

# MAINE STATE LEGISLATURE

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Legislative Record

OF THE

Eighty-Sixth Legislature

OF THE

STATE OF MAINE

Special Session, December 4, 1933

KENNEBEC JOURNAL COMPANY  
AUGUSTA, MAINE

**SENATE**

Tuesday, December 19, 1933.

Senate called to order by the President.

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

Journal of yesterday read and approved.

The **PRESIDENT**: Is there any business to come before the Senate before a recess is taken?

On motion by Mr. Weeks of Somerset,

Recessed until ten-thirty this forenoon.

**After Recess**

The Senate was called to order by the President.

Paper from the House, out of order, disposed of in concurrence.

On motion by Mr. Littlefield of York,

Recessed until one-thirty this afternoon.

**After Recess**

The Senate was called to order by the President.

From the House, out of order,

Bill an act regulating the sale of spirituous and vinous liquors for medicinal and mechanical purposes and the arts. (H. P. 156, L. D. 199)

In the Senate December 18 the bill was passed to be engrossed in concurrence as amended by House Amendment "A" as amended by House Amendment "A" to House Amendment "A," and as further amended by House Amendment "B."

In the House, passage to be engrossed reconsidered, House Amendment "D" offered and by unanimous consent withdrawn.

House Amendment "E" adopted.

House Amendment "F" offered and by unanimous consent withdrawn.

House Amendment "G" offered and ruled out of order as frivolous.

House Amendment "H" offered and indefinitely postponed and the bill passed to be engrossed as amended by House Amendment "A" as amended, and by House Amendment "B" and House Amendment "E" in non-concurrence.

In the Senate:

(At this point Mr. Holman of Franklin assumed the Chair the

President retiring amidst the applause of the Senate.)

Mr. **MURCHIE** of Washington: Mr. President, I move that the Senate reconsider its action taken yesterday whereby this bill was passed to be engrossed as amended by House Amendment "B" and by House Amendment "A" as amended by House Amendment "A" to House Amendment "A."

The motion to reconsider prevailed.

Mr. **MURCHIE**: Mr. President, I offer Senate Amendment "C" and move its adoption.

The Assistant Secretary read:

"Senate Amendment 'C' to Legislative Document 199. Amend said document by striking out the emergency preamble as amended and the last section."

Mr. **MURCHIE**: Mr. President, I wish to address myself for a few minutes to the question of the conversion of this bill from an emergency bill into an ordinary piece of legislation, and at the outset I wish to apologize to this Senate and to all the people in the State of Maine for the lack of foresight shown by me in this hall last Friday, if I recall, when I said that the repeal of the 26th Amendment would produce in the Maine Legislature an attempt to, palpably unconstitutionally, force down the throat of the people of the State of Maine a rum law as an emergency measure under the unjustifiable pretext that the state could raise revenue to pay its bills in no other manner. I am amused as I now recall the answers that were made to that forecast which my friend the Senator from Hancock (Senator Blaisdell) described as fear and which I frankly admit was fear because the Senator from Hancock, Senator Blaisdell, and the Senator from Penobscot, Senator Weatherbee, if I recall, proclaimed their confidence that no succeeding legislature would ever abuse the emergency clause. It never dawned on me at that time that this very legislature, under the whip not only of an executive who has unconstitutionally dabbled in legislative matters but by the cooperation of fellow Democrats in the administration at Washington, would make the same attempt. The issue comes, not in the legislature of 1935 as I anticipated it would come, but in the legislature of 1933. We have been warned by conversation in the corridors, by state-

ments either authorized or unauthorized to the press, that the Governor intends to veto legislative document 107, which was enacted by this legislature, a Republican legislature, in accordance with the mandate of the people at the election of delegates to the Constitutional Convention last September, that the unattainable achievement or attempt at achievement of enforcing bone dry prohibition should be abandoned. As I read House Amendment "D" I was reminded of the well-known saying, "Whom the gods would destroy they first make mad," and if any member of this Legislature can vote, be he Democrat or Republican, be he bone dry or dripping wet, for a bill carrying House Amendment "D", I feel sore regret for his utter and absolute lack of conscience.

We came here, Mr. President, on the first Wednesday in January, as legislatures have convened from time immemorial in the State of Maine, and the first thing we were called upon to do, before we entered upon the performance of our official duties, was to take and subscribe to oaths of office. And, Mr. President and members of the Senate, I want to read to you the first of those oaths and remind you that no man is privileged to vote upon this bill, upon this amendment, or to sign it as Chief Executive, who did not take and subscribe to this or a similar oath: "State of Maine; I, (Harold H. Murchie) do swear that I will support the Constitution of the United States and of this State so long as I shall continue a citizen thereof, so help me God." Mr. President and members of the Senate, an emergency clause drafted by the Democratic counsel for the Democratic beer commission, whose salaries are to be raised through the judgment of our Chief Executive and members of his Executive Council if this bill becomes a law, an emergency clause has been drafted as an amendment the meaning of which is nothing but this: that the Governor in his infinite wisdom by refusing to sign a bill providing for the liberalization of Maine's liquor laws, has himself created an emergency. Legislative Document 107, as every member of this Legislature is aware, either purports to or does—it is possible some may differ on it although personally I think there is no doubt—Legislative

Document 107 in my opinion takes the statute law of the State of Maine, except for question of pocket peddling and increases in penalties for infraction of the law insofar as liquor laws are concerned, back to the law prevailing in Maine when the Revised Statutes of Maine were adopted in October of 1916, if I recall the date. It eliminates from the Statutes the requirement that a Federal permit should be necessary to transport liquor in the State of Maine. It makes the test of illegal transportation the question as to whether or not the liquor so transported is intended to illegal sale within the State; and I say to you, Mr. President and members of the Senate, that I challenge any man in the State of Maine to point out a statute or a part of a statute, other than the one amended by that Act, which makes it an offense of any kind or forbids in any way the use of alcohol and intoxicating liquors for medicinal and mechanical purposes. I think the same thing is true of the arts, but I don't know what the words "the arts" mean.

