

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

Ninety-Second Legislature

OF THE

STATE OF MAINE

1945

DAILY KENNEBEC JOURNAL

AUGUSTA, MAINE

HOUSE

Wednesday, March 14, 1945.

The House met according to adjournment and was called to order by the Speaker.

Prayer by the Rev. Andrew Richards of North Anson.

Journal of the previous session read and approved.

Mr. Ward of Millinocket, out of order and under suspension of the rules, presented the following Order:

ORDERED, the Senate concurring, that House Paper 824, Legislative Document 428, "An Act Relating to Assignment of Counsel by the Superior Court," be recalled to the House from the Governor. (H. P. 1335)

The **SPEAKER**: The Chair recognizes the gentleman from Millinocket, Mr. Ward.

Mr. **WARD**: Mr. Speaker, very briefly, this is a matter which I presented to the Legislature, and it is deemed advisable at this time to recall the matter for further consideration. I hope the Order receives passage.

Thereupon, out of order and under suspension of the rules, the Order received passage; and on further motion by Mr. Ward, the Order was sent forthwith to the Senate.

**Papers from the Senate
Senate Reports of Committees
Ought Not to Pass**

Report of the Committee on Legal Affairs reporting "Ought not to pass" on Bill "An Act relating to State Racing Commission and Pari Mutuel" (S. P. 289) (L. D. 722)

Report of same Committee reporting same on Bill "An Act relating to Auctioneers" (S. P. 322) (L. D. 829)

Came from the Senate read and adopted.

In the House, read and accepted in concurrence.

Ought to Pass

Report of the Committee on Appropriations and Financial Affairs reporting "Ought to pass" on Resolve in favor of the Maine Historical Society (S. P. 70) (L. D. 62)

Report of the Committee on Inland Fisheries and Game reporting same on Resolve relating to Ice Fishing in Kezar Lake (S. P. 312) (L. D. 839)

Report of the Committee on Maine Publicity reporting same on Resolve Designating the White Pine Tree as the State Official Tree (S. P. 181) (L. D. 381)

Report of the Committee on Motor Vehicles reporting same on Bill "An Act relating to Operating Motor Vehicles at Grade Crossings" (S. P. 329) (L. D. 822)

Report of the Committee on Taxation reporting same on Bill "An Act relating to Taxation of Property of United States" (S. P. 222) (L. D. 462)

Report of same Committee reporting same on Bill "An Act relating to Cigarette Tax Licenses" (S. P. 153) (L. D. 371)

Came from the Senate the Reports read and accepted and the Bills and Resolves passed to be engrossed.

In the House, Reports were read and accepted in concurrence, the Bills read twice, the Resolves read once, and tomorrow assigned.

Bill Requiring Reference

The following Bill, transmitted by the Revisor of Statutes pursuant to Joint Order, S. P. 124, was received:

Bill "An Act Amending the Insurance Laws" (H. P. 1334) (Presented by Mr. Snow of Auburn)

On motion by Mr. Bowker of Portland, the Bill was referred to the Committee on Mercantile Affairs and Insurance, 1,000 copies ordered printed, and sent up for concurrence.

Orders

On motion by Mr. Perkins of Boothbay Harbor, it was

ORDERED, that there be printed 250 additional copies of each of the following Public Bills:

Bill "An Act Creating a Board of Examiners for Electricians" (H. P. 1303) (L. D. 948)

Bill "An Act relating to Pollution in Cobbosseecontee and Annabessacook Lakes and Tributaries" (H. P. 1289) (L. D. 935)

Bill "An Act relating to the Sanitary Water Board" (H. P. 1288) (L. D. 934)

Bill "An Act Revising the Teachers' Pension Law" (H. P. 1072) (L. D. 665)

On motion by Mr. Boulier of Stacyville, it was

ORDERED, that Rev. Frederick A. Champion of Sherman Mills, be invited to act as Chaplain of the House on Tuesday, April 3rd.

On motion by Mr. Downs of Rome, it was

ORDERED, that Mr. Poulin of Rumford, be excused from attendance for the remainder of the week because of business; also that Mr. Lacharite of Brunswick, be excused for the balance of the week because of illness; and that Mr. Bird of Washington, be excused from attendance Friday because of business.

House Reports of Committees

Leave to Withdraw

Mr. Anderson from the Committee on Inland Fisheries and Game on Resolve Regulating Ice Fishing in Squa Pan Lake in Aroostook County (H. P. 506) (L. D. 201) reported leave to withdraw.

Mr. MacKinnon from same Committee reported same on Bill "An Act relating to Open Season on Bull Moose in Cumberland County" (H. P. 1180) (L. D. 741)

Mr. Cousins from the Committee on Public Utilities reported same on Bill "An Act relating to Transportation of Livestock" (H. P. 351) (L. D. 127)

Mrs. Lord from the Committee on Welfare reported same on Bill "An Act relating to Payment of Funeral Expenses of Persons Receiving Old Age Assistance and Aid to the Blind" (H. P. 360) (L. D. 125)

Reports were read and accepted and sent up for concurrence.

Ought Not to Pass

Mr. Crosby from the Committee on Appropriations and Financial Affairs reported "Ought not to pass" on Resolve in favor of Knox Arboretum (H. P. 1133) (L. D. 789)

Report was read and accepted and sent up for concurrence.

Recommitted

Miss Deering from the Committee on Education reported "Ought not to pass" on Bill "An Act relating to

Towns having no Free High Schools" (H. P. 503) (L. D. 200)

(On motion by Mr. Vickery of Pittsfield, the Report, with accompanying Bill, was recommitted to the Committee on Education)

Tabled and Assigned

Mr. Lord from the Committee on Education reported "Ought not to pass" on Bill "An Act relating to Voluntary School Unions" (H. P. 1269) (L. D. 912)

The **SPEAKER**: The Chair recognizes the gentleman from Camden, Mr. Lord.

Mr. **LORD**: Mr. Speaker, I move the acceptance of the "Ought not to pass" report of the committee.

