EIGHTY-THIRD

LEGISLATURE OF MAINE

Hearing held in the Hall of the House of Representatives, State House Augusta, Maine, on Friday, March 18th, 1927, before the Joint Committees on Public Utilities, Interior Waters and Judiciary relative to

S. P. No. 149, S. D. No. 62

Bill, "An Act to amend Section one of Chapter Ninety-seven of the Revised Statutes, relating to right to erect and maintain dams and to divert water by a canal for mills"

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The CHAIRMAN: The Committee is ready to proceed with the hearing of this matter as advertised, and I wish to say that the Committee desires in considering the matters before us this afternoon that we shall first hear the proponents who appear for the several measures, and when that is concluded we will then give an opportunity for those who appear against the various measures.

The first matter for consideration is S. P. No. 149, S. D. No. 62, Bill, "An Act to amend section one of Chapter Ninety-seven of the Revised Statutes, relating to right to erect and maintain mill dams and to divert water by a canal for mills."

The committee is ready to hear the proponents of this measure.

Senator CARTER: Mr. Chairman and Members of the Committee: This was a bill which I introduced and I appear as proponent for it. First, in the printed bill I wish to add six words. I think, however, that the bill conveys the meaning intended without the addition of those six words, but it was suggested to me by a man who is interested in the bill that there was a portion of the amendment which might be somewhat ambiguous, and it is in compliance with his suggestion that I now amend my own bill, and I will submit a new draft to the committee.

In line seven on the first page of the printed bill after the word "dam" is added the following words, "other than a water mill dam," so that the amendment would read as follows: "but no dam other than a water mill dam shall be raised and placed in any river, stream or other water for the storage of water by it impounded, and creating thereby a reservoir basin by raising the level of water in any river, stream or other water, except such dam be authorized by special act of the legislature."

These same words shall also be added in line nine on page two of the printed bill, after the word "dam." And I will during the early part of next week submit a new typewritten draft to take the place of Senate Document No. 62.

The purpose of this bill is simply to affect the so-called storage dam or reservoir dam which holds back water and creates a reservoir, the water which is used for the entire benefit of the river, or more particularly under the Mill Act is used for the benefit of a water mill dam on the lower reaches, some of the lower reaches of the watershed in which the storage basin is erected at headwaters. To properly introduce this matter perhaps needs a little bit of history.

To go back to the early days when this country was a wilderness and when our forefathers first came over from Europe and settled in what is now the New England States, more particularly, or what was then the Province of New England, the settlers found an ownership of land very often in people who resided in England or abroad where it was very difficult to get at the owners, and where there was a tremendously slight public interest. The settlers must have mills in which to grind their corn in order that they might eat; the settlers must have mills in which to saw their lumber in order that they might build houses; the settlers must have mills with which to card and spin their wool in order that they might have clothing.

At that time in this country, and particularly where the water powers were situated, this was a wild country, and the necessity of those settlers and those citizens that they should be fed, that they should be clothed and that they should be housed gave rise to one of these early Provincial Ordinances which declared, in derogation of the common law and presumably under the common law, that man is entitled to the proper use of his own property, unless under eminent domain for a public use the sovereign power takes it from him. And only the sovereign can take it from him, and only for a public use.

But in those early days the need of the settler to have his corn ground, the need of the settler to have his wool spun and the need of the settler for lumber with which to build his home was such a paramount thing, and the land, the wilderness was at that time so valueless that under these early Colonial Ordinances sprung up a rule, in complete derogation of the common law which said—and I am giving the substance as I recollect it now—that a man might on his own land dam a stream or build a dam which was a water mill dam.

In other words, this was a permit to build a water mill dam where the power was used at the dam site, a dam built to grind corn at the dam site, or spin wool or saw lumber, for the power used there. That right was given to the man who had the dam site to so build the dam and flow back even on his neighbor's

land without any right so to do, so far as the Provincial Ordinance or owning land was concerned.

That right was in derogation of the common law. The owner of the land so flowed could not stop its being flowed. He simply had the right to collect damages from the party building the dam. The only excuse for this law which was the inception of the Mill Act, the only excuse for it was the great need of the settlers that their corn should be ground, that their wool should be spun and that their lumber should be sawed.

As time went on and New England became developed and more settled this law was carried along and under the provisions of this law a great many of our industries were built in this State, a great many of them. In those days and up until very recently all the dams built in this State were practically water mill dams, dams built for the purpose of developing power and applying it and using it within the vicinity of the dam itself.

When this Province became a State in 1820 the so-called Mill Acts in some form or other were incorporated into our Statute Law, and this old Act which originated from the necessity of the early settlers, and that is the only thing which could warrant it, has come along down to our day. A justification for the Act to-day there is not, because this Act permits a private individual or a corporation, without any sovereign grant of authority, to take the land of another individual, not for a public use which warrants the exercise of eminent domain, but for a private use.

Our Courts have in substance said many times that there is no justification of this Act at the present time, except its long antiquity and acquiescence in it, and that many property rights have been vested under this Act.

Up until a few years ago all storage, reservoir basins were created not under the provisions of this Act but by coming to the Legislature, and it is within a comparatively few years in the development of our rivers that the large storage basins or reservoir basins have been created. These basins are not water mill dams. These basins are created by dams holding back and storing water, not for the purpose of running a mill at the dam creating the basin, but they are created for the purpose of storing water to be used for the advantage of some dam down below on the river or stream.

The reservoir is a wonderful help in the development of our rivers and the power situation in any State. On the big rivers, or on two of them at least, and possibly on three, the flow has been stabilized and increased tremendously by the increase of these reservoirs. I think the first big storage reservoir in this State, if I remember correctly, was the Aziscohos on the Androscoggin River. But the promoters of the Aziscohos Dam, and later of the Ripogenus and many other of these reser-

voirs, came to this Legislature. The Legislature is the sovereign; and they said to the Legislature "We want a development, a storage reservoir basin which will greatly enhance the value of every water power on the Androscoggin." And the Legislature gave them the right after some considerable fight was put up and maintained, as I remember it, by some interests in Maine who thought that it was an improper use of the right of eminent domain to turn the rivers of the country over into industry, even to the extent of losing some of our lakes.

However, the right was granted and has been granted, I believe, in every instance with the exception of the 1923 debacle. Ripogenus was organized by Act of the Legislature, that dam and that storage reservoir which develops and stabilizes the Penobscot River.

No company or group of men up until recently considered that under the Mill Act they had any right to develop a storage basin at a long distance away from the mill dam, a water mill dam. Whether or not they had that right was never decided, according to my recollection, until the case of Brown v. DeNormandie. But each group apparently believed they did not have that right because each group came to the sovereign, to the State of Maine, and said "Give us the right to do this thing."

Now down on the Saco River they wanted to build a storage dam, or flow a lake, and they went ahead and tried it under the provisions of the Mill Act, and that gave rise to the suit known as Brown v. DeNormandie, which was decided in May, 1924, and which decision appears in the 123rd Volume of the Maine Reports, on page 535.

In this particular suit and on this particular development the storage dam which flowed back over the territory under the Mill Act was a long distance from the mill dam, the water mill dam, and the dam the ownership of which gave the right under the Mill Act to the owners to build this reservoir basin many, many miles up the stream, at the head-waters of the rivers which contributed to the flow water which eventually went over that dam.

Chief Justice Cornish, in discussing the proposition in his opinion in the case cited gives as a test the extent to which, he says, under the law and the present Mill Act the owners of a mill dam, a water mill dam on the lower reaches can go to develop this storage. "The test," says the Court, "is not one of terminology but of hydraulic fact, namely, is the reservoir dam situated upon a non-navigable stream, whose stored water in its natural flow to the sea, regardless of intervening forms of water, whether stream or river or lake and of the names that may have been given to them, passes through and aids in propelling the wheels of mills belonging to the owners of the reservoir dam. If so, such a stream is within the con-

templation of the Mill Act whether it requires an hour or a day or a week or longer for the water to reach its destination. Such a dam thus located and thus owned meets the purpose of the existing Act and complies with both its spirit and its terms."

Under this ruling the Brassua Reservoir has been built, or is being built. I don't know whether it has been completed yet or not. Quite likely I have not accurately watched the developments in Maine. But in my recollection that is the only big reservoir, non-power dam which has been developed under the Mill Act. What the Court did with this ruling is to say that anyone who owns a dam on the lower reaches of any river, a water mill dam, may if he owns the dam site go anywhere up that watershed and build a reservoir basin, if he simply owns the dam site, and flow back, if you please, a lake eighteen or twenty miles long, or longer or shorter, and flow out that land, irrespective of who owns it and irrespective of whether the owner wants it flowed out. That is the ruling of the Court.

Say we here in this room are a community settled and stretching along some stream up in Northern Maine, we will say, on the upper reaches of the Kennebec River, that if a man owning a dam, or the owners of a dam at Augusta, a water mill dam, could buy a dam site that flowed out all of our homes, flowed out all our homes and our fields. Under the terms of that ruling if the dam were built on property owned by the owners of the dam in Augusta we could be flowed out and no one could ever stop us from being flowed out. And what remedy do we have? All we have got is a right to collect damages. Our homes can be taken away from us. And that is done practically in defiance of the law as it is as applicable to any other person or thing. And that is done simply because away back before the time when this State was a State, when a group of people left Gardiner and went over to Pond Town, what is now the town of Winthrop, and settled and had their corn and wanted it ground, and away back in those days they could dam a stream and flow out the property back of it so that they could get their corn ground in order that they might eat.

Now that right, starting from that little dam back in those early days, that right has grown and has been engrafted and carried along up until the case of Brown v. DeNormandie, when the Court says that under this right and under the law as we have been interpreting it the man who owns the dam on the lower reaches of the river, if he can buy dam sites enough, can flow out every basin in that rivershed which will hold a drop of water, and he can do it under the law.

Now some people in Maine who were flowed out and who didn't want to be flowed out, and who wanted to live where their people had lived before them, on the same land that their

fathers had lived upon, brought a suit and asked that the Court set a limit on the distance back from the water mill dam which the owners of the dam could go. Because now it has been extended so that you can pass out the main river and up a tributary and up either branch, or another tributary to go with your storage dam, and the Court says:

> "The Mill Act speaks as of to-day and the individual who or the corporation which can meet its requirements, as do the defendants in the case at bar, can take advantage of its provisions and aid in building up the industries of the State as the State evidently wishes should be done. Moreover, to ask the Court to set an arbitrary limit to the location of a reservoir dam above the benefitted mill is to ask not judicial action on our part but legislative action, a request with which we cannot comply."