This bill is before the Governor for enactment and his answer is, not given. Mr. President and members of the Senate, as the Constitution says a Governor shall communicate with the Legislature, but given in the corridors of this State House, given last night by calling together three standing committees of this Legislature and conferring with them in secret caucus. He says, but he will not write it into the record, that this law does not change the situation. If he means that it does not change the situation because, under the opinions of the Justices in answers to question propounded by this Senate they have closed the door to a change in the transportation law, they have closed it equally to any change in the druggist bill or any other. But I believe most of the members of this Senate will be able to recall the other basis of his objection which is that regardless of the fact, if corridor comment is correct—and you will bear in mind that the only reason I refer to corridor comment is because his method of communication is not that provided by our Constitution—I understand from corridor comment—and I take it that that must be a fact because both things are referred to in the

amendment drafted by the Democratic counsel for the beer board—that the things which interfere with transportation are the Webb-Kenyon Act, so-called, and the Reed Amendment. The Webb-Kenyon law, enacted in 1913 is the law which prohibited shipment of interstate commerce by common carrier of alcoholic beverages intended for illegal use within any state by whose laws the sale of any such commodities are forbidden.

I am sorry to consume all the time that I must consume before the Senate, but the only possible answer to that argument is to read the Webb-Kenyon Act in full, and I now read it: "The shipment or transportation, in any manner or by any means whatsoever, of any spirituous, vinous, malted, fermented, or other intoxicating liquor of any kind, from one State, Territory or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, into any other State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, which said spirituous, vinous, malted, fermented, or other intoxicating liquor is intended, by any person interested therein, to be received, possessed, sold, or in any manner used, either in the original package or otherwise, in violation of any law of such State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, is hereby prohibited."

That is a good many words but I think it is a fact, to reduce it to the simplest language, that the Courts have interpreted it to mean that under the Interstate Commerce Clause of the Federal Constitution, interstate commerce by common carrier was banned insofar as the liquor was intended for illegal sale and for no other purpose. And under the operation of the Webb-Kenyon Act, as you all know, druggists, doctors, hospitals, manufacturers and private individuals bought alcohol and intoxicating liquors freely into this State, all except individuals, through shipment by express or other common carrier.

And then comes the Reed Amendment, and fortunately I shall have

to read only a few words of the Reed Amendment, because, after the confusing language of the Webb-Kenyon Act, it states its purpose at the outset: "Whoever shall order, purchase, or cause intoxicating liquors to be transported in interstate commerce, except for scientific, sacramental, medicinal, and mechanical purposes, into any State or Territory the laws of which State or Territory prohibit the manufacture or sale therein of intoxicating liquors for beverage purposes shall be fined," etc. It may be that what our distinguished Chief Executive has in mind is that the Reed Amendment will bar the importation of liquor into the State of Maine for uses of the Arts but surely he cannot seriously claim that the Reed Amendment, which exempts not only medicinal and mechanical purposes but scientific and sacramental as well, will have any further restricted operation.

I have the very highest personal regard for our Chief Executive. When we met here at the opening of our present term I went on record, if I can recall my language correctly, urging the members of this Senate to extend to him as our Chief Executive the maximum of both courtesy and cooperation. And I have tried throughout my term of office to date to live within the precepts that I sought to injoin upon all of you. I hope, however, that I may always in my own actions keep myself within the limit of the Constitution under which we act, and I consider that there is no surer way by which we can tend toward destruction than by abandoning that Constitution. Article III of the Maine Constitution reads as follows: "Section 1. The powers of this Government shall be divided into three distinct departments; the Legislative, Executive, and Judicial. Section 2. No person or persons belonging to one of these Departments shall exercise any of the powers properly belonging to either of the others, except in the cases here expressly directed or permitted." And the Constitution provides that when a bill is enacted into law by the Legislature, when it has been passed to be enacted by both branches of the Legislature, that it shall be submitted to the Chief Executive for his approval and if he approve it, it will become a law, while if he disapprove it, he shall submit it to the Legislature with the reasons for his disapproval and

that Legislature in its separate branches will have an opportunity to vote as to whether or not it shall be passed over his veto.

What is the situation in the present instance, I have already referred to it in the statement—and I make this on information and belief, or on hearsay, if you will, because I wasn't present—but I am informed and believe that the Governor, through cooperation, it is true, of Republicans, convened in secret caucus last night at three joint standing committees on Appropriations and Financial Affairs, on Taxation and on Temperance, for the purpose of seeking to convince those committees that they must put through this bill as an emergency measure in the name of revenue. The Governor took the same oath of office on the first Thursday of January that we several took on the first Wednesday and if his sacred oath means anything to him he is charged with supporting the Constitution of the State of Maine, and he supports it in a manner which you know. In his message delivered to the Legislature at the convening of this session he said, "For the purposes enumerated in the Constitution I recommend the passage of an act controlling the sale and keeping of intoxicating liquors to be effective until the 26th Amendment is either rejected or retained by vote of the people." High sounding words! Words entirely within the spirit and meaning and letter of his oath, but he then says, "Pure liquors at reasonable prices should be made available." Does he say, "For the purposes enumerated in the Constitution?" So far as his special message is concerned it might be interpreted that that is what he does mean but when you take into consideration the fact that he has threatened this Legislature with the repudiation of everything on the rum issue that the Democratic Party has stood for over a period of seventy-five years if we do not enact the rum bill in the name of revenue, he means by that "Pure liquors for beverage purposes contrary to the express language of the Constitution should be made available at reasonable prices." And perhaps that is well demonstrated by one of the later statements under the same caption in his message: "Bills prepared under the supervision of eminent citizens" etc., "will be introduced for your consideration."