(On motion by Mr. Donahue of Biddeford, the report, with accompanying bill, was tabled, pending the motion of Mr. Lord that the House accept the "Ought not to pass" report, and specially assigned for next Wednesday, March 21st)

Mr. Rankin from the Committee on Legal Affairs reported "Ought not to pass" on Bill "An Act relating to Exhibitions of Agricultural Societies" (H. P. 966) (L. D. 583)

Mr. Bowker from the Committee on Mercantile Affairs and Insurance reported same on Bill "An Act relating to Personal Examination of Certain Applicants to Solicit Insurance" (H. P. 1144) (L. D. 695)

Mr. Brown from the Committee on Public Utilities reported same on Bill "An Act relating to Inspection of Dams and Reservoirs" (H. P. 543) (L. D. 260)

Reports were read and accepted and sent up for concurrence.

Tabled

Mr. Collins from the Committee on Public Utilities reported "Ought not to pass" on Bill "An Act relating to Rural Electrification Cooperatives" (H. P. 544) (L. D. 322)

(On motion by Mr. Williams of Clifton, tabled pending acceptance of Committee Report)

Mr. Lombard from the Committee on Taxation reported "Ought not to pass" on Bill "An Act relating to the Gasoline Tax" (H. P. 1154) (L. D. 697)

Mr. Wright from same Committee reported same on Bill "An Act relating to the Use Fuel Tax" (H. P. 1153) (L. D. 696)

Mr. Harrison from the Commit-

tee on Welfare reported same on Bill "An Act relating to Payments by the State Toward Burial Expenses of Recipients of Old Age Assistance and Aid to the Blind" (H. P. 1016) (L. D. 557)

Same gentleman from same Committee reported same on Resolve relating to Status of Pauper Settlement of Arthur Melvin Clewley (H. P. 1017) (L. D. 553)

Reports were read and accepted and sent up for concurrence.

Ought to Pass Printed Bills

Miss Deering from the Committee on Education reported "Ought to pass" on Resolve Designating Hospital Building at State School for Girls as "Stevens Building" (H. P. 1327) (L. D. 971)

Mr. Marsans from same Committee reported same on Bill "An Act relating to Greeley Institute" (H. P. 317) (L. D. 100)

Mr. Russell from same Committee reported same on Resolve relating to Teacher-Pension Status of Carrie M. Wight of Bethel, Maine (H. P. 725) (L. D. 397)

Reports were read and accepted and the Bill and Resolves, having already been printed, under suspension of the rules the Bill was read twice, the Resolves read once, and tomorrow assigned.

Ought to Pass With Committee Amendment

Mr. Meloon from the Committee on Banks and Banking on Bill "An Act relating to Retiring Allowances or Life Insurance for Officers and Employees of Savings Banks" (H. P. 1163) (L. D. 700) reported "Ought to pass" as amended by Committee Amendment "A" submitted therewith.

Report was read and accepted and the Bill, having already been printed, was read twice under suspension of the rules.

Committee Amendment "A" read by the Clerk as follows:

Committee Amendment "A" to H. P. 1163, L. D. 700. Bill "An Act Relating to Retiring Allowances or Life Insurance for Officers and Employees of Savings Banks."

Amend said Bill by deleting (drawing a line through) the following: ", but not more than 1/2 of his salary at the time of his re-

tirement" in the 17th and 18th lines of said Bill (16th and 17th lines of the Bill as printed).

Committee Amendment "A" was adopted, and the Bill was assigned for third reading tomorrow morning.

On motion by Miss Deering of Bath, House Rule 25 was suspended for the remainder of today's session, in order to permit smoking. (Applause)

Passed to be Engrossed

Bill "An Act relating to Town Reports" (S. P. 375) (L. D. 969)

Bill "An Act relating to the Assignment of Accounts Receivable" (S. P. 378) (L. D. 970)

Bill "An Act relating to the Duties of the Department of Health and Welfare and the Inspection and Licensing of Institutions and Boarding Homes for the Aged" (H. P. 357) (L. D. 122)

Bill "An Act relating to Tuition in Secondary Schools" (H. P. 805) (L. D. 419)

Bill "An Act relating to Records of Sale of Real Estate for Taxes" (H. P. 1084) (L. D. 775)

Bill "An Act relating to Personal Loans Made by Savings Banks" (H. P. 1117) (L. D. 692)

Bill "An Act to Extend the Charter of the Vanceboro Water Company" (H. P. 1226) (L. D. 772)

Bill "An Act to Extend the Charter of the Central Aroostook Railway Company" (H. P. 1227) (L. D. 809)

Bill "An Act relieving Towns from Care of Neglected Children" (H. P. 1332) (L. D. 980)

Bill "An Act relating to Licensing Boarding Homes for Children" (H. P. 1333) (L. D. 981)

Were reported by the Committee on Bills in the Third Reading, read the third time, passed to be engrossed and sent to the Senate.

Amended Bills

Bill "An Act relating to the Re-issuance of Revoked Hunting Licenses" (S. P. 58) (L. D. 23)

Bill "An Act relating to Street Sliding" (H. P. 211) (L. D. 84)

Bill "An Act to Amend the Charter of the City of South Portland and Provide for a Park and Recreation Commission" (H. P. 530) (L. D. 259)

Bill "An Act to Aid in Prevention of Flood Damage" (H. P. 1225) (L. D. 808)

Resolve in favor of Penobscot Tribe of Indians (H. P. 792) (L. D. 415)

Were reported by the Committee on Bills in the Third Reading, Bills read the third time, Resolve read the second time, all passed to be engrossed as amended and sent to the Senate.

Tabled

Bill "An Act Relating to the Digging or Taking of Clam-Worms" (H. P. 195) (L. D. 58)

(Was reported by the Committee on Bills in the Third reading, read the third time, and on motion by Mr. Sargent of Bucksport, tabled pending passage to be engrossed)

Tabled

The **SPEAKER**: The Clerk has in his possession the bill recently recalled from the Governor by Joint Order.

Thereupon, on motion by Mr. Ward of Millinocket, under suspension of the rules, the House voted to reconsider its action whereby it passed "An Act Relating to Assignment of Counsel by the Superior Court," H. P. 824, L. D. 428, to be enacted; and on further motion by the same gentleman, under suspension of the rules, the House voted to reconsider its action whereby this bill was passed to be engrossed.

On further motion by Mr. Ward, the bill was tabled pending passage to be engrossed.

Passed to be Enacted Emergency Measure

An Act Authorizing the town of Mount Desert to Improve the Port of Northeast Harbor and Facilities (H. P. 339) (L. D. 152)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. This being an emergency measure and a two-thirds vote of all the members elected to the House being necessary, a division was had. 130 voted in favor of same and none against, and accordingly the Bill was passed to be enacted, signed by the **Speaker** and sent to the Senate.