The Court says that in this case in which the plaintiff asks to have a limit set to which the owner of the dam on the lower reaches can go. But the Court says "No, we can't do this because you ask of us not judicial but legislative action." The sovereign has given to the early settlers this right of eminent domain. Now the sovereign must take it back, because it applied to all sorts of industries and at all distances. In this case of Brown v. DeNormandie the court says "The Legislature must do this; the Court cannot."

I claim that my bill which I have introduced here carries out the request of the Court. The plaintiff in the case of Brown v. DeNormandie asked that the limit should be set, and in answer to that the Court says "We cannot do it; it is a legislative action." Following that statement of the Court I have brought at the request of Brown v. DeNormandie this matter to the Legislature, and I ask that the Legislature perform its rightful and proper action, which is not a judicial action.

Now let us see what happened. Before this case was decided none of the reservoirs, the big reservoirs in this State were ever built under the Mill Act. They all came to the Legislature and asked for their rights and charters. Now after this case was decided, not only they have come to the Legislature for their rights and permits, they have gone ahead with building storage, building huge lakes and storing untold waters under the Colonial Ordinances and drafted into the statutes which was given to the early settlers to grind their corn with.

The water mill dam owner is the only person in the State of Maine that I know of that is entitled by the very fact of his ownership of a water mill dam and the purchase of another dam site to go and take all of our property, and we can't stop him in that taking, if it lies in the basin which he flows, by the mere payment of damages.

Two years ago this measure was in here presented by me, or one similar to it, for the same purpose that I present it now. What happened at that time? A little later along came the Grand Falls proposition on the St. John River, where 80 per cent of the storage water is in the State of Maine. And what happened when that situation arose? The only thing that saved the State of Maine in the matter of storage water in Aroostook County was the Act which I introduced. And that was fought and being fought as hard as it could be by the public utilities, or the public utility interests which later became the Insull Interests.

But the need being so great for the protection of our Northern frontier that I at that time permitted my bill to be used for any purpose which would benefit Maine and for the greatest good of Maine. And that bill was re-drafted and is in the Maine law to-day in the form of repealing the Mill Act so far as it affects any waters and watersheds in Maine to a river whose mouth is entirely in a foreign country. It was so drafted as to affect the St. John river and nothing else, or to affect Aroostook County and nothing else.

That was agreed to by the public utility representatives because they were not in Aroostook, and so they were not interested. And that went through, and because of that Mill Act which I introduced two years ago the Grand Falls Development Company does not control and own all the storage water of Aroostook County to-day. And because of that Act for the land that is flowed in Maine to-day the Grand Falls Development Company allocated to Maine 2,000 horse power of its electricity, and if it had not been for that Act which was rewritten two years ago that right of the State of Maine to call upon the Grand Falls Development Company for 2,000 horse power of electricity would not exist.

Now let's see where we are in another way. Mind you, this is a right given to the owner of a water mill dam anywhere on the river, or on the lower reaches of the river. I think I am correct in stating, and if I am not I am quite sure that any error on my part will be called to my attention later during the hearing—that on these rivers, the Saco, Androscoggin and the Kennebec, the public utility companies of Maine, now owned and controlled entirely by the Insull group of Chicago, own the water mill dams on the lower reaches of each of those rivers, if not more. The ownership of those dams gives the Insull interests, provided they can buy the dam site, to flow out and develop every storage basin in those watersheds, provided they don't flow out another dam. There may be some exception to that, but as a general proposition I think I state the general law.

Now if any one man or any one group of men have that sovereign right, or have that right which should be a sovereign

right, the right to take land of an individual, and the sovereign can only do it for the benefit of the public, but under our laws the utility companies can do it for the benefit of themselves, or the individual can do it for the benefit of himself. So that in all these basins, since the case of Brown v. DeNormandie was passed upon, upon all these riversheds any land which is situated in a possible reservoir basin is subject to be taken from the owner and flowed at any time by people, and he has no control over it; he has no recourse; he can't stop it. We can proceed to get damages, and that is all we can do.

Now this right is a right of sovereign power. Eminent domain is a sovereign right, and this is eminent domain camouflaged under the Mill Act. And this State of Maine, a sovereign State, has lost this right through the operation and building up of the old Colonial Mill Act Ordinances coupled with the decision in the case of Brown v. DeNormandie. I ask simply this, that by this law the Mill Act is limited to a water mill dam, just as it was practically before the Brown v. DeNormandie case, and all these storage basins and all dams creating large reservoirs and storage ponds for the use of dams down below, not for use at the dam site, should come to the Legislature as the sovereign and say to the Legislature, "Grant us this privilege by your right of eminent domain and your sovereign right and give us the right to take this land and better the condition of the whole river."

These storage basins are a great advantage to your entire water flowage, and they are a tremendous benefit. There is no question about that. They are a benefit to all the power owners up and down the river. I am not talking about the reservoir dam for a minute; I am a believer in it. I am also a believer that they should come to the sovereign power, and each one of the propositions should be considered on its own merits, on its own facts, rather than to leave the State as it is now at the mercy, as far as its storage waters are concerned, of whoever owns the dams at the lower reaches of the river.

A question might arise as to the so-called Kennebec storage proposition, or the Dead River storage, a bill which is pending for consideration this afternoon. That storage as I am informed cannot be developed as it wants to be under the Mill Act, for under the provisions of the Mill Act the person or corporation or individual must own the dam site. But fortunately or unfortunately in the Dead River proposition one-half of the dam site, one side of the river where they want to place the dam is owned by the State of Maine. Not having the dam site and not being able to buy the dam site the basin cannot be developed, and therefore with the Dead River proposition they must come to the Legislature, because the State of Maine is the only power that can grant or sell or lease, or whatever may be, this public land to the companies, individ-

uals, firm or corporation which wishes to develop the Dead River basin. And that is the purpose in my judgment of the Dead River matter being now before the Legislature. Otherwise, under the case of Brown v. DeNormandie and the Colonial Ordinances granted to the settlers for the purpose of grinding their corn, that development would have gone along under the Mill Act to give to any owners of any dams on the lower reaches of the river this right to take from citizens of the State of Maine who will lose their homes, or whatever it may be, and simply pay damages for it, is too great.

I think this Mill Act is the best piece of legislation for the protection of the citizens of Maine that has been introduced either this year or to the last Legislature. I feel more strongly in favor of this than I do of any bit of legislation I have seen here in the last two years.

Senator MAHER: As I understand it, I assume that on a certain dam site that has been acquired while this law has been effective which has given to owners of dam sites as long as this law is in effect certain rights to flowage, and I would like to ask whether we have the power now, having given those property rights to now take them away from these parties? That is, whether we have the right to take them away from them.

Senator CARTER: I think there is no question about that. I think that anyone in that situation that came to this Legislature asking to be permitted to build a storage reservoir dam under those conditions, I have no doubt that the Legislature would permit them.

MEMBER OF COMMITTEE: It is your contention that the Legislature could do it?

Senator CARTER: I think without any question the Legislature could do it.

The CHAIRMAN: Does any member of the committee have any further questions he wishes to ask Senator Carter?

Mr. SKELTON of Lewiston: I understand your bill is not intended to affect any situation where a mill itself is concerned that would not justify the use of the Mill Act to be placed upon a stream?

Senator CARTER: Any dam which is to be erected to develop power is not touched by this Act at all.

Mr. SKELTON: So that if a mill is placed upon the proposed dam it takes it out of your amendment?

Senator CARTER. Exactly. Or in other words, it is still under the Mill Act. My amendment does not touch it at all. The Mill Act has been acquiesced in so long and for so many years that I wouldn't want to attempt to disturb any of the rights where money has been expended in these different mills. For instance, there is a dam site on the Androscoggin, and if one wanted to build a mill there he could go ahead and dam

it and the Mill Act would apply. It is just storage and reservoir basins.

Mr. SKELTON: And notwithstanding what you said about Brassua, if the builders of the Brassua dam put a water mill on that dam, or a similar situation, they would still have all the rights of the Mill Act?

Senator CARTER: I think so. I don't think there would be any question.

Mr. SKELTON: Your amendment would be helpless wherever the promoters put a mill on the new dam?

Senator CARTER: Yes, it was an amendment to the Mill Act. It is not for the purpose of repealing the Mill Act. I have not attempted to repeal the Mill Act.

Mr. SKELTON: You repeal it so far as it relates to a storage dam.

Senator CARTER: Exactly, limit it to a storage dam.

Mr. SIMPSON of Bangor: May I ask Senator Carter if he has in mind any decision which justifies his own definition of what constitutes a water mill dam. Is there any decision that would limit the water mill dam to a dam directly connected with which was a mill?

Senator CARTER: No, only general interpretation of the terms. I should suppose that a water mill dam pre-supposes a dam by which a mill is operated by water; otherwise the mill wouldn't be in there.

Mr. SIMPSON: Wouldn't a mill be operated by water from a reservoir dam as well as a dam that was directly hitched to it?

Senator CARTER: Following Brown v. DeNormandie, which is Judge Cornish's decision in the water storage reservoir is what I am attempting to—

Mr. SIMPSON: I am not asking what you are attempting to, but in my mind the phraseology of this Act would be very inapt if we didn't know what it meant after we got through with it. And the Court might not follow my interpretation of it, and it might not follow yours. I am trying to find out just what your ideas are.

Senator CARTER: Can we in any way draw any sort of an Act as to which we can tell what the Court will say about it?

Mr. SIMPSON: I think you can.

Senator CARTER: I didn't know as you could. I thought the Court had that to say about it, and not us.

Mr. SIMPSON: I didn't know but what we could make it clear enough so that the Court or anyone else wouldn't have any difficulty in understanding it.

Senator CARTER: Have you conceived of the proposition that you and I might disagree as to the legal situation?

Mr. SIMPSON: I think under some circumstances we do now.

Mr. LEONARD PIERCE of Portland: Senator Carter, I represent the Hollingsworth & Whitney Company, and I did act as counsel for the people building the Brassua Dam which, by the way, is not as yet entirely completed, although the work has been very considerably done, and I would not want by this Act to oblige this concern that have already somewhere in the vicinity of several hundred thousand dollars invested in this construction to have to come to this Legislature to get authority to complete that structure.

Senator CARTER: I don't think there is the slightest danger of that.

Mr. PIERCE: You mean danger of what the Legislature would do, or danger of their being obliged to come?

Senator CARTER: Danger of their being obliged to come. Brassua is practically completed, and they own all the land there, as I understand, and they are flowing their own land. Where would my bill affect them?