I was gratified, Mr. President and members of the Senate, even more than I was amused when yesterday the entire Democratic membership of the Senate voted against liberalization of Maine's liquor law, but the reason immediately became manifest. The Governor—the Governor—whose duty as Chief Executive is to enforce and support the Constitution, is trying to put through the rape of the Constitution, and Democratic members of the Legislature are supposed to stand by. It has been, I believe—and if I am in error I shall gladly apologize—the established practice in the State of Maine for the Executive to keep entirely free from the Legislative Department except as he communicated in the proper manner. Prior to 1931, as far as my memory can go back and so far as anyone with whom I have talked can recall, the governors of the State of Maine have consistently kept out of legislative halls and legislative hearings and have walked the chalk line of executive duties. In 1931, if I recall the time, our then Chief Executive, William Tudor Gardiner, broke the first of those precedents when he appeared before a legislative committee as sponsoring his administrative code bill. And the last vestige of that position has now disappeared. The Press today carried the information that the Chief Executive in his new function, I assume, as head of the Legislature has sent telephone and telegraph messages to absent members urging them to return. The separation of the three departments, safeguarded in theory by our Constitution, exists no longer in fact.

I would like, Mr. President, at the proper time, much as I regret the necessity of doing so, to discuss still further some other matters connected with this bill, because it is my firm conviction that should this bill become law those establishments in Maine which find it necessary to use alcohol for manufacturing purposes will be barred from securing such alcohol so long as this bill as now drafted remains law. And that there may be no surprise on that issue when the matter comes before the Legislature, let me say that in the bill as I read it the test of the authority of a manufacturer to secure alcohol depends upon the fact as to whether or not he is engaged in the manufacture of medicants. The eminent gen-

tleman or gentlemen who drafted the bill presumably dictated to somebody the word "medicament." It is a word in the English language and it is a word that covers many of the preparations that are manufactured by the use of alcohol, but the word "medicament" does not appear in the following dictionaries, Webster's New International, The Oxford, The Century, The Standard, The Pocket Oxford, Stedman's Medical Dictionary, Hackman's Chemical Dictionary, Words and Phrases—covering all the judicial definition of language that has been built up in this country since reports began to be printed—Bouvier's Law Dictionary and Fowler's Modern English Usage.

I assume, although I know not, that our Chief Executive, who in his wisdom can tell us all about the operation of conflicting provisions of State and Federal law, has not taken the trouble to read the Druggist Bill because had he done so he would have found that error along with many more that can be pointed out when the time comes for final enactment. As the bill now stands—and I say this for its friends because if it is to be enacted those things it seeks to accomplish should be properly protected—if it is enacted in its present form no manufacturer will be able to get a permit unless they change the medical term and no tourist will be permitted to enter the State of Maine with intoxicating liquor in his automobile or in his grip or in his pocket unless that liquor was purchased by him for medical and manufacturing purposes or the arts. And I believe Maine has many summer residents who will not perjure themselves for the privilege of coming to Maine. Legislative Document 107, if signed by the Governor—and it is on his desk, enacted by this Legislature under the emergency clause to be effective when his signature is affixed—will make it possible for doctors, for druggists, for manufacturing concerns and others, to secure liquor for manufacturing and medicinal purposes and will likewise make it lawful and proper for summer residents coming to the State of Maine to bring with them such alcoholic beverages as they may choose and not force them either to violate the law or to purchase from the monopoly which the Governor and his Republican affiliates

in this Legislature are seeking to set up in the State of Maine.

One word more and I have finished. I move the adoption of Senate Amendment "C". I move it, Mr. President and members of the Senate, because I conceive that no man in good faith and with clear conscience can vote either to foist rum in its broadest, cleanest—and by cleanest I mean widest and most rotten—scope upon the people of the State of Maine in defiance of the 26th Amendment or, bearing in mind again that the Constitution carries an absolute prohibition against the use of an emergency clause except where the peace, health and safety of the State are involved, to vote for such emergency clause when the only basis for it is the refusal of a Democratic Governor to sign it that he may himself create the emergency.

Mr. WEATHERBEE of Penobscot: Mr. President and members of the Senate, I shall not attempt to make any speech. I am just going to talk with you calmly, if I may. I have just listened to a strange speech that I wish had not been made. (At this point part of the remarks of Senator Weatherbee were ruled out of order and were ordered expunged.)

Mr. WEATHERBEE: (continuing) I did not intend, Mr. President, to say anything that would reflect upon a member of this body to the extent that I felt a member of this body had reflected upon another department of our State government. I leave that to the consideration of the distinguished Senator from Washington County (Senator Murchie). That rule which he invoked to his own protection, also applies to the Governor of the State of Maine. That is so plain and there need be no further comment on it. I allow no man to be the keeper of my conscience nor upon my good faith notwithstanding accusations from any other quarter. I shall exercise my judgment and keep my conscience and my faith regardless of any other Senator in this body and I do not like to be accused of impropriety because my judgment may not coincide with the superior judgment of anyone else.

I know nothing of a secret conference last night in this building with His Excellency, the Governor

of the State of Maine and Republican members of this Legislature. I do not know that it occurred, neither am I aware of the purposes of it or what actually took place at the meeting. I assume that the Governor of the State of Maine may seek counsel. It is a wise thing to do. It is wise to confer with one's fellow men. Information is oft times received in that manner. There has been not too much of conference in these legislative halls, and I believe the membership of the House and Senate will bear me out in that regard.

In the discussion of the distinguished Senator from Washington County (Senator Murchie), he has gone far afield. The only thing before the Senate is his motion that the emergency preamble may be stricken from this bill. That is the only question here for our determination, not the merits nor the demerits of the bill. The bill is not what I would have had. I should have preferred an agency bill, but I was not able to get such a bill. If I cannot get exactly what I want I am reasonable enough and good Republican enough to join with the other members and be satisfied with the best that we can get under the existing circumstances. I would that many others felt the same way. The distinguished Senator from Washington (Senator Murchie) made the remark that the Senator from Hancock County (Senator Blaisdell) and the Senator from Penobscot County (Senator Weatherbee) assured the Senate that it might well trust to the judgment and honesty of future Legislatures and that he, the Senator from Washington County (Senator Murchie) need not have any fear of the conduct of subsequent Legislatures. He said he did have a fear but didn't expect that emergency legislation would be put upon liquor bills at this very session of our Legislature.