Passed to be Enacted

An Act Authorizing Savings Banks, Loan and Building Associations and Trust Companies to Make Mortgage Loans Under the Servicemen's Readjustment Act of 1944 (S. P. 47) (L. D. 11)

An Act relative to Game Preserve (S. P. 112) (L. D. 229)

An Act to Promote Proper Recording and Education Concerning Vital Statistics (S. P. 117) (L. D. 226)

An Act relating to Recording of Certificates of Incorporation (S. P. 138) (L. D. 343)

An Act relating to Reenactment of Law Dealing with Unexpended Appropriations (S. P. 190) (L. D. 491)

An Act relating to Admission to Practice Law (S. P. 201) (L. D. 483)

An Act relating to the Transportation of Poles (S. P. 205) (L. D. 479)

An Act to Extend Opportunities for Secondary Education to Children Residing on the Islands Classified as Unorganized Territory (S. P. 238) (L. D. 646)

An Act to Extend Opportunities for Secondary Education to Island Children (S. P. 239) (L. D. 645)

An Act relating to Settlement of Suits (S. P. 244) (L. D. 640)

An Act relating to Reference or Compromise (S. P. 245) (L. D. 639)

An Act relating to the Determination of Mentally Defective Children (S. P. 318) (L. D. 833)

Were reported by the Committee on Engrossed Bills as truly and strictly engrossed, passed to be enacted, signed by the **Speaker** and sent to the Senate.

Tabled

An Act relating to Retirement of Justices of the Superior and Supreme Judicial Courts (H. P. 243) (L. D. 86)

(On motion by Mr. Haskell of Portland, tabled pending passage to be enacted)

An Act relating to Changes Under the Public Utility Holding Company Act Approved by Court of Competent Jurisdiction (H. P. 245) (L. D. 93)

An Act relating to the Foreclosure of Tax Mortgages in Equity (H. P. 328) (L. D. 115)

An Act relative to Quieting and Establishing of Titles Derived from

Tax Lien Certificates (H. P. 329) (L. D. 116)

An Act relating to the Chief Engineer and Assistant of the city of Lewiston (H. P. 428) (L. D. 236)

Were reported by the Committee on Engrossed Bills as truly and strictly engrossed, passed to be enacted, signed by the Speaker and sent to the Senate.

Tabled

An Act relating to the Working Capital of the Liquor Commission (H. P. 620) (L. D. 302)

(On motion by Mr. Bowker of Portland, tabled pending passage to be enacted)

An Act to Amend the Charter of the city of Saco by Providing for the Appointment of a Civil Service Commission (H. P. 653) (L. D. 301)

An Act relating to Adoption of Children (H. P. 820) (L. D. 424)

An Act to Repeal the Pension Law for Police in the town of Houlton (H. P. 826) (L. D. 441)

An Act relating to the Time for Packing Sardines (H. P. 879) (L. D. 515)

An Act relating to Interest Payments by Counties on Lost Heir Funds, So Called (H. P. 1063) (L. D. 660)

An Act relating to Witnesses Summoned to Appear before the State Liquor Commission (H. P. 1071) (L. D. 804)

An Act relating to Proxies (H. P. 1185) (L. D. 746)

An Act relating to Speed Limit on Bridges (H. P. 1205) (L. D. 706)

An Act relating to Inspection of Motor Vehicles (H. P. 1207) (L. D. 708)

An Act relating to Adoption of Persons (H. P. 1283) (L. D. 910)

An Act to Provide a Town Manager Form of Government for the town of Fairfield (H. P. 1323) (L. D. 967)

An Act to Amend the Charter of the Brunswick Village Corporation (H. P. 1324) (L. D. 968)

Finally Passed

Resolve relating to Old Bay Bridge Road in the county of Sagadahoc (S. P. 282) (L. D. 728)

Resolve -Regulating Fishing in Pleasant Pond (H. P. 509) (L. D. 249)

Resolve Opening Androscoggin Watershed and Tributaries to Smelt Fishing (H. P. 694) (L. D. 311)

Resolve relating to Sale and Distribution of Index to Private and Special Laws (H. P. 962) (L. D. 581)

Were reported by the Committee on Engrossed Bills as truly and strictly engrossed, Bills passed to be enacted, Resolves finally passed, all signed by the Speaker and sent to the Senate.

Orders of the Day

The SPEAKER: The Chair lays before the House the first tabled and today assigned matter, House Report "Ought to pass" of the Committee on Appropriations and Financial Affairs on Resolve in favor of the University of Maine (H. P. 409) (L. D. 183) tabled on March 9th by the gentleman from Bangor, Mr. Haskell, pending acceptance of report; and the Chair recognizes that gentleman.

On motion by Mr. Haskell, the Resolve was recommitted to the Committee on Appropriations and Financial Affairs and sent up for concurrence.

On motion by Mr. Wight of Bangor, the House voted to take from the table the third tabled and unassigned matter, Bill "An Act Relating to the Issuance of Licenses for Carrying of Concealed Weapons" (H. P. 525) (L. D. 256) tabled on February 20th by that gentleman pending third reading.

Mr. Wight presented House Amendment "A" and moved its adoption.

House Amendment "A" was read by the Clerk as follows:

House Amendment "A" to H. P. 525, L. D. 256, Bill "An Act Relating to the Issuance of Licenses for Carrying of Concealed Weapons."

Amend said bill by striking out the last sentence thereof which reads as follows: "As a prerequisite to the issuance of such license, the official or officials may demand a complete set of fingerprints of licensee, to be kept with such permanent record."

House Amendment "A" was adopted and the bill was given its third reading, passed to be engrossed as amended, and sent up for concurrence.

On motion by Mr. Crosby of Farmington, the House voted to take from the table the eleventh tabled and unassigned matter, Bill "An Act Relating to the Hunting and Trapping of Foxes" (S. P. 362) (L. D. 902) which in the Senate

was passed to be engrossed: in the House read twice and tabled on February 27th by that gentleman pending third reading.

Mr. Crosby offered House Amendment "A" and moved its adoption.

House Amendment "A" was read by the Clerk as follows:

House Amendment "A" to S. P. 362, L. D. 902, Bill "An Act Relating to the Hunting and Trapping of Foxes."