Mr. PIERCE: I suppose you would not have any objection if this was passed in language that would make that clear?

Senator CARTER: When will Brassua be completed?

Mr. PIERCE: Sometime this summer.

Senator CARTER: If you feel, Mr. Pierce, that this Act would in any way affect Brassua Dam I would be very glad to amend it by adding that the Brassua dam is excepted. If that is satisfactory I will add that provision.

Mr. J. F. GOULD of Bangor: What would be the effect of making an exception of one dam?

Senator CARTER: I don't know, I am sure.

Mr. GOULD: How would that affect the constitutionality of the matter, your giving a privilege to one dam that you would not give to others similarly situated?

Senator CARTER: Have you any others similarly situated? I am not discussing moot questions of law. I am trying to state the reason of this bill. I believe it is constitutional, and I believe it is proper and I believe it is right.

Mr. GOULD: I would lke to ask another question, because I may be dense. Do I understand from you that the Brassua dam can build storage dams removed from their present dam along the waters they control?

Senator CARTER: I don't know about that.

Mr. GOULD: That's what I want to know.

Senator CARTER: I have always supposed and do now that if an individual, firm or corporation owned land and a stream on that land that they can so handle the stream and the land as they see fit, if they are not encroaching on the rights of others, and as long as the normal flow of the stream goes through.

Mr. GOULD: So that there is no question but what if they owned the dam site and built a dam upon it and own up the river a hundred miles that under your amendment to the bill they could build a storage dam notwithstanding it might be a hundred miles from the site?

Senator CARTER: I always supposed that a man who owned property, whether a stream is running through it or not, he could do with his property that which he wished, and that is the very idea of my draft to get back to the land holders and the holders of these reservoir basins—if I owned a piece of property and on it there is a brook and a chance to create a mill dam, I don't think anybody can stop me from so doing. I may be mistaken.

Mr. GOULD: If I understood your comment in the Brown v. DeNormandie case you are interpreting that decision as a command or direction to the Legislature to change that law.

Senator CARTER: No, I interpret it in this way. In that case the Court said that the plaintiff asked the Court to do a certain thing, to carry out a certain right, and the Court could not do it because it was not a judicial act, but was rather a legislative one.

Mr. GOULD: The Court said in effect to these people "We can't help you, and you go to the Legislature." Why do you imply that the Court wanted the law changed?

Senator CARTER: I am not implying anything to the Court. I say I believe this amendment is proper. I am asking the Legislature to do the same act which the Court said it could not do. Now that is what I said, and that is what I mean.

Mr. GOULD: There is one part of that decision which you perhaps did not read.

Senator CARTER: There are a great many parts of it that perhaps I have not read. If you want to read it in the form of a question I would be very glad to listen to you.

Mr. SIMPSON: I would like to ask a question with your permission. Do I understand that this question never arose in this State until 1924?

Senator CARTER: I don't think I made that statement.

Mr. SIMPSON: Do you now make it?

Senator CARTER: No. Why should I make it? I am not familiar with any case which broadens the provisions of the Mill Act in any way until this case in which the decision was rendered by Judge Cornish?

Mr. SIMPSON: Were you aware of the fact that the Court said this question first arose some eighty years ago, in the case of Nelson v. Butterfield, in the 21st Maine?

Senator CARTER: Very likely.

Mr. SIMPSON: Then you don't think it is a new question that came up?

Senator CARTER: Yes, sir; I think Judge Cornish's decision broadened this out and so stated the law that the companies such as those which you represent have dared to go ahead under the Mill Act and spend millions of dollars, where before that they came to the Legislature to get permission to do it. Brown v. DeNormandie was a very much talked of case and was a great departure from the common law we had in this State before that time.

The CHAIRMAN: I wish to state at this time that I would like to have anyone rising to address the committee to please state their name and address and state whom they represent for the benefit of the record.

Mr. EDWARD N. MERRILL of Skowhegan: Mr. Chairman, I represent the Central Maine Power Company, and I would like to ask Senator Carter a question through the Chair. As I understand it, your amendment is not intended to forbid a man to build even a storage dam on his own land which flows only his own land?

Senator CARTER: No, I don't think it does.

Mr. MERRILL: Notwithstanding the language of the amended Act, which says: "But no dam other than a water mill dam shall be raised and placed in any river, stream or other water for the storage of water by it impounded, and creating thereby a reservoir basin by raising the level of water in any river, stream or other water, except such dam be authorized by special act of legislature." You agree with me that that is an express prohibition?

Senator CARTER: No, I don't think so. It may be that I am wrong in my construction of the law and my interpretation of the law. In my mind under the provisions of the Mill Act it is one thing, and all it ever did, it gave you the right to take your neighbor's land. This is an amendment to the Mill Act, and that amendment of that Mill Act or that prohibition does not apply under the Mill Act. To my mind it does not impair the right of the individual using his own land.

Mr. MERRILL: I think you will agree with me that the terms of the Mill Act are all permissive without prohibition until you get this phrase in there and this is in language a general prohibition.

Senator CARTER: I don't think it is a prohibition of anything, until one attempts to flow land that is not his own.

Mr. MERRILL: The provisions of the Mill Act relative to flowing land of others are all well recognized.

Senator CARTER: I am starting out with the Mill Act which does not affect anybody until they get off of their own land, and therefore this prohibition can touch nobody where the individual owns his land.

Mr. MERRILL: You spoke of the Act which was passed referring to the St. John river situation two years ago, and

your bill provides an express repeal of the Act passed two years ago.

Senator CARTER: I think it does to make all counties in exactly the same relation, and under this Mill Act of mine the owner of Grand Falls cannot develop storage in Maine unless he comes to the Legislature.

Mr. MERRILL: You felt in common with others two years ago that there was a great danger of Canadian interests storing water in Maine for use of Canadian mills.

Senator CARTER: Yes.

Mr. MERRILL: You still feel that way?

Senator CARTER: Yes.

Mr. MERRILL: Others still feel that way. If a man hooks a mill on to his dam site he could effectively store water to be used on the Canadian side if your bill passes.

Senator CARTER: If a man builds a water mill dam with a mill on it and operates his mill and the water is impounded by it and he is operating the mill, certainly he can.

Mr. MERRILL: Under the law as it stands now he cannot without getting permission.

Senator CARTER: If the Mill Act is repealed—

Mr. MERRILL—He will have to get the consent of the Public Utilities Commission.

Senator CARTER: Practically.

Mr. MERRILL: With the consent of the Public Utilities Commission they can build at the present time either a mill dam or a storage dam on the Aroostook waters.

Senator CARTER: Yes, with certain sections repealed and others substituted for it.

Mr. MERRILL: It would not apply to certain waters unless they got the consent of the Public Utilities Commission.

Senator CARTER: It was a substitution of one section of the statute.

The CHAIRMAN: Does anyone else have any further questions to ask Senator Carter? If not, and if Senator Carter is through with his statement we are ready to hear any other proponents of the measure, and if there is no one else appearing in behalf of the measure we will hear those opposed.

STATEMENTS BY OPPONENTS

Mr. EDGAR M. SIMPSON of Bangor: Mr. Chairman and Gentlemen: I represent the Bangor Hydro-Electric Company. I do not understand that the Bangor Hydro-Electric Company is owned by the Insulls or controlled by the Insulls, or that they have anything to do with the running of it. I say that in order that I may avoid any of the prejudice that my friend, Senator Carter, seems to feel himself and apparently is hopeful that some other people may feel against the

Insull interest. We have no concern with the Insull interest whatever.

The Bangor Hydro-Electric Company, just to give an illustration, has a very high dam just above the city of Ellsworth, in the city of Ellsworth but just above the lower bridge. Some few miles above that, before this case of Brown v. DeNormandie was ever heard of, they bought land upon which they proposed to erect a dam under the Mill Act. They started to build that dam under the Mill Act. They thought they knew something about the law, and I still think so after reading the opinion in the case of Brown v. DeNormandie. I confess I am somewhat surprised at Senator Carter's position that this decision was revolutionary, and that nobody ever heard of such a proposition before. I think if Chief Justice Cornish could be back with us today nobody would be more greatly surprised at that interpretation of his opinion than he would himself.

To explain that statement I want to read to you some of the language of Chief Justice Cornish which apparently was in that part of this opinion which Senator Carter did not take the trouble to look at. In this opinion Judge Cornish says: "The Mill Act includes reservoir dams as well as working dams"—the Mill Act, and that is the Act we have had ever since Maine was a State. He says "The Mill Act includes reservoir dams as well as working dams. The statute itself mentions neither class." I call your attention to the fact that Chief Justice Cornish did make a distinction, a well defined distinction. He called what Senator Carter has termed in his language as being a water mill dam, the Chief Justice calls a working dam, a dam where the work is actually done. He terms the other a reservoir dam. I think that distinction is clear. When you talk about a "water mill dam" I suppose it means today that the dam is connected with a water mill, and there was water to run the mill, whether it is built at the end of the mill or two miles or ten miles or a hundred miles above. And here is what Chief Justice Cornish said about it:

> "The Mill Act includes reservoir dams as well as working dams. The statute itself mentions neither class. It simply says dams to raise water for working a mill. It does not specify where they shall be located. Any dam that will raise water for working the mill answers the statutory requirement, and a reservoir dam comes within that class as certainly as a working dam. The reservoir dam conserves, equalizes and renders more uniform the flow to the mill and is obviously within both the letter and the spirit of the Act, provided of course, its ownership is the same as that of the mill to be benefited."

And I want to pause there and say that within the view of

the Chief Justice these reservoir dams that now seem to be condemned as a sort of new creature, in the view of the Chief Justice of this State in writing this opinion such dams were not only within the letter of the Act but were within the spirit of the Act as well. The Chief Justice then goes on to say further:

> "The question first arose more than eighty years ago in Nelson v. Butterfield, 21 Maine, 220. In that case the mill owners below had erected a reservoir dam as early as 1817 at the foot of Twelve Mile Pond, now called China Lake, in the County of Kennebec, to store water for the use of the several dams and mills on different parts of the outlet stream running from the lake to the Sebasticook River, a distance of about six miles."

So that this question, as it seems to me, if you had no further light on the subject you would assume after listening to the remarks of Senator Carter it had just come up here, but this question was raised back in 1817, and it was settled to the effect that a reservoir dam was not only within the letter of the Act but was well within its spirit.