I remarked in the few remarks that I made that day, that it would not be wise, in my judgment, to prevent future Legislatures from attaching an emergency clause to such bill, because I could not foretell what emergency might arise, and I, like him, was very much surprised that an emergency measure might be attached to an ordinary liquor bill at this session. I was infinitely more surprised when I found it was the Senator from Washington (Sen-

ator Murchie) who placed the first emergency preamble upon a liquor bill. Can it be that an emergency if it is inaugurated by himself is excusable while that established by others should be condemned? That is the position of the distinguished Senator. He attached an emergency clause to his bill, Legislative Document No. 107. He recognized that an emergency existed. I think he is right. I think there was an emergency and that it did exist. But why should someone else be criticised for conceiving that an emergency also exists in the "druggists' bill?" If the emergency exists in the bill No. 107, it likewise and for the same reason, exists in the druggists' bill and no one should say it shouldn't be in the druggists' bill because the Senator from Washington County (Senator Murchie) thinks he has taken care of the entire emergency in his bill No. 107.

I do not know his bill is to be vetted for that emergency and for the purpose of driving this Legislature into the enactment of the druggist bill, under an emergency. It would be unfair to assert that that was the underlying reason. I should want conclusive proof before I made that accusation because if I did not have that proof, I would be unfairly criticising the motives of the chief executive of the State of Maine.

Now, in his bill No. 107, to which he attached an emergency, we find that he would deal with Section 3, which is the federal permit law under our statutes in this manner, "Section 3 of said chapter is hereby amended by striking out all of said section and substituting in place thereof the following: 'No person shall knowingly transport from place to place in this state, any intoxicating liquors, with intent to sell the same in this state in violation of law, or with intent that the same shall be sold by any person, or to aid any person in such sale, under a penalty of not less than three hundred dollars nor more than six hundred dollars and costs, and in addition thereto, by imprisonment of not less than three months nor more than six months, and in default of the payment of fine and costs by imprisonment for six months additional'."

Section 3 provided that one could not transport liquors in the State of Maine. That means for any purpose, without a federal per-



mit, and the Senator (Senator Murchie) would overcome the legal effect of that section by amending it in this strange manner. I say strange manner because his amendment re-enacts the existing law upon the statute books. Today upon your statute books, there is a law which has been there over 40 years, providing that you cannot transport liquors in Maine which are intended for illegal sale. He just re-enacts in effect, an existing statute. The purpose of this bill is to do away with Section 3, the permit law, and the Court has already rendered you a decision upon that point. The court says you may not act upon the subject matter in the bill that passed last session and which has gone to referendum, that you may not act upon that subject matter until the people have expressed their wishes at the referendum or election to be held, and I want to say it is my opinion, humble though it may be, that this bill of the Senator is in conflict with the opinion of the Court, and it attempts to do indirectly what it cannot do directly. The subject matter of Section 3 is transportation, pure and simple. By this bill he would overcome it by amending it and re-enacting an existing statute. That certainly isn't getting around the proposition properly.

Regardless of what the Governor may do to his bill, I believe there is an emergency existing in the State of Maine, and the druggists' bill, in a measure, takes care of it. If it doesn't go sufficiently far to cover manufacturers who are manufacturing something besides medicine, I invite Senator Murchie to aid those interested in that bill and help them, in enacting an emergency preamble which will meet all the requirements.

During the late hours of this session, we do not wish, and we will not defeat this bill just for mere technicalities. Let the membership understand that a large majority of the House and Senate intend to vote for this bill. Let us do all we can then, to make the bill a better bill. We are responsible as Republican senators to aid in all ways possible to improve that bill so that we may have a working bill that shall meet all the requirements when it becomes a law. I invite the distinguished Senator (Senator

Murchie) to give the subject matter his careful attention and his valuable assistance. I feel it is his duty as much as it is my duty. We ought to get down to facts and disregard all fancies here. We want to have realities and not all mere theories.

It is evident, to my mind, that the gentleman does not desire legislation of this kind to pass this legislature. He is entitled to that judgment and he need not vote for such a bill if he does not wish to, but I still say that with the knowledge, and I am sure he has it, that the bill is going to pass, he should do what he can to make it a better bill so that this legislature may go upon record as passing the very best bill of the kind that could possibly be passed.

Now, if you eliminate the emergency provision of this bill, by the same token you ought to eliminate the emergency upon his bill No. 107. There is no distinction between them in that regard in the least. I am willing to await the action of the Governor of the State of Maine. I do not feel called upon to defend the Governor here today upon any attack that has been made upon him. I do not think any defense is necessary. I think he may well let it go without a defense and without any notice whatsoever. But I hope, Mr. President and members of the Senate that the motion of the Senator from Washington, Senator Murchie, may not prevail.

Mr. MURCHIE: Mr. President, may I ask the Senator from Penobscot (Senator Weatherbee) a question through the chair?

The PRESIDENT pro tempore: The Senator from Washington (Senator Murchie) may ask a question through the chair of the Senator from Penobscot (Senator Weatherbee) and that Senator may answer if he wishes.

Mr. MURCHIE: Mr. President, will the Senator (Senator Weatherbee) be willing to have questions prepared for presentation to the Supreme Judicial Court of Maine, as to the constitutionality and legal effect of both this bill and of Legislative Document No. 107 and defer further action until those answers are received?

Mr. WEATHERBEE: Mr. President, I will answer by saying this, I would much prefer that the Governor ask the Supreme Court of

Maine whether Section 3 of Chapter 137 is now the law of the State of Maine. I think you get down to the meat in the cocconut in that question.

Mr. MURCHIE: I should likewise be very glad to have the question asked, but I should also like to have the opinion of the Supreme Judicial Court as to whether or not a financial emergency, so-called, comes within the emergency provisions of Article XXXI of the amendments to Constitution.

Mr. WEATHERBEE: I will answer by saying to the Senator, that there are other features of emergency, the liquor emergency itself, the need of hospitals and of doctors and of druggists to have liquor in the State of Maine is an emergency and that so long as an emergency like that is set out, and finally concludes with the language of the Constitution, I believe the court will hold, as it has heretofore, that the Legislature itself is the judge of the emergency.

Mr. MURCHIE: Mr. President, I know the Senator from Penobscot (Senator Weatherbee) so well that I know he is not intentionally evading my question but my question was whether he would be willing to have questions prepared for presentation to the Supreme Judicial Court of Maine, as to the constitutionality of this bill and also as to Legislative Document 107?