Amend said Bill by adding at the end thereof the following underlined sentence:

'The provisions of this subsection shall not apply to Franklin county.'

On motion by Mr. Anderson of Oxbow Plantation, the bill and amendment were tabled pending adoption of House Amendment "A".

On motion by Mr. Perkins of Boothbay Harbor, the House voted to take from the table the thirteenth tabled and unassigned matter, Majority Report "Ought not to pass" and Minority Report "Ought to pass" of the Committee on Judiciary on Bill "An Act relating to Civil Actions for Death" (H. P. 244) (L. D. 90) tabled on February 28th by that gentleman pending acceptance of either report.

The SPEAKER: The Chair recognizes the gentleman from Boothbay Harbor, Mr. Perkins.

Mr. PERKINS: Mr. Speaker, I now move acceptance of the Majority Report "Ought not to pass."

The SPEAKER: The gentleman from Boothbay Harbor, Mr. Perkins, moves acceptance of the Majority Report "Ought not to pass."

The Chair recognizes the gentleman from Augusta, Mr. Peirce.

Mr. PEIRCE: Mr. Speaker and Members of the House: Before a vote is taken on this measure I think the House should know what the measure is. To illustrate, the first example, there is the case of a bus accident where the driver of the bus is admittedly negligent. The occupants of the bus, for the purpose of argument, we will say, are a mother and three children. Another occupant is a three year old child. Another occupant is a twenty-five year old father.

Now let us analyze what absurd results can be obtained by the law as it exists in the State of Maine today. For the purposes of argument, we will say that the mother of the three children was killed in-

stantly; no pain and suffering; no duration of consciousness whatever. In that case, her husband might bring suit against the bus company to recover under the statute known as the Lord-Campbell Act. Under that statute he would be entitled to recover her pecuniary value. Pecuniary is a word that comes from the Latin, the Latin word pecus, meaning cow. In other words, jury awards permitted by the Law Court in this State in some cases trace back to the value placed on Roman cattle. The award in the case of this mother instantly killed would be very small. She is a home maker. The Court would give no consideration to her care to her children or to her husband in making a home and in raising her children. The Court would base its award entirely on the pecuniary value; in other words, the earning value of that woman.

Another case, a three year old child is horribly mangled, lives two or three days, experiences consciousness at different times, and finally expires as a result of the injuries received from the accident. That child might be worth absolutely nothing in pecuniary value or very little in pecuniary value if it had died instantly and suit was brought against the company, but in this case where that child lived a short time and suffered pain, that could not be evaluated by any living soul. How much would you take for the loss of an eye or for the loss of a leg? You cannot evaluate these things.

To get back to the original proposition, the estate of that child could recover a very reasonable award from the bus company. That award would probably be three or four or five times as much as could be recovered in the case of the mother of the three children who was killed instantly. Are we going to continue with these absurd results in our laws in the State of Maine today?

Another example: The same accident, a twenty-year old girl, a graduate of high school and business college, with maybe a year's experience as a stenographer or private secretary. If she should die instantly as a result of the accident, a small nominal sum could be recovered from the bus company. If she should die after enduring some pain and suffering, the award would naturally be much larger. There is absolutely no reason, gentlemen, for this absurd distinction.

The opponents of this measure will say that different parties are bringing suit. They will tell you that under the Lord-Campbell Act, which my bill amends, the nearest relative, husband or wife, mother or father, son or daughter, would be bringing suit, whereas under the pain and suffering statute the estate brings suit. In 99-44/100% of cases, the estate and nearest of kin are the same identical persons. There is no reason for this absurd distinction.

Another example, which does not involve a bus accident. Take for example the six or seven year old boy riding in the road in the country near his farm home on a pure-blooded Shetland pony that may be worth from two to five thousand dollars. A drunken driver recklessly operating a truck runs over both the pony and the little boy, killing them both instantly. Now, members, if both the boy, and I suppose the pony, were not negligent in this accident, there could be some recovery, but what about the amount of the recovery? The six or seven year old boy might be in the eyes of our Law Court worth six or seven hundred dollars. The pony is worth two or three or four thousand dollars. Are we going to continue in our laws in this fair State provisions which, from a practical point, reach these absurd ends?

Now the opponents of this measure will tell you that it is impossible to evaluate human life. We agree with them. We do not attempt to place a value on human life. However, this act was passed by this Legislature over fifty years ago to fulfill an urgent need to bring Maine into line with other jurisdictions operating under the Anglo-Saxon system. We did keep in step with these jurisdictions.

At that time early cases going to the Law Court set a precedent for all subsequent cases. The first decisions handed down by the Law Court set what was considered in those times reasonable and fair awards. In the case of a young child, five hundred dollars in those times was reasonably fair, but a tremendous change has taken place in money values over a fifty year period. Five hundred dollars in 1895 was worth at least four times what it is worth today, and this bill amending the Lord-Campbell Act is an act by the proponents

to adjust this discrepancy that has taken place over a fifty year period in money values.

The Law Court, in effect, legislates a great deal,—there is no question about it,—although legislation is the sole province of the people representing the State of Maine; in other words, this House and the Senate. The effect of this legislation by the Law Court has been the retention of these absurd laws giving awards in the case of sudden death.

This measure, members, has been before this Legislature at previous sessions. I would not call it a radical measure. I would not call it even a progressive measure. It is a measure merely to bring the laws of the State of Maine up to date to conform to existing social and economic conditions. Like all social legislation, it requires time and battles on the part of its proponents to get it through. Past legislatures have defeated it and it has usually been defeated in committee. This time a minority report "Ought to pass" came out of committee and we feel encouraged to attempt a battle for the enactment of this measure at this session. Therefore I urge you, after listening to the arguments on both sides of this measure, to give it your favorable consideration and vote no on the motion of the gentleman from Boothbay Harbor (Mr. Perkins). Mr. Speaker, when this comes to a vote, I ask for a division of the House.

THE SPEAKER: The question before the House is on the motion of the gentleman from Boothbay Harbor, Mr. Perkins, that the House accept the majority "Ought not to pass" report of the committee.

The Chair recognizes the gentleman from Auburn, Mr. Williams.

MR. WILLIAMS: Mr. Speaker and Members of the House: There are a few things in connection with this proposed legislation that I feel should be called to your attention. It is not my purpose to go into any theoretical discussion of the law, but merely to point out a few practical difficulties that would be involved in the actual administration of a law of this type.