Now it might make some difference, although I can't see how it would, if the members of this committee and of the Legislature got the impression that these great corporations coming in here by straining and talking and pushing and using money and all sorts of things had enlarged the powers that had originally been given and created a dangerous institution. That is not so. It is true, I suppose, that industries have grown and mills are no longer little mills run by one or two men working with a crude gristmill or a crude sawmill. They embrace large industries. Isn't that what we are trying to get into the State of Maine here?

I read with considerable interest what Governor Pinchot had to say to the members of this Legislature here a short while ago to the effect that if things were managed properly within a short time a great part of the drudgery not only of the farmers but of the householders would be performed by electricity. I told you a minute ago that my clients, the Bangor Hydro-Electric Power Company, had this dam down at Ellsworth and had built this storage reservoir to feed this dam, which it does pretty successfully. And what are they doing with the power? They have agents out soliciting. Pretty nearly every housewife has to have an electric carpet sweeper, a vacuum cleaner and all sorts of electrical appliances to help her do her housework. Is there anything very dangerous about a corporation that is engaged in that sort of an enterprise, I ask you? Isn't my client well within its rights in coming in here and assuming that it is not a dangerous creature to be headed off, curbed and re-

strained as if it were in danger of running away with some of these rights?

But it has been urged that this case of Brown v. DeNormandie took away the rights of a man whose great,great grandfather came down here and tilled the swamp and cleared away a place for his humble cabin and whose descendents have been farming on that place ever since. What is the fact? The plaintiff in this case was a man who came here in 1900 with more or less money and proceeded to buy some land up there and proceeded to build a summer hotel on it. And then it appeared that the people who were building the dam were disturbing his summer hotel business, and the Court said, and well said, that the industry which would be created and carried on by means of this dam was of almost as much importance as the business of running that little summer hotel, which could be moved somewhere else as far as that goes. The property was not taken from him without compensation, but he was blocking the whole development of a tremendous water power, or other men like him, just because they didn't want to move.

Is there any necessity of putting any such checks as that upon orderly business in the State of Maine? Is it any more dangerous? My Brother Carter says that he doesn't believe that we ought to meddle with what he calls the water mill dam, and what the Chief Justice has called the working dam. The Mill Act should not be meddled with. If it is all right to build a dam and erect a mill at the dam, to build a working dam as I prefer to call it, why isn't it all right to build a reservoir dam ten miles or a hundred miles above so that you can keep that mill working all the year around, instead of hiring a man for three months and then making him loaf the other nine months of the year?

Is there any reason in it, or is this a cunningly devised attack upon the whole fundamental proposition of the Mill Act itself? Why is it necessary to come in here and insinuate that the State of Maine has reached that condition where the honest toiler whose grandfather came here and set up and made a humble home in the wilderness is being deprived of his rights by the Insulls away out in Illinois?

I don't care about the Insulls. I never saw them, and they probably wouldn't speak to me if they saw me, but I don't know as that is any reason why we should get frightened and panicky over it? I don't know as it is any reason why we should say to every person who is building a storage reservoir dam here in the State of Maine to help develop industry in the State of Maine "You must somewhere and somehow be in cahoots with the Insulls." Why should we say to them "I don't like you and I am going to put a rock in your way?" Is there any sense in

that? If Senator Carter believes as he says he does, that it is all right to encourage the building and erecting of dams and erecting mills upon them, why shouldn't you let them build a dam to keep water enough to keep the mill working all the year round? Is there any reason for it? If there is, I confess I can't see it. Is there any call for it?

I expected when Senator Carter got up here and talked about the rights of the people being taken away from them that this committee would be deluged with people out here who were fearful that their homes were going to be taken away from them by the Insulls. I didn't see anybody here who seemed at all concerned. There might have been some here, but they certainly didn't seem to be very vociferous about it.

Here is this Act, and we have had it in the State of Maine ever since we were a State; we had it in the Commonwealth of Massachusetts, when Maine was a part of Massachusetts. I never heard of its doing anybody any considerable injury. I am rather astonished that anybody should really claim that he was fearful that there was going to be a great calamity if we let the thing stand just as it is on the statute books. There is no need of going into a long and detailed history of the legislation. There is the situation. If this committee feels that there is any great danger in leaving things as they have been for the last hundred years or more, then of course they perhaps would favor the passage of this bill if they could discover what it means, although I think it would take them some little time to satisfy themselves that it was going to cure the evil. But for my part I don't see why it shouldn't be a good proposition to let well enough alone.

The CHAIRMAN: Has anyone else anything to say relative to this matter?

Mr. WILLIAM B. SKELTON of Lewiston: Mr. Chairman and Gentlemen, the case of Brown v. DeNormandie that has been referred to was not tried out on the question of whether the Mill Act extended to a reservoir dam. That question naturally was discussed. It was a reservoir dam that was being created. The defendant in that case, DeNormandie, and others were the owners of the Pepperell Mills, cotton mills at Biddeford, that is, they were the trustees representing the stockholders. It was proposed to build a dam that would create storage at Kezar Lake. The mills at Biddeford are on what is called the Saco River. Kezar Lake flows out through a small outlet stream and then into another stream bearing a different name but one continuous body of water, and that flows into the Saco River.

In that case the only real question was whether the Mill Act which unquestionably permitted a reservoir dam on any part

of that stream or body of water known as the Saco River would justify it on a further part of the continuous body of flowing water that happened to bear another name. It had been decided by the Massachusetts Court that such a dam could be created on a tributary as well as on the main river. We thought that was the law, or would be the law in Maine. I say "we" because I happened to represent the defendant in that case. And the Court so decided.

Now so far as the question of whether a reservoir dam was justified by the Mill Act, that was not then first decided, as Mr. Simpson says, but was decided and approved long before that. I have before me a copy of the brief that I used in that case, and I find this quotation from the case of Nonley v. Gardiner, reported in the 77th Maine Report, on page 63, a case that was decided in 1881, which was 46 years ago.

> "The reservoir dam is within the Mill Act. It has ever been so held. The statute authorizes the erection of dams but does not restrict the mill owner to one dam."

And in that case there were several dams below the reservoir before coming to the actual working dam, or the dam on which the mill was situated. The Court in that case held that it was a part of the mill dam, and that was 46 years ago, as I have said.

In Massachusetts it was held in 1857, 70 years ago, and this is the language of the Court:

> "There is no doubt that a reservoir dam is a mill dam within the meaning and provision of the Mill Acts. It is not necessary that the dam be immediately connected with or quite near the mill. It is sufficient, though at a considerable distance, that it be practically and obviously subservient to the purpose of carrying on a mill."

And that case cites for its authority, among others, a case reported in the 5th Volume of Pickering, in Massachusetts, in 1827, which happens to be just one hundred years ago.

So that nothing new with respect to reservoir dams has really developed through the DeNormandie case.

Now I think there are two serious objections to the bill which is before you at this time. One of those objections is political, and the other is economic. If you can make such a law as is contemplated by this bill every time there is a development, such as the Brassua one which has been demanded for a great many years, in this State, not only by the power companies—and I include in that all kinds of power companies—but by those who have been working for the development of our water powers. If you had this amendment as a law you

would have to come, or those interested in it would necessarily have to come to the Legislature every time a development were to be made, and you would have to find out and they would have to find out every time there was an attempt to develop more power in the State of Maine the question as to whether or not it was consistent or inconsistent with some person or group of persons' political policies or beliefs. You would not have the Brassua developed today as it is.

Now it has been said that Aziscohos came to the Legislature, and that various others have come to the Legislature, Aziscohos of all others, as it has been shown, by the decision of the Court I have read. There would be no occasion for those conditions if they had been built under the Mill Act. Aziscohos came to the Legislature because State lots were concerned, just the same as State lots are concerned in the case of the Dead River. And probably in most of these large reservoir basins State lots or public lots have been involved.

Now as to the economic situation, the situation where we will be if this Act should be passed. And I want to call to your attention now because I think it is the most important consideration that can be addressed to the subject matter under discussion—Senator Carter says very frankly that his amendment contemplates taking reservoir dams out from under the Mill Act. He says, which is true, that the Mill Act has been justified not because it is strictly a taking of private property for public uses, or strictly a process of eminent domain, but because it has been drafted into our economic system through necessity and long use and has been recognized so uniformly that its validity will not now be questioned.

That is to say, you may develop a storage reservoir under the Mill Act for a public use or for a private use, you may develop it by a public utility, or you may develop it by a cotton mill, a woolen mill, a saw mill, any of the industrial businesses that are not treated as public utilities and that are not for public uses, and you may do it because the Mill Act is regarded as valid on account of the great length of time it has been recognized.

Now what will happen if you repeal the Mill Act so far as it relates to storage reservoirs? Take the construction of storage reservoirs out from under the authority of the Mill Act and depend upon legislative enactment. You won't hit the folks or the companies to which Senator Carter has referred so forcefully so much as you will hit those to whom he does not intend that this Act should be directed. Why? Because unless there is a log driving privilege or some other substantial public use the Legislature cannot lawfully create or authorize the creation of a storage reservoir outside of the Mill Act.

The Legislature cannot authorize the creation of a storage reservoir to get water to run one of our cotton mills, or one of our woolen mills, or to manufacture lumber, because that would not be a public utility, it would not be a public use, and the Legislature by private enactment cannot do that.

I do not want you to think that I am stating this entirely upon my own judgment. I am supported by the language of the opinion of Mr. Justice Spear who elaborated more fully than the other members of the Court in answers to questions that were submitted to the Justices in the 118th Maine Report, and I quote from page 502, first summarizing what led up to the language of the Court. Questions 3 and 4 that were submitted to the Justices asked whether the State could impose a tax upon a private corporation for benefits derived from the use of water through storage on great ponds where the Legislature had granted the right to erect a dam and control the flow of water. That was where the authority was given by private legislation, and Mr. Justice Spear in his opinion distinguished between the coperate powers of an incorporated company and the franchise or franchises or privileges which are incidental to its existence, or to the particular powers or functions which it is authorized to enjoy, and he said, and I quote his language: "It should be here noted, as it is the foundation of this discussion, that storing water under the Mill Act is not the exercise of a corporate power." It was an incident to the power of a corporation as well as an individual that owned the dam site on a non-navigable stream. I quote Judge Spear's language further: "Under the law and the constitutional limitation of the right of eminent domain the acts of the Legislature in attempting to confer upon corporations" —that is, the special acts of the Legislature under which we are to rely if this bill passed—"the right to flow and thereby store water, are ultra vires, and consequently bestowed no special right or privilege whatever. This conclusion is based upon the premises already stated and the deductions legally derived therefrom.

"(1) The State, in no event, owns above low-water mark.