Mr. WEATHERBEE: I will answer directly as to that. If I had reasonable assurance that the reply of the Court could be had within a short or reasonable time, I would say "Yes," but I would not believe in this Legislature being kept in session for days and days to get such an opinion.

Mr. MURCHIE: Mr. President, I assume these interrogatories passing so freely back and forth do not constitute speaking to the question, either by Senator Weatherbee or myself, and that it would be my offense rather than his, but am I infringing the rule of speaking too many times? If it is proper for me to speak, let me say that if my recollection and my sources of information are correct, all the tax bills that have been presented to this Legislature are still in the hands of the tax committee unreported except those of trifling importance which have already been reported "ought not to pass"; and the "lottery" bill which is still in the hands of the

Appropriations and Financial Affairs committee. Christmas is coming on. We might well submit questions to the Court today and adjourn to some day early in January and then certainly there would be no delay.

Mr. WEATHERBEE: Mr. President, may I ask whether that is Question Number Two, for me to answer?

Mr. MURCHIE: Mr. President, if I may reply through the Chair to the rather sarcastic question of the Senator from Penobscot (Senator Weatherbee), I will say that it is not. It is an answer to his question whether delay would be involved by the submission of questions. Should I unduly infringe in answering in that manner, I shall be glad to tender my apologies to the Senator from Penobscot. The second question which I proposed to ask him was this: Would he agree to requesting the Governor to return Legislative Document No. 107 and to eliminate from that document and from this one, at one and the same time, the emergency clause?

Mr. WEATHERBEE: I will answer that. No, I will not agree to any such performance at all. If the gentleman is disturbed by the emergency preamble which he put upon his own bill to satisfy his own conscience, he may request the return of the bill and I will join with him in it and he can strike off the emergency and then he will be in a position to attack the emergency upon the other bill.

Mr. MURCHIE: Mr. President, I think it is proper for me to reply; the emergency attached to Legislative Document No. 107, as the Senator will know if he will read it, recites that there has been a suggestion that hospitals and doctors and manufacturers are unable to secure intoxicating liquor and alcohol, and the emergency clause was put on for that purpose. There is in the bill no suggestion that the State of Maine, either directly or indirectly, will itself be put into the liquor business.

Mr. VILES of Kennebec: Mr. President, I regret that the Senator from Washington (Senator Murchie) chose as the time to make his remarks, that time when the Senator from Hancock (Senator Blaisdell) to whom he alluded, and whose motives he referred, was absent from the Senate. I also

regret that he should criticise the meeting held here last night of three committees of the Legislature. I supposed the committees of the Legislature still had the right to meet and that they could ask advice from those whom they cared to. These three committees met here to discuss temperance, appropriations, revenue and taxation, as I believed, in an entirely proper manner. The meeting was not called by the Governor of Maine. At that meeting there were present, besides the three committees, the budget officer, the controller of the State, and the Governor was asked to come in to that meeting at one time to express any ideas that he might have upon those measures.

I hope, Mr. President, that the time has not yet arrived when committees cannot properly hold meetings without criticism.

Mr. BLAISDELL of Hancock: Mr. President, I am perfectly delighted that my friend from Washington County (Senator Murchie) took up the time that he did, and I was more delighted when my friend, Senator Weatherbee, took up a lot of time, and I was very delighted when the Senator from Kennebec (Senator Viles) took occasion to have something to say. My reason for that was that while I was not present at the time the Senate recessed, I had been informed by several that we recessed to four o'clock. The result was that I marched myself to the hotel. I was called from the hotel and made a quick walk here, finding myself out of breath and finding myself somewhat perturbed over the situation, but they talked long enough so that I have cleared my mind on the subject and am ready to give you my views, which will be very brief and I will try to keep them directly to the point. I assume I am correct, and I hope I will be immediately corrected if I am not, that the amendment being offered is for the purpose of removing the emergency clause on legislative document No. 199. Is that true?

Mr. MURCHIE: It is.

Mr. BLAISDELL (continuing): Then, Mr. President, why not come directly to the point and find out whether an emergency exists. Surely it is the only question. I am frank to say I can sit here an hour and listen to the learned discussion of the law, as we all have, and

I, myself, at least could get a great deal of good out of it, but if it extends beyond the bounds of the question before the Senate, then it becomes purely academic and not to the point. The question is whether or not an emergency exists. If you agree that an emergency does exist, the emergency preamble should stay on; but if by proper reasoning you could agree that an emergency does not exist, there should be no real logical reason for keeping an emergency clause on. That is the question and I am sure it is simple.

The Webb-Kenyon act may be interpreted by lawyers, and may be interpreted by those who are not lawyers, but the final interpretation is by two departments far separated from each other. The first is the department of administration of that law and the second department is by the last courts of the land. And so we have the Webb-Kenyon law and its amendments which specifically state the following: "Whoever shall order, purchase, or cause intoxicating liquors to be transported in interstate commerce, except for scientific, sacramental, medicinal, and mechanical purposes, into any State or territory the laws of which State or territory prohibit the manufacture or sale therein of intoxicating liquors for beverage purposes shall be punished as aforesaid (and the next is very important) PROVIDED, that nothing herein shall authorize the shipment of liquor into any State contrary to the provisions of the laws of such State."

Now, that is a subsequent law of enactment to the Reed amendment which divests alcoholic liquors of their interstate commerce character.

Let's see what happens when we get the interpretation of it. As I said, it must be interpreted by the department that administers it or by the Supreme Judicial Court of any land in which it is involved.

Here is a telegram to the Governor of the State of Maine:

"Governor Louis J. Brann, Augusta, Maine. Greatly regret that I can find no means of facilitating your effort to enable Maine hospitals and physicians to secure supplies of alcoholic beverages for medicinal purposes. Federal alcohol control administration is without power to authorize transport or import of alcoholic beverages even for such purposes into a state

where present state laws forbid the delivery sale or use of such beverages in such state. (Signed) Joseph H. Choate, Jr., Federal Alcohol Control Administrator."

