by these sections"—the sections of the Massachusetts proposition which the Senate of Massachusetts presented to the court for its opinion—"It is attempted by these sections, and possibly by other sections, to make the substantive law of the commonwealth in these particulars change automatically so as to conform to new enactments from time to time made by Congress and new regulations issued pursuant to their authority by subsidiary executive or administrative officers of the United States. We are of the opinion that legislation of that nature would be contrary to the Constitution of this commonwealth. Legislative power is vested exclusively in the General Court except so far as modified by the Initiative and Referendum Amendment." And under the act of Congress of 1926 the Congress, as is so common now in national legislation, has delegated to the departments and bureaus, such as the Commissioner of Internal Revenue authority to issue rules and regulations in regard to filing returns and also in regard to various other matters which will automatically affect and modify the law which we propose to pass. And when will this law be repealed? Not when the legislature of Maine says it shall be repealed, but this act shall be repealed by another sovereign power. Section 3 of this proposed legislation says: "This act shall become void and of no effect in respect to the estates of persons who die subsequent to the effective date of the repeal of Title III of said Federal revenue act or of the provisions thereof providing for a credit of the taxes paid to the several states of the United States not exceeding 30 percent of the tax imposed by said Title III."

And I say that we have no more right to allow the Congress of the United States to repeal a law of Maine than we have to allow the parliament of the Dominion of Canada or the parliament of Great Britain to do so.

If it is the desire of this legislature, Mr. President and members of the Senate, to enact an estate law which will in fact get 80 per cent of the money which will be collected as taxation under a federal estate law, it is within our power to do it. Such a bill can be drafted. Let us pass a tax law which will be honestly a tax law entitled "An Act to create an estate tax." And then let us so phrase it as to set out the exemptions that we intend to allow, stating, for instance, that all estates under one hundred thousand dollars shall be exempt. And then let us take the rest. Make them for cases from a hundred thousand to five hundred thousand, one per cent, like the federal act, and then go on taking the same tax rate as the federal law. As to exemptions, such as bequests to charities and others which we have and which are also in the federal act, we need not mention such exemptions as are allowed by the federal act and are not allowed by us now. We can draw up such a tax law of our own but we should go before the people honestly so that they will know that we have created a new kind of tax law, that we have set a precedent which will be followed by future legislatures, that we have increased taxation in the state of Maine, although as long as that federal act lasts it will, as the Senator from Androscoggin (Mr. Carter) and the Senator from Kennebec (Mr. Maher) so very well show, amount in the end to no mere payment of taxes by those estates affected but it will be the establishment of a new policy. But it can be done.

Mr. MAHER: Mr. President, I wish to say one word more simply from the fact that I did not make myself clear before. The Senator from Androscoggin, Senator Holmes, as I understand him, is particularly distressed because he says this will establish a new policy. I join issue on that. It is the law today and Maine is taking advantage of it today. The proposition here in a nutshell is this: There is no federal inheritance tax on estates less than one hundred thousand dollars. Above that sum there is, and the rates vary according to the size of the estate. Now, the federal act allows, in order to encourage uniformity of taxation, a credit up to the amount of 80 per

cent and I illustrated just how that would work on an estate of a hundred thousand or a hundred and fifty thousand dollars. If there is a state tax covering the same matter, so as not to have double taxation, the Federal Government says that amount of state tax, up to 80 per cent of what the assessment is upon the estate by the Federal Government, shall be credited. We are taking advantage of it and we are getting it today. The state is allowed that 80 per cent.

Now, does it hurt the tax payer or the estate? No! If a man dies leaving a million dollar estate, under the federal law that estate is taxed and that money must be paid to the Federal Government. It comes out of the estate. It goes away from the family and it goes away from Maine because Maine says that on estates of one hundred or one hundred and fifty thousand we will take our credit of 80 per cent but when you get up to this, why, no, we won't change it in accordance with this law. That is all there is to this. It is not imposing any new tax. It is not imposing any new method. It is not surrendering anything. But it is saying that in that twilight zone between one hundred and fifty thousand and half a million or five hundred and fifty thousand, and from then up, we here in the State of Maine will arbitrarily say that there shall be assessed an additional State tax which will bring it up to 80 per cent. of the federal, when that estate, which has grown up in Maine, which has perhaps been made out of Maine, shall, under the beneficence of the federal government, when the one who made that estate passes on, shall leave an equitable portion of it to the State. I trust that the very serious matter in regard to the emergency clause will be considered and that this bill will be tabled until tomorrow morning.