(2) The State cannot itself, or authorize any corporation to, take the land above low-water mark except for a public use.

(3) The special acts have not authorized a public use. Hence these acts, if intended to confer the right to flow, for industrial purposes, were in defiance of the right of eminent domain, as defined by the Constitution, ultra vires, and void."

Now here is the conclusion:

"The only way known to the law, at the present time, by which a private corporation can be permitted to take or use land for private purposes for flowage is under the Flowage Act of the State."

That is the Mill Act to which reference has been made.

"In other words, abolish the Flowage Act and no constitutional way would survive for the use, taking, or flowage of private land for the storage of water for a municipal purpose. The Bill of Rights blocks the way. Therefore, whatever the corporations may have attempted to do, by virtue of special acts, to store the waters of the great ponds, they have acquired no legal rights, except under the Flowage Act."

Now there is exactly where you will land, not with the public utilities that have been mentioned here so feelingly, but with the great industrial interests of the State of Maine that are not public utilities, and are equally interested in the right to create storage to keep their mills running when there is business for them to do.

As Justice Spear says, "Abolish the Flowage Act," and that is what is proposed here, as far as it relates to reservoirs, "and there is no known way," or as the Court says, "no constitutional way would survive" by which that class of corporations can improve their conditions by the creation of flowage. So I say that there is a very substantial economic reason why this amendment should not be adopted.

The CHAIRMAN: Is there anyone else who appears against this measure?

Mr. WILLIAM B. NULTY of Portland: Mr. Chairman and Gentlemen, I am here in the interest of the S. D. Warren Company, a corporation which manufactures paper in Westbrook, or Cumberland Mills, and takes water power from the Presumpscot River. I also represent the E. I. DuPont de Nemours Company which has a power plant and a mill on another river in Cumberland County, the mill being located at Newhall. I also represent the York Manufacturing Company which has a mill on the Saco River.

For the reasons stated by the gentlemen who have preceded me, and particularly the remarks of Brother Skelton, these three companies regard this measure as detrimental to industry and wish to be recorded as not in favor of the passage of this proposed bill.

Mr. LOUIS C. STEARNS of Bangor: Mr. Chairman and Gentlemen, I live in Bangor and appear here in behalf of the Great Northern Paper Company, the Orono Pulp & Paper Com-

pany and the Eastern Manufacturing Company, all Maine corporations except the Eastern Manufacturing Company which is a Massachusetts corporation. These companies having made substantial investments in this State, for the reasons already stated, want also to remonstrate and object to the passage of this proposed bill.

Mr. J. F. GOULD of Bangor: Mr. Chairman and Gentlemen, I represent the Penobscot Development Company, the Penobscot Chemical Fibre Company of Old Town, pulp mill owners, and the Advance Bag & Paper Company of Howland, and on behalf of these companies I object to the passage of this measure for the reasons already stated by Brother Skelton, as we are not public utilities, and if this bill is passed, as stated by him, we will be absolutely unable through any Legislative act to obtain a right to build any dam or reservoir, whether one mile or one-half mile or any distance above the mill dam.

The public utilities can take care of themselves through the Legislature, but the industrial corporations that have done so much to build up the State of Maine would have no protection and could get no protection from the Legislature.

And while I am on my feet I would like to read just a short extract, and I promise that I will take but a moment of your time, but I think this is important because it hits what to my mind is the bight of the case. I got the impression from the remarks of Senator Carter that this Brown v. DeNormandie case was in effect a mandate to the Legislature to change a condition which the Court was powerless to change. I would like to read to you what the Court says about that:

> "True, when the Act of 1821 was passed the idea of a reservoir eighty miles above the mill probably did not enter the legislative mind. But that argument has little force. It is doubtless true that small mills, suited to actual local necessities of the pioneer settlement, were then contemplated, such as carding and fulling mills, grist mills or saw mills. But the scope of that Act has never been thus limited. Mills for the manufacture of cotton goods, woolen goods, pulp and paper have increased and multiplied and the manufacturing industries of our State have been built up in absolute reliance upon this broad construction of the Act. Millions in capital have been invested, industrial cities and towns of considerable size have grown up, and tens of thousands of employees are dependent upon these industries for their livelihood. As the Massachusetts Court remarked in answer to a somewhat similar suggestion nearly a hundred years ago: 'The encouragement of mills has always been a favorite object with

the Legislature, and though the reasons for it may have ceased the favor of the Legislature continues.' Walcott Woolen Company v. Upham, 5 Pick. 292."

Do you see any mandate there for this Legislature to repeal an Act under which there has been a development to such an enormous extent along industrial lines in the State of Maine? I simply want to say that I represent industries of Maine that have millions of dollars invested, and we earnestly protest against the passage of this bill.

MEMBER OF COMMITTEE: As I understand the present situation you would have the right to develop a reservoir dam.

Mr. GOULD: Yes.

MEMBER OF COMMITTEE: I am going to ask whether you agree with Senator Carter that we can in this Legislature pass an Act which would deprive you of the rights which you now have?

Mr. GOULD: I think you can. I am afraid so. And I want to go further and say I don't think any reservation which he has here would at all help us in any rights that we may have. That is, we have no rights, if this bill is passed, or I could not advise my people if they came to me and wanted to know what their rights were— I wouldn't say to them "You couldn't build that storage plant, notwithstanding the failure to build it might shut your mill down and throw your men out of employment." I do not appear for any public utility. I appear here for industries that employ men and labor and that are struggling at this time, and as you know, the industries of Maine today are carrying a heavy load. The woolen business is exceedingly bad; the pulp and paper business is just holding its own, and it seems to me that this is a mighty poor time to "throw a monkey wrench into the gears."

Mr. LEONARD A. PIERCE of Portland: Mr. Chairman and Gentlemen, I appear in behalf of the Hollingsworth & Whitney Company. This company owns a large paper mill at Waterville and also owns a paper mill at Madison. They are not a public utility or engaged in any business of a public nature. It is the same type of organization as the paper companies represented by Mr. Stearns and Mr. Gould. We desire to add our very earnest protest to that of the other gentlemen that this Legislature will not take away from those companies the advantage which they believe they have in the future prosecution of their mills in the State of Maine which are under the provisions of the Mill Act.

I might at this time add a word in connection with the Brassua development which has been spoken of. I don't know as all of you are familiar with the situation. That Brassua dam is controlled by one public utility, by the Hollingsworth & Whitney Company which manufactures paper, by the Great

Northern Paper Company which manufactures paper and by the Lockwood Company which manufactures cotton goods, they owning the dam site and acquiring the flowage rights as tenants in common. The Lockwood Company has a cotton mill at Waterville; the Hollingsworth & Whitney Company has mills in Waterville and Madison, and the Great Northern Paper Company has a mill at Madison. Three of the four co-tenants in that dam are not public utilities.

I will say that I agree with the legal reasons pointed out by Mr. Skelton. And just as an illustration of the nature of improvement that can be made, and the nature of the developments that are possible under the present law, I think that might be of interest, and the nature of the particular development might be of interest to the committee. I should like to say further, that I entirely agree with Mr. Gould as to the law. I do not believe that any man can have a vested right with this statute continuing on the books. I would suggest very earnestly for your consideration that this law has been the law ever since Maine has been a state.

Unquestionably dam sites for the construction of storage reservoirs have been acquired, and in acquiring them and in paying for them, and in acquiring and developing mills below them the owners have in the natural run of events given very careful consideration to the fact that under the law of Maine as it has stood for a hundred years there was an opportunity for them to develop the flowage dams above, the reservoir dams above.

Now this Legislature may without any constitutional objection take away that statute, although I submit to you, gentlemen, as a matter of fairness that it would be better business for the State of Maine not to take away from those gentlemen who own those different businesses and who have acquired that property the right to go ahead and develop our State of Maine.

In regard to the Brassua Lake development, one of the largest developments that has been made, away up in the woods where it does not injure anyone that I know of, we have acquired the right to flow from everybody concerned except one. In other words, that one large development has come about since the case of Brown v. DeNormandie has been decided, and I think everyone here will agree that it is something of inestimable value to the State of Maine. I think the Legislature would not refuse the grant. You have the delay of two years between sessions of the Legislature, and you have also the uncertainty, and by adopting this measure you don't leave the thing in the situation where it is as easy and simple for people to go ahead and do business and promote developments as is done under the law that we have at the present time, and which we have had for a hundred years.

Mr. FRANKLIN D. CUMMINGS of Portland: Mr.

Chairman, I would like to ask Mr. Skelton one question. I want to ask him if he considers it a sound legal proposition that the Mill Act can take away and destroy the constitutional provisions against the taking of private property for private use?

Mr. SKELTON: The Court in this State has positively declared that the Mill Act is valid.

Mr. CUMMINGS: If you will, Mr. Skelton, I wish you would give me your opinion in answer to that question.

Mr. SKELTON: I agree with the Court.

Mr. EDWARD F. MERRILL of Skowhegan: Mr. Chairman and Gentlemen, I appear for the Central Maine Power Company, a public utility, and in behalf of that company I object to the passage of this bill. Of course, as a public utility, if the bill was passed we could get a legislative right to build storage reservoirs.

But it appears to me that there is another reason that has not been urged why this bill should not be passed, for in spite of Senator Carter's opinion that if this bill was passed a man could build a mill dam, or a storage dam rather, on his own land, a dam which flowed only his own land. Nevertheless, if a stream was large enough to be floatable the State might have a right to prohibit a man even to build a dam on his own land which only flowed his own land, and this bill as drawn contains an absolute prohibition when it states that "no dam other than a water mill dam" which creates storage shall be built without coming to the Legislature. Now there is no other commission in the statute for a man to build a dam other than under the Mill Act. The Act confines him to his own land. A later section says if he flows another man's land they may get their pay for it, but in this section as amended there is an absolute prohibition for building a reservoir dam without coming to the Legislature, and that would include a reservoir dam that flowed only the owner's own land. It seems to me that the bill is deficient in that respect, as well as the others that have been named.

EIGHTY-THIRD

LEGISLATURE OF MAINE

Hearing held in the Hall of the House of Representatives, State House, Augusta, Maine, on Friday, March 18th, 1927, before the Joint Committees on Public Utilities, Interior Waters and Judiciary relative to

H. P. No. 865, H. D. No. 189

Bill, "An Act to create the Kennebec Reservoir Company and define the powers thereof"

EIGHTY-THIRD LEGISLATURE OF MAINE

Hearing held in the Hall of the House of Representatives, State House, Augusta, March 18th, 1927, before the Joint Committees on Public Utilities, Interior Waters and Judiciary, relative to

H. P. 865—H. D. 189

Bill "An Act to Create the Kennebec Reservoir Company and Define the Powers Thereof."