There is the inter-pretation of the situation as it exists here today. He says there is nothing he can do to help our doctors, our hospitals and our manufacturing plants who use alcohol and the many, many other sources where industrial alcohol or grain alcohol is to be used. No alcohol is available today for the undertakers or embalmers of this State and we have the situation of the bootlegger supplying them with alcohol for their needs.

Whether or not that creates an emergency, is a matter which this legislature must decide. Of course, I take the position that such a situation does create an emergency within the meaning of the Constitution of the State of Maine.

Now, my brother Murchie realizes of course, as well as I realize that there is equally as great a controversy over the fact of the good that will result from the passage of bill No. 107, there is just as much controversy over the passage of the act and what it will accomplish when put into effect as there is over the passage of the so-called druggists' bill, No. 199. If that represents the confusion—and we do not know the result of the effect of the Murchie bill, No. 107—then safety demands that the emergency preamble remain on this one.

I think it is very clear that within the meaning of the Constitution of the State of Maine an emergency does exist and if I am correctly informed, Mr. President, there has been placed a new emergency preamble on, in the form of an amendment in the House. Am I correct?

The PRESIDENT pro tempore: I think that is correct. It is House Amendment "B." Would you like it read at this time?

Mr. BLAISDELL: I think, Mr. President, I have a copy of it. That emergency preamble sets forth very clearly an emergency within the meaning of the Constitution of the State of Maine and the emergency should remain on there until we have either passed or defeated the whole bill. I hope that the motion of the Senator from Washington, Senator Murchie, will not prevail.

Mr. MURCHIE: Mr. President,

may I first express to the Senate my regret that the Senator from Hancock, Senator Blaisdell, was not here when I was addressing the Senate. His chair is immediately behind the one I am occupying and until the Senator from Kennebec (Senator Viles) made his statement I had no knowledge that he wasn't here. May I, through the Chair, address a question to the Senator from Hancock, Senator Blaisdell.

The PRESIDENT pro tem: Does the Senator from Hancock, Senator Blaisdell, care to grant the request?

Mr. BLAISDELL: Mr. President, if the Senator from Washington, Senator Murchie, does not confound the issue I shall be glad to answer.

Mr. MURCHIE: I would like to ask, Mr. President, merely the same question that I addressed to the Senator from Penobscot, Senator Weatherbee. As one of the sponsors of this measure in the Senate will the Senator from Hancock, Senator Blaisdell, subscribe to addressing questions to the Supreme Judicial Court of Maine to determine these questions that now agitate us before enacting this law?

Mr. BLAISDELL: I will not, Mr. President, in answer to the question, for the reason that I cannot see why the situation which has developed here should not have been presented to the Supreme Judicial Court of this State a week ago as well as today; and many of us have too much to do. That is my answer.

Mr. MURCHIE: Mr. President, if I might just comment on that last statement; the sponsors of the bill, themselves by the introduction of this new preamble have recognized what some of us knew at all times, that the emergency preamble as originally written could by no possible stretch of the imagination be effective. It has been impossible, therefore, for anyone desiring to determine that question to address questions to the Court until today.

The PRESIDENT pro tem: Is the Senate ready for the question? The question before the Senate is, shall the Senate adopt Senate Amendment "C" to Legislative Document 199, being to "amend said document by striking out the emergency preamble as amended, and the last section." Does any of the Senate care to have the amendment read before the vote is taken?

Mr. MURCHIE: Mr. President, on that motion I would like to call for the Yeas and Nays.

The PRESIDENT pro tem: Those who are in favor of ordering the Yeas and Nays will rise and stand until counted.

A sufficient number not having risen the Yeas and Nays were not ordered.

The PRESIDENT pro tem: Is the Senate ready for the question?

Mr. VILES: Mr. President, in order to clear my mind on this, is that the amendment offered by the Senator from Washington, Senator Murchie?

The PRESIDENT pro tem: The Chair will say that it is the amendment which strikes out the emergency preamble. Would the Senator from Kennebec, Senator Viles, like to have it read?

Mr. VILES: No, Mr. President.

The PRESIDENT pro tem: The question is on the adoption of Senate Amendment "C". Is the Senate ready for the question?

A viva voce vote being had Senate Amendment "C" was not adopted.

The PRESIDENT pro tem: The question before the Senate now is the adoption of House Amendment "E" in concurrence. House Amendment "E" was adopted in non-concurrence in the House. The Secretary will read House Amendment "E".

The Assistant Secretary read House Amendment "E".

The PRESIDENT pro tem: Is the Senate ready for the question on the adoption of House Amendment "E"?

A viva voce vote being had House Amendment "E" was adopted in concurrence.

Thereupon, the bill as amended by House Amendment "A" as amended by House Amendment "A" to House Amendment "A" and as further amended by House Amendment "B" and House Amendment "E", was passed to be engrossed in concurrence.

The PRESIDENT pro tem: The Chair is informed that there is nothing further to come before the Senate at this time.

On motion by Mr. Littlefield of York,

Recessed, until 4:30 o'clock this afternoon.

### After Recess

The Senate was called to order by the President.

The PRESIDENT: The Chair will state that the House has passed to be enacted the so-called Flexibility Bill. The last recess of the Senate was taken until four-thirty. It is now five forty-five. The Senator from Kennebec, Senator Viles, who is the Chairman of the Committee on Appropriations, the Senator from Kennebec, Senator Towle, the Senator from Somerset, Senator Weeks and the Senator from Cumberland, Senator Jackson, are temporarily absent. The Senator from Somerset, Senator Page, has gone to New York. If there is no attempt to defeat the bill it can be enacted now. If there is to be any debate on the bill in opposition to it the Chair would feel that out of courtesy to the absent Senators a recess should be taken. The Chair will therefore call the bill in its usual order and if any member wishes to oppose it the Chair will urge that instead of opposing it at this time a motion to recess be made so that the absent Senators may be brought in.

Mr. WEATHERBEE of Penobscot: Perhaps, Mr. President, we could vote on the matter with the understanding that if the bill were defeated it could be tabled and taken up again when the absent Senators come in.

Mr. LITTLEFIELD of York: Mr. President, I don't think that is the proper way to do it. When we vote on this bill let's vote on it and if we defeat it all right, and if we don't, all right.