The purpose of our law, the theory, briefly, is compensatory; it is not to inflict any penalty upon the person who commits the damage or does injury. Although in some

instances it might appear that this did not work out equitably in every instance, I would like to point out just what does happen.

The case where this arises most frequently is in the case of children who happen to run into the street, and our question is whether we should pay a fixed minimum payment of \$2,000. Now it happens that I have two small children. The financial loss involved in the death of either one of those children would not interest me, and I do not think it would interest you, so far as your child is concerned. You are concerned with your love and affection for that child and keeping it in your home, and, if it is killed, no amount of money can replace that child. If your child is injured, that is another situation; the money in that case can pay you for the expenses, can help you to bring that child perhaps back to health and furnish him some of the things he might need in his injured condition.

Now so far as actually recovering under this act, I want to show you about how I feel it would work. If a child runs into the road and is injured, some of the proponents of this bill have assumed that insurance is involved in every case, or a bus company; but we have in this State between 40 and 45 per cent of our motor vehicle operators who are not insured.

Under our present law, if you are not insured and you run over a neighbor's child, you can go down there and say, "Now I am sorry; I do not think I was to blame; but I know you have some expense here, and I am willing to contribute two or three or four hundred dollars"—according to your means—and the parents would sign a release and you would make that payment to help them out. Now under this law it would be \$2,000, and you are surely not going down and offer to pay the \$2,000, because there are not many of us that can afford to do that if we are not insured. That would prevent the fellow from helping his neighbor or the person who had suffered this loss if he did have an immediate expense in connection with the death and burial of the child.

Now let us take the insurance angle for a moment. If there is an injury, regardless of liability,—in most of these instances, you know, because you have driven a car,

children run out into the street, and you yourself have narrowly escaped running over one on numerous occasions; but if you are insured the company comes down and they do not question very much, if any, who is to blame in connection with this injury or this death. They will pay a sum. To be sure, it is not much, perhaps \$500; sometimes it is less and sometimes it is more. I have known of instances where they paid as much as \$1,500. They do that on a compromise basis, and it takes care of the immediate financial embarrassment of the family. Of course they could not replace that child, no matter what they paid.

Now let us look at it if we pass this law with a minimum of \$2000. If there is any chance of avoiding liability, what are they going to do? They are going to attempt to prove that the child is guilty of negligence in running across the road, or that the driver of the car was not negligent. They could not pay \$500 or \$1000; they would have to pay \$2000. They are not going to pay that unless there is negligence. I submit to you that the parents of the child, or the husband where his wife is killed, would, in every instance, unless liability was absolutely sure and unquestioned, be placed in the position of having to bring suit and go to court and try the case. To be sure, if they won the case they would get \$2000, but that would not restore the life. If there is any question of liability, they would get nothing; or if there is any question of liability the case would be tried, because they are not going to pay \$2000.

Therefore, it seems to me that we would not be doing any service to the citizens of this State if we placed upon the person who suffers a loss like that, a death in the family, which cannot be paid for because you cannot replace a life—if we placed them in the predicament where the person who is not insured cannot come down there and make a reasonable contribution, or where the insurance company cannot come in and say, "We realize the liability is questionable, but we are willing to pay five or six hundred dollars to help out." It is not that they are philanthropists, or anything like that, but they realize there is a loss there and they like to close their records and they do make those payments.

I sincerely hope that this "Ought

not to pass" report will be accepted.

Mr. PEIRCE: Mr. Speaker and Members of the House: Now that the word insurance has been mentioned, evidently without any adverse effect on the person who first mentioned it, I would like to point out to the House that in a legal proceeding involving an accident in which insurance is involved, the mere mention of the word insurance automatically throws the entire case out of court.

In answer to my brother's argument, I would like to point out again that the Law Court of this State has already legislated, in effect, without any authority, constitutional or otherwise, minimum values on human life. I agree with my brother that it is impossible to evaluate human life. You do not want to evaluate the life of your mother, your son, your uncle or any relative; neither do I. In view of the fact that there already is legislation on the books in Law Court decisions, I do ask this House and Legislature to set a decent minimum value. There is a maximum of ten thousand dollars already set under the statute. I ask you to set a decent minimum value as provided by this bill. Once again I ask that the vote on this motion be no.

The SPEAKER: The question is on the motion of the gentleman from Boothbay Harbor, Mr. Perkins, that the House accept the majority "Ought not to pass" report of the committee. The gentleman from Augusta, Mr. Peirce, has asked for a division.

All those in favor of the motion of the gentleman from Boothbay Harbor, Mr. Perkins, will rise and stand in their places until counted and the monitors have made and returned the count.

A division of the House was had. Seventy-nine having voted in the affirmative and 15 in the negative, the motion prevailed, and the majority "Ought not to pass" report of the committee was accepted and sent up for concurrence.

On motion by Mr. Perkins of Boothbay Harbor, the House voted to take from the table the fourteenth tabled and unassigned matter, Majority Report "Ought not to pass" and Minority Report "Ought to pass" of the Committee on Judiciary on Bill "An Act with Reference to Pleading and Proving Contributory Negligence" (H. P.

330) (L. D. 117) tabled on February 28th by that gentleman pending acceptance of either report.

The SPEAKER: The Chair recognizes the gentleman from Boothbay Harbor, Mr. Perkins.

Mr. PERKINS: Mr. Speaker, I now move the acceptance of the majority report, "Ought not to pass."

The SPEAKER: The gentleman from Boothbay Harbor, Mr. Perkins, now moves that the House accept the majority "Ought not to pass" report. The Chair recognizes the gentleman from Augusta, Mr. Peirce.

Mr. PEIRCE: Mr. Speaker and Members of the House: This is another bill which would bring Maine into line with the majority of jurisdictions operating under the Anglo-Saxon system of law. In any action involving negligence, and I would like to point out that this is the sole case where this law applies,—

The SPEAKER: Will the gentleman defer for just a moment?

The Chair recognizes the presence in the House of a former Speaker, Colonel William Tudor Gardiner, and asks the Sergeant-at-Arms to escort him to the rostrum.

Thereupon, Colonel William Tudor Gardiner, Speaker of the House of Representatives in the year 1925, was escorted to the rostrum by the Sergeant-at-Arms amid the applause of the House, the members rising.