The CHAIRMAN: The committee will next proceed to the consideration of House Paper No. 865, House Document No. 189, Bill "An Act to create the Kennebec Reservoir Company and define the powers thereof." The committee is ready to hear the proponents of this measure.

Mr. SKELTON of Lewiston: Mr. Chairman and Gentlemen of the Committee: I have asked to have distributed among you a new draft of the bill which has been introduced, and I understand that Mr. Piper has a further amendment which he wishes to offer at this time, so that you may have the whole matter before you while we are discussing it.

I regret that I must begin this statement with an apology for the appearance of the new draft itself, which will be explained as I go along. Of course the words that you find immediately after the title "Substitute new draft by Kennebec Log Driving Company" ought not to be there. That occurred, as I can readily explain to you, from a hasty typing of the new draft. That does not belong there at all, and those words should be stricken right out of the copy of the bill that is reported. The reason for it is that the new draft is different from the bill which you already have before you only in the provision which relates to log driving.

The proponents of the bill and the representatives of the various interests who own timberlands or are engaged in lumbering operations have had several conferences since the original bill was introduced and have made various changes relating to the log driving part of the bill, and this new draft contains those changes, and that title heading was put on simply to designate the preliminary part, and as I have said, in the haste of typing it the stenographer was not instructed to strike it out, so that it appears here.

There is no difference in the first, second, third, fourth and fifth sections of the bill until you get to the last paragraph of

section five. And then through the next three or four sections there are changes that I shall not take time to call to the attention of the committee in detail because, as I have said, they relate only to the subject of log driving and have been assented to by the representatives of the people who are interested in driving.

I am going to be as brief as I can in explaining this bill, because I realize that while it is important, yet it is a late hour, and I realize also that the whole thing is more or less familiar to a great many members of this committee.

Aside from the changes which have been made in the log-driving provisions that I have referred to, this bill I think is an exact reprint of the original Kennebec Reservoir Bill that was before the Legislature in 1923, except that the names of the corporators themselves are changed somewhat on account of changes that have occurred since that time, but they represent exactly the same interests on the river.

Mr. Graustein's name appears now as being the representative of the International Paper Company, while Mr. Dodge as president of the International Paper Company was named in the bill four years ago. Mr. Lockwood whose name appears second is identical with the name contained in the original bill, and appears as the treasurer of the Edwards Manufacturing Company here at Augusta, which has some 15 or 17 feet of head. Mr. George S. Williams is a new name, and appears in place of Mr. Pekinstaufer who four years ago was the representative of the Shawmut Company which now is a subsidiary of the Central Maine Power Company. Mr. Pratt appears as president of the Hollingsworth & Whitney Company, same as four years ago. Mr. Schenck, appears as president of the Great Northern Paper Company. Mr. Winchester appears as treasurer of the Lockwood Company located at Waterville. Mr. Bagley representing the Cushnoc Paper Company which was not named at all four years ago, and which now has a long term lease of a certain part of the power of the Edwards Manufacturing Company here at Augusta. Mr. Wyman as four years ago represents the Central Maine Power Company.

These corporations represented by the corporators named here are the owners of developed power between The Forks and Augusta, representing somewhere about 208 aggregate feet of developed head.

The second section of this bill—and I am not going to take much time in detail upon these different sections, but the second section is the authorization for the issue of capital stock to meet the requirements of the corporation, limited to two million dollars.

The third section defines the powers or purposes of the corporation, which are to build dams for storage and log-driving

purposes. The dam is proposed to be located on public lots or reserve lots on Dead River, about twenty-two and one-half miles above the point where it flows into the Kennebec River at The Forks.

The log driving powers include the reservoir which will be created, the Dead River westerly to Alder Stream and up the South Branch to a pond which will be of the same level as the crest of the dam when it is completed, together with driving rights on Dead River between this dam and The Forks and on certain lakes, with the right to take over by exercise of the power of eminent domain if they are not able to agree among themselves, the property of the log-driving company as it now exists, and to make improvements in Dead River below the dam to facilitate driving there. Also the right to acquire by purchase but not by the exercise of eminent domain log-driving facilities in tributary streams, so that that would be purely a matter of voluntary arrangement between this corporation as owners and these log-driving companies that now or afterwards operate in the tributary streams.

The company will be obliged to take the logs from the tributary streams as they may be delivered into this territory whether it operates the facilities and undertakes driving in the tributaries or not.

So that under these provisions all the surrounding timberland owners will be provided for just as efficiently as they are now provided for.

The company is obliged to furnish water to make one drive per year and an additional one if it is required later in the year if the holders of a limited amount of timber wish to have that done, when it does not come into either of the original drives the company may take it and drive it, and if it does not care to do so it is compelled to furnish water, provided it then has it in its reservoir for these smaller holders to make a late drive in the season.

The company is obliged to save water enough, if it gets it at all during the calendar year from January first, it is obliged to save water enough to make the two main drives, which is all that is required regularly now.

I am not going into the detail of log-driving, because as I say it already meets with the approval of those who are interested in it, and I think to take up your time upon that part of the matter would be unnecessary, and perhaps it would be improper at this late hour.

This bill provides in section 7, in the new draft

> "This corporation shall remove all growth on the area flowed by it seasonably to prevent it from falling and being carried away by the water,"

and in any event, within four years of the commencement of the flowage, so that it may not be left there indefinitely.

The original bill of four years ago provided for its removal without the time limit, except that it should be done seasonably so that it would not fall into the water. Tolls to be collected are provided for with the approval, same as the other driving provisions, by the timberland owners themselves.

The methods provided for determination of the amount to be driven and the compensation provided also that the company will be entitled to provision for enforcing its collection.

Section 12 on page nine I think of your revision is the first one that provides definitely for the creation and general description of the purposes of the company for things outside of log-driving.

Section 12 gives power to acquire land, properties, rights, etc., including any state, public or reserved lot, and provides for compensation for the same if the parties cannot agree and if not provides by the statutes for the exercise of the right of eminent domain.

Section 13 gives authority for the State Land Agent or such other person as the Governor and Council may designate and under their direction to convey the State, public and reserve lots or any parts or portions of the same for such price as may be agreed upon, and that the deed shall be conditional upon subsequent revesting in the State if the payment is not made as called for, and if the parties cannot agree the price to be paid for the State lots and State flowage is also to be fixed by the Court. And the Land Agent or such other person as the Governor and Council may designate is authorized to represent the State in any proceedings to fix the consideration and damages that the State would be entitled to for the land so taken and flowed.

Section 14 provides for the removal of cemeteries in the same manner already provided in other similar charters under the direction of the selectmen of the towns and entirely at the expense of the corporation.

Section 15 provides that the corporation may purchase, hold or sell its own stock in accordance with the provisions relating thereto which shall be provided in the by-laws, but shall not purchase or hold such stock except for the purpose of re-sale or for a longer period of time than one year, and the corporation may retire any part of its capital stock or substitute another class therefor in any manner provided in its by-laws and not inconsistent with the laws of the State.

This is a general provision similar to the provision that has been found to be convenient when the Androscoggin Reservoir Company built the Aziscohos Dam, and for such general purposes as this, where there might be a change from time to time

in the ownership and provision for maintenance operation of the dam as the owners of other developed heads benefited by it may come in.

Perhaps I will say at this time and in connection with this that there is nothing in the bill and no power requested to compel anybody to pay for any benefits they may receive from this reservoir. In other words, just exactly as the Aziscohos reservoir was built and is maintained on the Androscoggin waters the owners of these developed heads will, if this power is granted create a corporation, subscribe to the capital stock and build a dam and operate the reservoir under such arrangements as they may make mutually among themselves. And any owners of water falls along the river who are benefited by it and do not care to come in will get the benefit just the same, and there is no power and no request for any power to compel anybody to contribute against his will.

You may be interested to know in this connection just how that matter is taken care of on the Androscoggin River with the Aziscohos dam. The four corporations, the Union Water Power Company, the International Paper Company, the Rumford Power Company and the Berlin Mills, now the Brown Company, bear each one-quarter of the total expense, or $250,000, making $1,000,000, the total expense of construction. They made a temporary arrangement among themselves as to the operation and up-keep. The Rangeley storage is about twenty billion cubic feet, which was owned by the Union Water Power Company before the Aziscohos development was all turned into the same pool. The four corporations divide the expense of up-keep among themselves substantially in proportion to their developed head. That is, while they built the Aziscohos in equal parts, each standing 25 per cent of the cost, they maintain and operate the entire system in proportion approximately to their developed heads so that the International and the Brown Company each pay one-third and the Union Water Power Company and the Rumford Falls Power Company each pay one-sixth of the operating and up-keep expense.

Section 16 confers the usual authority to borrow money and issue bonds or such other evidences of indebtedness as the corporation may determine upon for construction purposes. And there also you may be interested to know that in the case of the Aziscohos development they issued the corporate notes indorsed by the individual corporations that were interested in it, and then paid off the notes gradually, and as they paid the notes issued capital stock, dollar for dollar for the money contributed in payment of the indebtedness. So that they started out with $400,000 of capital stock and $600,000 of indebtedness. When they got through they had paid off their indebtedness

and had four hundred plus six hundred of capital stock outstanding.

Section 17 contains this provision which is of some importance: "The State of Maine reserves the right to acquire by proper legislation and by such agencies as it may provide for the purpose the whole or any part of the franchises and rights hereby granted, and the whole or any part of the structures erected by authority of this act upon the payment of just compensation; but such compensation shall not include the value of the franchises granted by this act, and shall not exceed the cost of the property and franchises so taken, and just compensation for damages by severance if less than the whole is so taken; provided, that said right shall not be exercised within fifty years from the date of approval of this act without the consent of said corporation, its successors or assigns."

That is to say, if the State of Maine at any time makes provision whereby it may and if it wishes to acquire the property of this corporation, it may take the whole of it or any part of it after some reasonable period to give the corporation an opportunity to take care of its own obligations. We have put in here arbitrarily the period of fifty years, which is the period recognized in the Federal Water Power Act. And as we stated four years ago, if the committee feels that some different period, whether longer or shorter, probably shorter is desirable, then that is a matter for the committee to consider. We ask only that it be such length of time as will give the corporation itself a chance reasonably to retire its obligations and perform the functions for a reasonable length of time for which it has been created. And then if the State does take it over there is a provision that there shall not be included in the price any allowance for the franchises which the State grants, and that the cost to the State shall not exceed the actual cost to the corporation for the property and franchises which it acquires.