The PRESIDENT: The Senator from York, Senator Littlefield, will no doubt recognize that any member of the Senate has a right to move reconsideration on any vote and the Chair understands that is the suggestion of the Senator from Penobscot, Senator Weatherbee.

Mr. LITTLEFIELD: As far as I am concerned, Mr. President, I am willing to vote on the bill now.

Mr. WEATHERBEE: Of course, Mr. President, I would want it understood that no one would defeat the motion for reconsideration.

Mr. KITCHEN of Aroostook: Well, Mr. President, a motion for reconsideration is governed by a majority vote as I understand it.

The PRESIDENT: The Chair so understands unless the motion is

made later than the next legislative day.

Mr. KITCHEN: Then I don't think there would be any difficulty in reconsidering.

**(Emergency Measure)**  
**(Out of Order)**

An act providing flexibility in the handling of State revenues and expenditures during the period of the present State cash stringency. (S. P. 65, L. D. 169)

Which act being an emergency measure and having received the affirmative vote of 25 members of the Senate was passed to be enacted.

On motion by Mr. Littlefield of York.

Adjourned until eight o'clock this evening.

**Communication from the Clerk of the House**

**HOUSE OF REPRESENTATIVES**  
**Augusta**

December 19, 1933.

Hon. Royden V. Brown  
Secretary of the Senate  
Augusta, Maine

Sir:

I transmit herewith "An Act regulating the sale of spirituous and vinous liquors, for medicinal and mechanical purposes and the arts" (H. P. 156, L. D. 199).

This being an emergency measure and requiring two-thirds of the elected membership of the House, and in the House today ninety-one voted in favor of enactment and fifty-two against, the bill failed on its passage to be enacted.

Respectfully yours,

(Signed) HARVEY R. PEASE,  
Clerk of the House.

Which communication was placed on file.

Mr. WEYMOUTH of Penobscot: Mr. President, I move that the bill be indefinitely postponed.

Mr. VILES of Kennebec: In the absence of the Senator from Hancock, Senator Blaisdell, Mr. President, I move that the matter lie upon the table awaiting his return.

The motion to table prevailed.

Mr. VILES of Kennebec: Mr. President, I move that we recess until nine o'clock in order that an amendment may be prepared.

The motion to recess prevailed.

**After Recess**

The Senate was called to order by the President.

Papers from the House, out of order, disposed of in concurrence.

From the House, out of order

The Committee on Taxation on bill an act to impose a Sales Tax (together with remonstrances S. P. 29, S. P. 64, H. P. 133, H. P. 139, and H. P. 140) reported that the same ought not to pass.

In the House, the report was read and accepted.

In the House, the report was read and accepted.

In the Senate:

Mr. JACKSON of Cumberland: Mr. President and members of the Senate: If ever I was in favor of a sales tax, it is tonight. I think it will be a lasting disgrace to this legislature to adjourn and leave the State in its present serious financial condition. However, the legislature has seen fit to bring into being a tax commission that will, in the next two months, study the tax measures and tax laws of our State and bring to the Governor and Council at an early date, its findings. Therefore, Mr. President, I move that we accept the report of the committee.

Thereupon the report of the committee "ought not to pass" was accepted in concurrence.

**Report of Committee**

**(Out of order)**

The Committee on Taxation submitted its final report.

Which report was read and accepted.

Sent down for concurrence.

The PRESIDENT: The Chair will advise the Senate that so far as he is able to learn there are three matters in the House where the action of the Legislature is not complete; the Lottery Bill, the bill on the salaries of subordinate offices and the Tompkins Bill so-called, and two orders which obviously serve no purpose now. In the Senate we have on the table the Druggist Bill, so-called and one order introduced this morning. So that unless we are to set up some program of increased taxation or further economy there is no other business except these five items and adjournment should be possible tonight.

Paper from the House, out of order, disposed of in concurrence.

The President laid before the Senate, bill, an act regulating the sale of spirituous and vinous liquors for medicinal, mechanical purposes and the arts (L. D. 199), tabled earlier in this evening's session by Mr. Viles of Kennebec pending the motion to indefinitely postpone; and the Chair recognized that Senator.

Mr. VILES of Kennebec: Mr. President, I yield to the Senator from Hancock, Senator Blaisdell.

Mr. BLAISDELL of Hancock: Mr. President, I move that the Senate now recess until nine-forty five.

Mr. LITTLEFIELD of York: Mr. President, may I ask why they wish to adjourn until 9:45; if there is a good reason for it or is it just to fool along and keep us here all night the way they did before?

Mr. VILES: Mr. President, if I may answer the Senator I will say that there is in preparation a very important amendment to the so-called Druggist Bill which we hoped would be ready some few minutes ago but which is not quite ready.

The PRESIDENT: The question is on the motion of the Senator from Hancock, Senator Blaisdell, that the Senate recess until 9:45.

A viva voce vote being had

The motion to adjourn prevailed.

#### After Recess

The Senate was called to order by the President.

The PRESIDENT: The unfinished business at the time of recess was an act regulating the sale of spirituous and vinous liquors for medicinal and mechanical purposes and the arts (H. P. 156, L. D. 199). The Chair recognizes the Senator from Hancock, Senator Blaisdell, who had the floor when the recess was taken.

Mr. BLAISDELL of Hancock: Mr. President, the committee and attorneys that are working on the amendment expect to report at any moment. We are not quite ready to take up the matter which is tabled. If we could just recess from moment to moment or perhaps until the sound of the gavel, it would not be so long.

The PRESIDENT: Does the Senator make a motion to recess for ten minutes.

Mr. BLAISDELL: Yes, Mr. President, I do.

Mr. KITCHEN of Aroostook: Mr. President, may I inquire of the Chair whether there is any further report on the condition of our Secretary, Mr. Brown?

The PRESIDENT: The Chair will say that according to the last report received there is no definite change in Mr. Brown's condition but he has been resting more comfortably and on the whole his condition seems to be more favorable.

Mr. KITCHEN: Mr. President, it seems to me that it would be entirely appropriate, and I would move, that the Assistant Secretary be instructed to convey to our Secretary of the Senate, Royden V. Brown, our sincere regret because of his illness, and to express our hope for his immediate recovery. I make that as a motion.