The SPEAKER: Colonel Gardiner, it gives me a great deal of pleasure to welcome you to the rostrum. You have served your State nobly and your country with honor and distinction. We are glad and proud to have you with us. (Applause)

The gentleman may proceed.

Mr. PEIRCE: (Continuing) Mr. Speaker, in a negligence action involving some accident, maybe an automobile accident, or any type of negligence action, the plaintiff must go into Court under the Maine law and prove two things: First of all, he must prove by a clear margin of evidence, or by a preponderance of the evidence, that his own actions were not negligent and did not contribute to the cause of the accident. He must prove that his own due care was adequate in the eyes of the law. Second, he must prove that the defendant was negligent.

We say, ladies and gentlemen, that is an unfair burden to place on the plaintiff. It is like a boxer going into the ring with both hands tied behind his back, having to fight a man with both hands free. His position as plaintiff may be one where you will rightly require him to prove his case and his case would be the negligence of the defendant. However, under the present law he has a double-barrelled burden of proving not only the other's negligence but his own lack of contributory negligence.

The defendant going into Court in Maine today does not have to prove anything. He can sit and twiddle his thumbs while his attorney works away on plucking out items of evidence that might point to the contributory negligence on the part of the plaintiff. This bill does not remove contributory negligence; it merely shifts the burden of proving it. It is entirely and logically a matter of defense and should be so pleaded and proved.

Now that I see that it is safe to mention the sacred word insurance, I would like to mention a couple of instances which occurred in this county within the last couple of months illustrating the unfair advantage that insured defendants have over plaintiffs in the State. An accident happened outside of Augusta in which the driver of an automobile, through no fault of his own but through the fault of the defendant, received severe chest injuries. He also received a concussion of the brain. He was hospitalized and for the time being placed on the danger list. Three-quarters of an hour after he had come out of the operating room—still on the danger list—his wife could not see him—his parents could not see him—an insurance investigator walked into the hospital and talked with the hospital physician, who incidentally is an insurance physician, and obtained the physician's permission to interview the injured man. It was about two or three weeks before he realized that he might have a case against the defendant who was insured and whose agent, the insurance adjuster, had so efficiently investigated the accident right on the spot, so to speak.

Another example of the unfair operation of the present law: A lady in the northern part of the county was injured in an automobile acci-

dent. She was a guest—a different law applies to guests than to drivers and operators and owners of automobiles. The lady was hospitalized for six weeks. She was a factory worker. She was fifty years old. Two weeks after her release from the hospital, she took one of her first outings walking along the road in the country. The insurance adjuster came along and had a check made out in her name and a release made out ready for her signature and he obtained her signature on the release and passed over to her the check for ten dollars.

I can assure you this measure has wide-spread support. I have a great many letters from prominent, outstanding attorneys. I am not going to read those letters. I would like to mention their names; you know many of them personally. In Portland we have such authorities as Charles Nichols, one of the deans of the American Bar, Richard Chapman, County Attorney, and Donald Leadbetter. In Augusta we have an attorney who is president of a bank, Walter Sanborn. He is for this measure; he considers it is fair. Now he is not a radical; he is not going to go out for any unsound legislation that might conceivably affect his bank or any other business institution in the State of Maine.

Other Augusta attorneys who supported it were Ernest Goodspeed and Carl Fellows, and the office of McLean, Southard & Hunt, also Melvin Sawtelle.

There were two attorneys in Augusta who, when they saw this bill, assured me they would support it. They do a little bit of insurance work, and, before the bill came up for hearing, they heard from their insurance clients and were asked to oppose it. They did not oppose it, neither did they go on record in favor of it.

In Bangor, another conservative gentleman and one of the best lawyers' lawyers this State has ever had, Howard M. Cook, is on record for it. Harry Stern is in favor of it. I can go right through the bigger Maine communities and name the names of attorneys favoring this bill.

In addition to local attorneys, I would like to point out that authorities in other states are one hundred per cent behind the rule I am asking you to enact here.

In addition to forty other juris-

dictions in this country, there are the U. S. Federal Courts where actions originate in those courts. The authorities, the text writers, the encyclopedias, say this is the preferable law: Wigmore, Thayer, even the Insurance Encyclopedia; Sherman and Redfield say that the arguments in favor of this law are preponderant.

Therefore, members, I ask you to vote "No" on the motion of the gentleman from Boothbay Harbor (Mr. Perkins) and subsequently vote "Yes" on the minority report "Ought to pass," and I ask for a division of the House, Mr. Speaker.

The SPEAKER: The Chair recognizes the gentleman from Portland, Mr. Connellan.

Mr. CONNELLAN: Mr. Speaker, I am speaking as a proponent of this bill which the gentleman from Augusta, Mr. Peirce, has introduced. I would like to get away from the angle which has been raised here that would seem to indicate that this is pointed at insurance companies. That is not the reason I am a proponent of the bill, if that is a reason for its passage.

I feel this way about the matter: Throughout the country, I think the vast majority of the states have legislation of this nature. This does not mean that the plaintiff will not have to prove his own due care: it simply removes from him the burden of proving it before it has been disputed by the defendant.

If the defendant wishes to rely upon the lack of due care of the plaintiff, he may bring this matter up in court and the plaintiff will then be called upon to prove that he was in the exercise of due care. It is simply a question of shifting the burden of proof. The plaintiff comes into court, as the situation is now, and may very easily lose his case against the defendant if he cannot recall exactly what he was doing at the time the accident occurred. If any of you have been in an accident, you have probably found that your recollection of just what did take place at the time of the accident was a little hazy.

I feel that this places an inequity upon the plaintiff. As I said before—and I want to make this point very clear—the plaintiff can be called upon to prove his own due care if challenged to do so by the defendant.

I urge that the motion made by my Brother Perkins for acceptance of the "Ought not to pass" report

be rejected and that you vote "No."

The SPEAKER: The Chair recognizes the gentleman from Boothbay Harbor Mr. Perkins.

Mr. PERKINS: Mr. Speaker, Maine is a purely common law State, and, when we refer to the action taken by some other State of our great Union, we are dealing with something that is entirely different from what we have here in the State of Maine. The common law of Maine is the common law of England up to the time of obtaining our independence, the common law of Massachusetts from 1776 to 1820, and from then down it is our own common law.