So that the State is not to pay in any event more than the property is reasonably worth at that time, and is not in any event to pay more than the cost of the property to the corporation. That is, if through difference in values and construction costs the property then is reasonably worth more than its present cost to the corporation we lose it—if it is worth less we lose the difference. The State takes the chance of benefitting from the reduction in value and is not penalized for any increase in value.

This bill provides in section 18 that "This corporation shall not generate, sell or distribute electricity in any manner and shall not dispose of its property or franchises to any corporation which has authority to do so. This corporation, as a corporation made up of the companies which will go into it, does not

care, I believe, to go into the business of generating electricity. Part of the companies are not in that business at all. This is primarily a reservoir proposition, and its limitation of authority takes away all necessity for any other provision to prevent the shipment of electricity contrary to any law which may now or may hereafter exist because they have no right to generate it.

Section 19 provides for the calling of the meeting to organize the corporation.

Now that in substance stated as briefly as I can covers the provisions of the bill. What the bill contemplates to accomplish is this: The creation of a storage reservoir beginning some 22 1-2 miles from The Forks and extending back 24 miles, ranging from half a mile up in width, and creating a surplus area of about 21 square miles, which has a watershed of about 500 square miles and will hold about twelve billion cubic feet of water, which is about one-third more than the Aziscohos storage. It is 60 per cent of all the Rangeley Lakes storage on the Androscoggin. It is about one-half of the Moosehead Lake storage. This twelve billion cubic feet, the engineers say, will furnish about 770 second feet, or cubic feet per second continuous 24-hour flow, for a period of five months in the year, to help out in low-water times and increase the power over the dam. 770 second feet makes about 77 horse power at 90 per cent efficiency for every foot of head, so that it would create somewhere from 14,000 to 16,000 horse power over the 208 feet of present developed head during the period of five months.

In respect to the cost of construction and acquisition of property somewhere in the neighborhood of a million dollars was the estimate four years ago, or a million and a half including the acquisition of flowage and everything of that sort, including everything.

This, as you can see, will not only regulate and improve the flow on the Kennebec River but will furnish a substantial amount of additional power at a comparatively low cost per kilowatt hour to every class of users because it will be capable of use in the facilities already existing.

Now there are some other features in connection with this matter that I am going to discuss at the present time, because of the history of this undertaking beginning or dating back to the session of four years ago. Many of the members of this committee are familiar in a general way with what took place at that time, and I am not going into any extensive discussion of it. I am going to avoid everything which seems to me properly avoidable. As all of you, I think, know and most of you recall from experience at that time, this bill was passed and in, as I have said, substantially the form that we offer it now. And it was passed a second time over the Governor's veto. Petitions for a referendum were started. The companies, some of them

with their immediate necessities, perhaps, more than others, were extremely anxious at that time, foreseeing early benefit from the proposed development, and wisely or otherwise—otherwise, as it turned out, but in absolute good faith, and on suggestions which came to them, not from them,—some of those interested in the development at that time entered into negotiations with Governor Baxter which resulted finally in a re-draft based upon a lease instead of a sale.

They believed that, while they preferred the original draft, there was not very much difference in effect in what was being accomplished, and that if the matter were properly presented to the Legislature it would have received their approval, and perhaps would have proved, under all the circumstances, the most satisfactory solution of the thing to be worked out immediately.

The re-draft was presented on the following morning, under circumstances which produced results entirely different from what was anticipated. But I am not going to discuss that any more. The result was that some of those interested in the measure and who were not personally on the ground while these negotiations were going on, and properly enough, I concede, felt that perhaps we who were here did not treat the members of the Legislature who had supported the blill with sufficient respect although no disrespect, I think you all believe, was intended, and did not care to go on further at the time. The net result was that nothing was done with the re-draft, and that the original Kennebec Reservoir charter which had been voted upon twice favorably was repealed.

There is nothing more of interest in connection with that that I feel required to say here except to refer briefly to two or three statements, three in particular that I am going to mention which have been made, and no appropriate time seems ever to have come before to explain or to reply to them, which, if true, as stated, would severely impugn the good faith of some of the proponents of this measure.

Some of these statements were made at that time and some have been made later. I am going to refer here only to one that has been made later. Within two or three weeks there has appeared in I think both of the Lewiston papers, and I don't know what other papers, a statement purporting to come from a member of the Legislature from which I read this paragraph:

> "The Kennebec Reservoir bill was passed, vetoed and passed over the Governor's signature four years ago, but was repealed at the same session when a joker in the bill was discovered."

Now I refer to that only because it charges directly that we offered to the Legislature then—and if it was true then, we have done the same thing now—a bill which the Legislature repealed

because it discovered a joker in the bill. I think all of you who were here at that time know that the bill was not repealed on account of any provision, joker or otherwise, that it contained, but solely on account of the circumstances which I have related, and entirely independent of any provision whatever that was contained in the bill.

Governor Baxter shortly after the adjournment of that session of the Legislature issued a proclamation, published in the newspapers and entitled "The Inside History of the Kennebec-Dead River Storage Charters." Now among other things he discussed the inclusion of the right to develop power in that bill which was a compromise draft, and with the statement that we claimed that this was of no value. He says there in this statement "I realize that the company did not ask for the specific right to develop water power but understood their plan which was merely a blind or camouflage."

Now we have not asked for it here, and if our plan then was a "blind or camouflage" it is a "blind or camouflage" now. And that is why I refer to that. We did not ask for it for the reasons which I have already explained. The Governor then said "Oh, of course, it was perfectly apparent that once having obtained the right to build this dam and occupying the pond we might come to a subsequent Legislature and get a right to develop power for a mere trifle," with the implication that we would be cheating the State out of something of value that we had acquired from the State.

The fallacy of that statement is that under the Kennebec Reservoir bill as we offered it then and under the bill as we offer it now the bill provides—and this is the purchase proposition in both cases, that we should pay the State the full value of everything that we acquire from the State in cash, and if we couldn't agree upon that value then the Courts of the State of Maine, and not the Reservoir Company, were to fix the price. So that you will see that if we were asking for any less powers than we might have had we were not asking for any consideration on that account on the price that the State was to be paid for anything that we were getting from the State. So that if there were any "joker" or "camouflage" or anything less than full value received it was the corporation and not the State that was the victim of it.

Let me make that plain. There is nothing in this bill, and there was nothing in the bill in 1923 which was to make the price the State is to get for its land any less by reason of our asking for less than all of the additions we might have had or might now ask for at your hands from the development.

It was also said—and this is the only other statement I am going to take time to refer to now, partly because I don't want to take up too much of your time, and partly because two or

three of these may give you all the light you will need upon this sort of criticism. The implication was attempted to be had, or was had, that in the discussion we had with Governor Baxter that night when we were through with the draft of the compromise bill, we expressed too great confidence in the expectation that the Legislature would ratify that compromise, and caused a copy of the compromise to be printed that night against the advice of the Governor and of Senator Brewster. I am not quoting this from Senator Brewster, now Governor Brewster, or saying that he was at all responsible for this statement. This is the statement of Governor Baxter, and he says that notwithstanding his advice that nothing of that sort should be done, and now I quote from him—"Mr. Wyman immediately went to the printer's office and ordered the bill engrossed, with the result that the first proof unnesessarily enough had the word 'Wyman' printed at the top of the page, showing the printer had taken his orders from Mr. Wyman personally."

Now the facts are these, and I haven't the slightest doubt that Governor Brewster would verify the statement, although I have not talked with him about it. We had that conference in the Blaine House. Senator Brewster was delegated, had been delegated earlier in the evening by Governor Baxter to meet with me and draw the compromise draft. We drew it, and while it was being typed a telephone came from Governor Baxter's office inviting Mr. Wyman to come up there with us when we went up, Senator Brewster and myself, who were together at the time, to present it. As a result the three of us went together. The draft was said to be satisfactory and it was agreed that it should be printed ready for the next morning, and instead of Mr. Wyman arranging for the printing Senator Brewster and I, with Governor Baxter's knowledge, left the Blaine Mansion together for the purpose of seeing that it was printed. Mr. Wyman took us down street with his automobile, showed us the way to the job printing department of the Kennebec Journal, which was the State Printer, and he went not in there but directly to his own office. Senator Brewster and I went into the job printing office, got hold of the foreman and explained what we wanted. He demurred for a time to print it without orders, fearing that they would not be paid for it, and it was explained to him who Senator Brewster was, that he was a member of the Senate and that this was something that would have to be done anyway, and there would be no question about it. We left with the understanding—I mean Senator Brewster and I, with the understanding that the printing would be done ready for delivery at eight o'clock the following morning.

Senator Brewster and I then went to Mr. Wyman's office and asked him to call for the printed copies and bring them to us the next morning. At 8.30 the next morning we were

waiting at the time he agreed to be there with them in the Augusta House, when he came up and said he had been after them as we had requested and that nothing had been done with them. We were both disappointed, and asked him then to go back and see if he could get them, to get them printed so that we could deliver them to Governor Baxter before his message was to be delivered to the Legislature, in accordance with the agreement the night before. He went back then at the joint request of Senator Brewster and myself and asked to have them at once, and that is the explanation of the appearance of his name at the head of the proof that was sent up.

Now I have spoken of those things because inasmuch as the statements were published broadcast it seemed to me that they reflected unjustly and unfairly upon the position and the acts of those who were trying at that time, as I have said, unfortunately and unwisely, but in good faith, to bring about an adjustment of the controversy that then existed.

Now I have one more thing to say, and that is all. I realize that after what took place at that time there may be perhaps a majority, perhaps all the members of the committee, who feel that now the only thing that can be done, or the proper thing that can be done is to insist upon that lease instead of a sale. We would prefer a sale according to the bill that has been explained to you here. It seems to us to be more workable, more consistent with the general method that has been followed in such projects. But there is really not sufficient difference between the plan for a sale and the plan for a lease so that the proponents of this bill will be unwilling to accept the lease project that was agreed upon at that time if that seems to be more suitable to the committee.

This plan provides that the State can take it over in fifty years, if it so wishes, without paying anything except the cost, or the value at that time if that is less than the cost. The lease project was a project for forty years, with a provision that if the State then wished to take it over instead of renewing the lease they should pay the net investment at that time, and the method of arriving at it is defined in detail in the lease, and provides only for a depreciation of one-half on the dam and full cost for everything else. Otherwise there are no substantial differences.