The PRESIDENT: The senator from Kennebec, Senator Maher, moves that this bill lie upon the table and be especially assigned for tomorrow.

The motion to table and assign prevailed.

The President laid before the Senate, House Report "A" "ought to pass"; House Report "B" "ought not to pass," on concurrent resolution memorializing Congress to abolish federal estate tax (H. D. 11) tabled by

Mr. Holmes of Androscoggin on March 3rd pending acceptance of Report A and especially assigned for today.

Mr. HOLMES of Androscoggin: Mr. President, as this matter also travels along naturally with House Document 58 which has been tabled until tomorrow, I move that it be retabled until tomorrow and be especially assigned for that day.

The motion to table and assign prevailed.

The President laid before the Senate, House Report, majority report "ought to pass," minority report "ought not to pass", on an Act relating to advertising signs along public ways (S. D. 11) tabled by Mr. Oakes of Cumberland on March 4th pending consideration and especially assigned for today, and on motion by Mr. Oakes of Cumberland the report was tabled and especially assigned for March 16th.

On motion by Mr. Maher of Kennebec, the Senate voted to take from the table An Act to incorporate Bluehill Water Company (H. D. 74) tabled by that senator on March 2nd pending consideration.

Mr. MAHER of Kennebec: Mr. President, I now move that this matter take its next step whatever that is.

The PRESIDENT: The pending question is passage to be engrossed.

Thereupon, on motion by Mr. Maher of Kennebec the bill was passed to be engrossed.

The President laid before the Senate, House Report, "ought to pass", on An Act relating to insurance upon lives of directors, officers, agents and employes of corporations and prescribing what shall constitute evidence of due authority for all corporate actions with reference thereto (H. D. 287) tabled by Mr. Woods of Penobscot on March 4th pending consideration and especially assigned for today; and on motion by that senator the report was accepted in concurrence and the bill received its first reading.

The President laid before the Senate, House Report "ought to pass", on An Act relating to the excise tax on railroads (H. D. 23) tabled by Mr. Harriman of Kennebec on March 4th pending consideration and especially assigned for today.

Mr. FOSTER of Kennebec: Mr. President, acting for my colleague,

Mr. Harriman of Kennebec, who was called away, I move that this report take the next step.

The PRESIDENT: The question is on the acceptance of the report which is "ought to pass."

Thereupon, on motion by Mr. Foster of Kennebec the report was accepted and the bill received its first reading.

On motion by Mr. Buzzell of Oxford the bill was then tabled pending further consideration and especially assigned for Wednesday, March 16th.

The President laid before the Senate, An Act to regulate fishing in Bowler Pond in Palermo (S. D. 159) tabled by Mr. Bragdon of Aroostook on March 4th pending passage to be engrossed and especially assigned for today; and on motion by that senator the bill was retabled until tomorrow morning.

On motion by Mr. Carter of Androscoggin the Senate voted to take from the table, resolve empowering and directing the Forest Commissioner to convey a lot of land in Wallagrass Plantation (H. D. 243) tabled by that Senator on March 3rd pending final passage.

Mr. CARTER of Androscoggin: Mr. President, is there any pending motion before the Senate?

The PRESIDENT: The pending question is automatically on passage to be enacted.

Thereupon, on motion by Mr. Carter the bill was passed to be enacted.

On motion by Mr. Speirs of Cumberland the Senate voted to take from the table An Act relating to registration of milk dealers (H. D. 319) tabled by that senator on March 8th pending reference and on further motion by the same senator the bill was referred to the Committee on Agriculture.

The PRESIDENT: Is there any other business? Is there any other matter that any senator feels may be taken from the table?

On motion by Mr. Miner of Washington

Adjourned until tomorrow morning at ten o'clock.