It has been the law of this State from time almost immemorial that when a plaintiff goes into court in a negligence action the burden is upon him to prove that he himself was in the exercise of due care, and also that the defendant was negligent, before he can recover any damages.

This bill, as I understand it—and I am now speaking for the majority report "Ought not to pass"—this bill provides that, if the question of contributory negligence is to be raised in the case, the defendant must plead it and prove it, shifting the burden to the defendant.

Now, Mr. Speaker and Members of the House, there are a great many cases where it is almost impossible for the defendant to ever attempt to prove contributory negligence on the part of the plaintiff, because the plaintiff, in a great many cases, is the only one who knows anything about it. I have tried quite a few negligence cases in my experience at the bar, and I do not recall of one case in which the plaintiff was unable to show or put in evidence that he or she was in the exercise of due care.

Now this would change the whole practice of negligence actions and is a bill for the benefit of plaintiffs. They can come into court and put in some evidence that perhaps the defendant may be negligent—they say nothing about themselves—and the burden is shifted upon the defendant to prove the plaintiff was not in the exercise of due care. It means a great increase in so-called "negligence actions"; it enables a plaintiff to get into court, and sometimes the defendant is absolutely without any opportunity to obtain evidence of what happened when the accident occurred. It

seems to me that this great change in our practice in negligence actions should not be made.

I think the report of the committee is eight to two, or something of that kind. We feel as a committee that it would be a grave mistake to open the door to a great many of these actions, many of which are without merit. I hope that the motion I made for the acceptance of the majority report "Ought not to pass" will prevail.

The SPEAKER: The Chair recognizes the gentleman from Portland, Mr. Connellan.

Mr. CONNELLAN: Mr. Speaker, I have just one more thought which my Brother Perkins has brought out. He referred to the common law of England and the common law of Massachusetts, under which we have practiced for many years until we became a sovereign state. It might interest the members of this House to know that the Commonwealth of Massachusetts has a law on its books at the present time which is similar in effect and is almost identical with the bill which the gentleman from Augusta, Mr. Peirce, has introduced.

The SPEAKER: The Chair recognizes the gentleman from Augusta, Mr. Peirce.

Mr. PEIRCE: Mr. Speaker and Members of the House: I would like to answer another point brought out by the opposition, namely, that the plaintiff is in the best position to prove his own lack of contributory negligence. That is not true in a considerable percentage of cases. In a great many accidents the plaintiff is knocked out; he suffers what is known medically and legally as a retrograde loss of memory; it is impossible for him to remember things that happened five or ten minutes before the accident or a greater length of time after the accident.

I have played football, and I have been knocked out. You may have played football and been knocked out, and then played the whole or part of an entire period without knowing what you were doing. That same result is very often found in cases where there is severe impact.

Now in regard to the insurance angle of this matter. In committee, one lobbyist—and of course all the people who opposed this in committee were lobbyists, paid by vested interests to oppose it—one member said that this bill was aimed against insurance companies. I

would like to deny that statement. I believe that insurance is a vital, necessary part of our existing economy. I do not believe in legislating it out of existence or impairing its usefulness. However I would like to read to you a few statistics obtained by the State Insurance Office showing the amount of money taken out of the State by insurance companies for casualty, automobile liability insurance, and the amounts returned in the form of damages.

In the year 1942, which is the last year for which we have statistics, the total amount of automobile liability insurance taken out of this State was \$2,011,000. The amount returned in the form of damages was \$800,000.

For the year 1940 the amount of insurance premiums taken out of the State of Maine was \$1,620,000, and the amount returned in the form of damages was \$750,000. In about every year for which we have records, the insurance companies have taken out of this State at least twice as much as they put back, and some years more.

As I said before, this bill is not aimed at insurance companies; it is merely aimed at giving the citizens of Maine an equal chance in court with insurance companies. All we want is a square deal. These tremendous profits that are being taken out of the State today by insurance companies may have a tremendously adverse effect upon our State economy in years to come. The bigger insurance companies are building up today such large surpluses that they are finding a great deal of difficulty in re-investing those surpluses. One of the new forms of re-investment that has been adopted—we haven't heard very much about it in Maine, but we are going to unless something is done about it—is investments in corporate farms. Members, if corporate farms put into Maine by insurance companies or any other company become at all widespread, the life blood of our State economy is going to be sapped; the small farmer, who is the backbone of our State, both economically and socially, is going to be put out of business; he is not even going to be a share-cropper; he is going to join the Okies in California.

The SPEAKER: The Chair recognizes the gentleman from Auburn, Mr. Williams.

Mr. WILLIAMS: Mr. Speaker and Members of the House: Let us get back to the question of negligence for a little while, or the problem that is under consideration.

I would just like to comment to this extent in connection with any statement that anyone secures while a patient is in such condition that his own family is not permitted to see him. I think some of you gentlemen here have served on a jury, and you will agree with me that if any such statement were ever submitted it would be prejudicial to the defendant's case, and the plaintiff would probably secure a substantial verdict. So I do not think that is any valid argument for a change in the law.

Now I would like to consider an accident. It seems to me it is safe to say that all these accidents occur, as has been stated by the previous speakers, when the plaintiff, we will say, has not had any opportunity to consider the matter, and he might suffer a loss of memory as a result of the injury. I would just like to say this—and let us be fair about it and let us assume that the defendant did not plan to run into anyone; that perhaps he may have been in the exercise of due care, or, even if his attention was directed somewhere else for the moment, he too can be injured, and he too has the same difficulty in remembering the facts, and I see no reason why we should give the fellow who wants to reach into the other man's pocket and take out some money a chance to do so because of an accident which they both would have liked to have avoided.

The SPEAKER: The Chair recognizes the gentleman from Bingham, Mr. Dutton.

Mr. DUTTON: Mr. Speaker, I move the previous question.

The SPEAKER: The gentleman from Bingham, Mr. Dutton, moves the previous question. In order for the Chair to entertain the motion for the previous question it requires the consent of one-third of the members present. All those in favor of the Chair entertaining the motion for the previous question will rise and stand in their places until counted and the monitors have made and returned the count.

A division of the House was had.

The SPEAKER: Obviously more than one-third of the members

having arisen, the motion for the previous question is entertained.

The question before the House now is: Shall the main question be put now? All those in favor will say aye; those opposed no.

A viva voce vote being taken, the main question was ordered.