The PRESIDENT: The Senate hears the motion and the Chair will take the liberty of calling for a rising vote.

A rising vote being taken

The motion unanimously prevailed.

The PRESIDENT: The question before the Senate is now on the motion of the Senator from Hancock, Senator Blaisdell, that the Senate adjourn for ten minutes.

A viva voce vote being doubted

A division of the Senate was had.

Nineteen having voted in the affirmative and three opposed, the motion to recess prevailed.

#### After Recess

The Senate was called to order by the President.

The President laid before the Senate, An Act regulating the sale of spirituous and vinous liquors for medicinal and mechanical purposes and the arts (L. D. 199), tabled a few minutes ago by the Senator from Hancock, Senator Blaisdell; and the Chair recognized that Senator.

Mr. BLAISDELL of Hancock: Mr. President, it is with a good deal of pleasure and satisfaction that I yield to the Senator from York Senator Littlefield.

Mr. LITTLEFIELD of York: Mr. President, I have attended this Legislature now for nine sessions, I think, and every time with no exception we have been held up here until midnight or one or two o'clock until everyone went to sleep, got tired out and got under the desks or on top of the desks and every-

where else. I understand now that there is a liquor bill here and that we have got to pass it. Now, we cannot pass it in the form in which it is drafted, so they say, but they say we have got to wait and have it amended. We have waited since eight o'clock for this one particular amendment but the bill has been with us for three weeks. Now, it seems to me that someone is to blame. It may be me. I don't know; but if it is I am sorry. But the others don't seem to be sorry. Mr. President, I move that we give this committee nine minutes more to produce this amendment, which will be ten-fifteen, and if it doesn't come in then I move that we do something with the bill.

The PRESIDENT: With the consent of the Senator from York, Senator Littlefield, the Chair will put that as a simple motion to recess until ten-fifteen o'clock because the Chair does not feel that the Senate can impose such restrictions on a committee. Is it the pleasure of the Senate that we now recess until ten-fifteen?

The motion to recess prevailed.

#### After Recess

The Senate was called to order by the President.

The President laid before the Senate, An Act regulating the sale of spirituous and vinous liquors for medicinal and mechanical purposes and the arts (L. D. 199), tabled in this evening's session pending the motion to indefinitely postpone, by Mr. Littlefield of York; and the Chair recognized that Senator.

Thereupon, that Senator yielded to the Senator from Penobscot, Senator Weymouth who yielded to the Senator from Hancock, Senator Blaisdell.

Mr. BLAISDELL of Hancock: May I ask through the Chair a question of the Senator from Penobscot, Senator Weymouth.

The PRESIDENT: The Senator from Hancock, Senator Blaisdell, wishes to ask a question through the Chair of the Senator from Penobscot, Senator Weymouth. He may do so and that Senator may answer if he desires.

Mr. BLAISDELL: Mr. President, to avoid confusion, loss of time, and so forth, I would like to inquire of the Senator from Penobscot, Senator Weymouth, if he would be will-

ing to withdraw his motion to indefinitely postpone.

Mr. WEYMOUTH of Penobscot: Mr. President, I withdraw my motion.

Mr. WEATHERBEE of Penobscot: Mr. President, I have an amendment which I wish to offer and move its adoption.

The PRESIDENT: The Senator from Penobscot, Senator Weatherbee, moves that the Senate reconsider its action of this afternoon whereby this bill was passed to be engrossed as amended by House Amendment "A" as amended by House Amendment "A" to House Amendment "A" and as further amended by House Amendment "B" and House Amendment "E."

The motion to reconsider prevailed.

The PRESIDENT: The Senator from Penobscot, Senator Weatherbee, now offers Senate Amendment "D" and moves its adoption.

Mr. WEATHERBEE: Now, Mr. President, I would suggest that the first of the amendment be read; the entire amendment is very lengthy and if we can get it past the stage of being engrossed it would save a great deal of time.

The PRESIDENT: Will the Senator from Penobscot, Senator Weatherbee, come to the desk for the moment?

The PRESIDENT: The Chair, with full realization that when a Maine legislature begins to talk about this esubject matter of rum, it is liable to disregard all forms of regularity, but the Chair is forced to rule Senate Amendment "D" out of order. Senate Amendment "D," the Chair will state to the Senate, is the identical bill designated as legislative document 149 with trivial changes, which was reported by the committee on temperance "ought not to pass" and the report of the committee was accepted on December 15th. Under the rules of the Senate, if the Senate chose to abide by its rules, a matter which is once indefinitely postponed or thrown out by concurrent action, cannot be revived except on three days notice. This bill, in the opinion of the Chair, must be either an attempt to introduce the bill without reconsideration or an attempt to introduce a new bill notwithstanding the closing order which was adopted early in our session. The Chair anticipates there will be an appeal from



the ruling of the chair and will, of course, entertain such an appeal.

Mr. WEATHERBEE: Mr. President, this is a very important matter, as you very well known. We should, before adjourning, reach some definite conclusion in both houses upon the subject matter, and tonight, owing to the short recesses, this matter was hastily drawn, I think it would be wise if we adjourned until tomorrow morning. I make a motion that the Senate be now adjourned until tomorrow morning at nine-thirty.

Mr. LITTLEFIELD: Mr. President, I would like to amend that motion, if it is in order, until ten o'clock.

Mr. VILES of Kennebec: Mr. President, speaking to the hour

of adjournment may I inquire through the Chair of the Senator from Penobscot, Senator Weatherbee, if it would not expedite matters if this bill was sent for printing and engrossing tonight, thus avoiding delay in the morning.

Mr. WEATHERBEE: Mr. President, I think the other procedure is preferable, to recess.

The PRESIDENT: Will the Senator from Penobscot, Senator Weatherbee, accept the amendment of the Senator from York, Senator Littlefield, to recess until ten o'clock instead of nine-thirty?

Mr. WEATHERBEE: Yes, Mr. President; ten o'clock.

Thereupon, the Senate voted to recess until ten o'clock tomorrow morning.