The SPEAKER: The question before the House is on the motion of the gentleman from Boothbay Harbor, Mr. Perkins, to accept the majority "Ought not to pass" report of the committee on Bill "An Act with Reference to Pleading and Proving Contributory Negligence." (H. P. 330) (L. D. 117) The gentleman from Augusta, Mr. Peirce, has asked for a division. All those in favor of the motion of the gentleman from Boothbay Harbor, Mr. Perkins, will rise and stand in their places until counted and the monitors have made and returned the count.

A division of the House was had. Seventy-two having voted in the affirmative and twenty-eight in the negative, the motion prevailed, and the Majority Report "Ought not to pass" was accepted and sent up for concurrence.

On motion by Mr. Snow of Auburn, the House voted to take from the table the tenth tabled and unassigned matter, Majority Report "Ought not to pass" and Minority Report "Ought to pass" of the Committee on Legal Affairs on Bill "An Act Relating to School Committee in Town of Rumford" (H. P. 831) (L. D. 444) tabled on February 23rd by that gentleman pending acceptance of either report; and, on further motion by the same gentleman the two reports with accompanying bill, were recommitted to the Committee on Legal Affairs and sent up for concurrence.

On motion by Mr. Hemphill of Mechanic Falls, the House voted to take from the table the seventeenth tabled and unassigned matter, Committee Amendment "A" (L. D. 975) to Bill "An Act to Provide a Town Council and Manager Form of Government for the town of Mechanic Falls, in the county of Androscoggin" (H. P. 426) (L. D. 189) tabled on March 7th by that gentleman, pending adoption.

Committee Amendment "A" was read by the Clerk as follows:

Committee Amendment "A" to H. P. 426, L. D. 189, Bill "An Act to Provide a Town Council and Manager Form of Government for the Town of Mechanic Falls, in the County of Androscoggin".

Amend said bill by striking out all of section 2 and substituting in place thereof the following:

"Sec. 2. Election of officers. At such annual town meetings the voters shall elect by ballot as hereinafter provided, 5 inhabitants of said town to be known as councillors, and a member or members of the superintending school committee, in accordance with the general law, and a town clerk.

At the first annual town meeting, said councillors shall be elected as follows: 2 for a term of 1 year, 2 for a term of 2 years, 1 for a term of 3 years, and thereafter at each of said annual town meetings 2 councillors shall be chosen as herein provided, each for a term of 3 years, provided, however, that in each 3rd year but 1 councillor shall be chosen; and provided further, that vacancies in the office of town councillor due to death, resignation or other cause shall be filled at the next annual meeting for the unexpired term.

The chairman of the council shall annually appoint, subject to confirmation by the council, a treasurer, a board of registration to be composed of three members of the council who shall also perform the duties set forth in section 6, and once in 3 years a health officer subject to the approval of the state commissioner of health and welfare, and when a vacancy exists, shall select a town manager, with duties hereinafter defined, for a term not to exceed 3 years. Said health officer shall appoint a plumbing inspector for a term of 1 year subject to the approval of said commissioner as now provided by general law. Except as hereinafter provided, all other necessary town officers provided by this act or now or hereafter provided under any statute, ordinance, or by-law shall be appointed by the town manager, subject to approval by a majority of the council."

Further amend said bill by striking out all of section 3 and sub-

stituting in place thereof the following:

"Sec. 3. Councillors to serve ex officio as certain officers. The councillors provided for in the preceding section shall serve instead of selectmen, overseers of the poor, and assessors of taxes provided for by general statutes and shall have the same powers and be subject to the same duties vested in them by virtue of said offices."

Further amend said bill by striking out all of sections 6, 7, and 8, and substituting in place thereof the following:

"Sec. 6. Compensation. Each councillor shall receive an annual salary of \$50. In addition to said annual salary, the councillors when sitting as a board of registration of voters in their capacity as municipal officers as required by law during the 3 secular days next preceding any primary election, state or presidential election, shall receive a per diem of \$3 each, meaning and intending that said board of registration shall constitute a legal board to pass upon the qualifications of persons desiring their names entered upon the polling list of said town of Mechanic Falls. Provided further, that for such services, as required under the general law, of such board of registration, acting in their capacity as municipal officers, at any such primary election, state or presidential election the per diem shall be \$5 per day. Payment for all services contemplated by this section shall be made by the town treasurer.

Sec. 7. Town manager and tax collector. Said councillors shall by ballot by a majority vote of the total members appoint a town manager, said office of town manager being hereby created, who shall not be a member of said board of councillors. Said appointment shall be made as soon as possible after the organization of said council. The town manager so appointed shall be the collector of taxes and as such shall have the same powers as though regularly elected under the provisions of the general statute. The councillors as overseers of the poor, as herein provided, may authorize the town manager, at the time of his appointment aforesaid or at any time thereafter, to be clerk or agent for them as said overseers of the poor, to sign and

send the notices and answers referred to in sections 29 and 30 of chapter 82 of the revised statutes. Any such notices and answers shall have the same effect as if signed and sent by the members of the council as overseers of the poor. Said town manager, on and after his appointment as aforesaid, shall be road commissioner of said town.

Sec. 8. Special power of council. The council shall pass such municipal ordinances as they think necessary and proper, governed by the authority which towns have to enact ordinances under the provisions of the general law. At any regular meeting, the council may vote to combine the offices of collector of taxes and town treasurer."

Further amend said bill by striking out after the word "council" in the fourth line (4th line of bill as printed) of section 9 thereof, the underlined words "upon the question".

Further amend said bill by striking out all of section 17, and substituting in place thereof the following:

"Sec. 17. Nomination of officers. Any and all candidates for the council and other elective offices in

the town of Mechanic Falls, shall file with the town clerk at least ten days prior to the annual town meeting, a uniform petition or nomination paper, which shall be supplied by said town clerk, requesting the name of the candidate to be placed on the ballot, and shall specify the name, office, and term thereof, to which he is nominated, and be signed by not less than 25 qualified voters of said town."

Further amend said bill by adding to section 18, the following paragraph:

"The election of all elective officers provided for in this act shall be by Australian ballot."

Committee Amendment "A" was adopted, and the bill was assigned for third reading tomorrow morning.

The **SPEAKER**: If there is no further business to come before the House, the Clerk will read the notices.

On motion by Mr. Gay of Damariscotta,

Adjourned until ten o'clock tomorrow morning.