So that if the committee, as I have said, feels that the lease should be substituted for the purchase provision the proponents of this measure can work out the desired terms under either plan. The lease provision then adopted did provide that the bill should be accepted within five months, instead of the time that is allowed by law, if no restriction is made, and that construction should be begun within a limited time.

Under changed conditions as they now exist, business conditions and uncertainty as to how soon there may be an actual

demand for this extra power, we would prefer that even if a lease is given or offered in a new draft that we should be given the full two years that all general legislation allows, unless otherwise provided, and which we would have had under the Kennebec Reservoir bill itself, to act instead of being compelled to act in a shorter time.

We have not prepared a draft for a lease because that does not seem to be called for at this time, but if the committee should think favorably of the project as a whole and prefer the lease rather than the Dead River Reservoir bill as I have explained it, which is the purchase proposition, we will cooperate with any committee from your committee, or we will prepare such a draft and have it ready to submit to your committee at any time you wish, or do anything that will meet your wishes in the matter.

MEMBER OF COMMITTEE: Wasn't there a conditional grant in that other charter that you got other than what you asked for?

Mr. SKELTON: The lease provided and gave the company authority, not to generate itself, but to sublet the right to generate, and that was part of the consideration on the price in which the lease or the rent was agreed upon at that time, and that we should want at this time if we were charged with that amount of rent. Governor Baxter had a price which he suggested that we ought to pay as rental. I suggested a different price from that, and then at a second meeting that same afternoon after I had found that we could handle the power if we had the right to generate it, without having the Reservoir Company do so, it was agreed that we would be willing ot pay an additional amount if we had the right to sublet the power.

Mr. OAKES: In order to clear up the thought that you suggested wouldn't you want to explain further this one point. Is it not true that in the lease charter of four years ago there was such a situation that the referendum provision of the original charter was for practical purposes nullified, after which time your company could refuse to take the lease charter and the original charter would have been in force?

Mr. SKELTON: I think there is no doubt about that.

Mr. OAKES: And that was what was called the joker?

Mr. SKELTON: That couldn't have been the joker because that was not in the one that you repealed.

Mr. OAKES: Isn't that what they referred to as the joker?

Mr. SKELTON: I don't know what they referred to as the joker. It was not in the bill that was repealed. I am glad you mentioned that, if it is in anybody's mind, because I don't want any feeling left that there was any intention to deceive on anybody's part there. The original Kennebec Rerervoir bill didn't limit the time within which the proponents

should accept the charter, so that they were entitled to the full two years given by the statute. When we agreed upon the compromise bill, which was the lease, it was insisted on behalf of Governor Baxter and against our protest, that the time should be limited to the shortest possible time, and finally we agreed upon five months because that was as much time as we could get. It was not our suggestion. It was forced upon us by or through the suggestion of Governor Baxter.

Of course they didn't think of what this meant at that time, and we didn't think of it. It didn't occur to anybody at that time, but it was suggested later, and I believe it is a fact, that if the second bill had gone through, that carrying in itself a repeal of the first, and the proponents had let the five months go by and had not accepted the second bill that would have become void, and after becoming void the repeal of the first one which was contained in it would have been void and the first bill would have become a law. Now there is no question about that.

MEMBER OF COMMITTEE: How many acres does the State own in that vicinity?

Mr. SKELTON: They own about 320 acres of land there where the dam would be located. I don't know about how much additional State land there may be, but there may be other land that might be flowed. The dam site would be on two lots which are 320 acres each, as I recall it.

MEMBER OF COMMITTEE: With the expenditure of this large amount of money in constructing that dam would it not be feasible to develop power there at that dam?

Mr. SKELTON: Oh, yes.

MEMBER OF COMMITTEE: Would it not be good business?

Mr. SKELTON: I think it would. It is simply a matter where part of the companies do not care to engage in the development of power for sale, but with a power to sublet it to somebody else to do it. Of course they will have to find a market for it. There is not that demand for it now that there was four years ago on account of other developments that have been made since that time, but it can be done and as part of the consideration for the rent that was agreed upon the other time. But I want to get it clearly in everybody's mind, because there has been a lot said about a proposal to steal the land and get it for nothing, and that there was nothing in either of the bills that purported to give the company the right to take it except to pay for it, and didn't give any power to fix the price. If they couldn't agree upon the price the Courts were to settle it just the same as they would do with any private individual.

MEMBER OF COMMITTEE: If the company so organized should lease to a power company would that affect the equali-

zation of the water below that to the other parties who were anxious to use it?

Mr. SKELTON: No, I don't think it would because they would have to provide for that in their own lease. Otherwise, if it were an entirely independent concern it would.

Mr. Wyman calls my attention to the fact that I may have permitted you to feel that I was speaking for all the incorporators when I said they were ready to accept the lease provision. Some of the others are represented here and will speak for themselves. I speak primarily for the Central Maine Power Company.

The CHAIRMAN: Should a power company lease that and they were constantly using water other mills below there might have to let the water go by or build storage below.

Mr. SKELTON: Yes, a power company that was also developing power elsewhere would have to run that when the water was going through and lose somewhere else.

MEMBER OF COMMITTEE: Where is the market for this power if it is developed?

Mr. SKELTON: There is none at present. We don't know what we may have after you get through here. We are at your mercy. There is a power site independently of the storage. There is not sufficient power, except that it might be developed in connection with the storage.

MEMBER OF COMMITTEE: How many acres do you intend to flow?

Mr. SKELTON: I can't tell you exactly, but the pond is about 21 square miles, and that would be 640 times that many acres, I suppose.

Mr. WALTER S. WYMAN: I would like to point out to the committee the location on this map which is before them. This blue space on the map is Moosehead Lake, and this is the Kennebec River running down through here. Here is Dead River coming over from the west and running northeast into the Kennebec. In the foreground here is the drainage area of Dead River, at the Long Falls where this dam would be located, and the blue space within the red lines is the proposed flowage, which including the lakes and rivers amounts to about 25 square miles. The dam site is about there, and down here we get Norridgewock and Skowhegan, so that it would be possible for a power station at that point by building about 30 miles of transmission line to feed into the Central Maine Power Company's system, or it would be possible to go the other way and get into the system at Guilford or somewhere in that neighborhood.

The question that was asked about the use of the water was disposed of in this way four years ago, that the lease which would have been made between the storage company and the

power company that developed the power would have provided for the use of the water by the power company only when it was running to waste over the top of the dam or be vented through the dam on the order of the storage company. That is, they would have to take the water as it would be used for storage and not take it primarily for power. I think that is the only feasible way to use it, and that cuts down the value of the water for power considerably over what it would be if it could be used primarily for power. This water would be used for several dams having a total fall of 208 feet, and will add about 750 second feet through five months of drought. It will make a total of about 42 or 44 billion feet of storage available on the Kennebec River, which will be the largest amount on any river in Maine, except the Penobscot, and would be very close to that. I think as a matter of fact there will be about fifty billion second feet, counting the smaller lakes and ponds which don't hold a great deal of water. This water would be available at the Solon dam of the International Paper Company, at the Madison dam of the Great Northern Paper Company, the Madison dam of the Hollingsworth & Whitney Company, at the Skowhegan dam of the Central Maine Power Company, at the Shawmut dam of the Central Maine Power Company, at the Fairfield dam belonging partly to the Central Maine Power Company and partly to manufacturers, the Hollingsworth & Whitney dam at Waterville, the Lockwood Company's dam at Waterville, and the Edwards Manufacturing Company's dam at Augusta.

The water will also run through on the Kennebec River about 250 feet of undeveloped head and through about 500 feet of undeveloped head on the Dead River.

There is one thing that Mr. Skelton said that I would like to alter. He said that we would be willing to take a shorter lease, or at any rate not longer than fifty years. I think it would be very difficult, especially now, to finance this thing and build it on less than fifty years assured occupancy of the premises, and particularly so if the lease form is adopted and the power is developed, which will necessitate the investing of something like a million and a quarter of additional bills in power station facilities, and the whole cost of the enterprise if the power is used would run up to around three million dollars.

Mr. OAKES: How much power would you get out of it?

Mr. WYMAN: We have thought that the power modified by the use of the water for storage that it would be equivalent to some four or five thousand horse power. It is pretty hard to tell how much will have run to waste, and how much it will be affected by being obliged to shut off at some hours of the day when there was a good market and letting it out early in the morning when there was not any market.

MEMBER OF COMMITTEE: As storage would you not want to let it out in the night time, or at some time when the power would not be developed as primary power?

Mr. WYMAN: The top of this pond will be 1100 feet above sea level, and the head immediately available at the dam would be a little less than 100 feet. I think you may see, particularly after the whole thing is developed, at some time in the future, the use of that water at some distance below the power plant would be of much more importance than its use over the hundred feet at the storage dam.

MEMBER OF COMMITTEE: What would be the additional cost of the whole generating proposition and the storage proposition?

Mr. WYMAN: The storage proposition with the flowage is expected to cost a million and a half dollars. The generating plant is rather roughly estimated at $1,200,000. Probably with the transmission lines it would run right around $3,000,000.

MEMBER OF COMMITTEE: On the average rainfall what per cent would you expect to save in storage?

Mr. WYMAN: You mean how much of the water?

MEMBER OF COMMITTEE: How much would this reservoir conserve of the average year's rainfall?

Mr. WYMAN: The average run-off up in that country is about 900 second feet for the entire year, and this reservoir would hold about 770 second feet for five months, so that it would hold something less than half of the total run-off of the river. A good deal of that surplus would run off in a month. The Dead River is not regulated at all now and it is a steep river and runs off very quickly, and we get a tremendous amount of water out of it in time of extreme freshet.

Mr. LEONARD PIERCE of Portland: Mr. Chairman and Gentlemen, I am attorney for the Hollingsworth & Whitney Company, and merely to make the attitude of that company clear I am requested to come here, and I do not care to add anything to Mr. Skelton's explanation but to state that the Hollingsworth & Whitney Company, which owns a dam at Madison and a large paper mill, and another dam at Waterville with a large paper mill, endorses the project and prays that the bill will receive favorable action at your hands. If it were not for the lateness of the hour I would perhaps follow along the line of Senator Crafts' question.

I had occasion to have a good deal to do at one time with the hydraulic engineer of the Hollingsworth & Whitney Company, and he is very emphatically of the opinion that a very big factor in his reason for having this development is the advantage to the Hollingsworth & Whitney Company because it saves in two different towns where their mills are located from very severe floods. He also pointed out that the Brassua

development was of no such beneficial effect on the flood question because Brassua is above Moosehead while the Dead River has nothing to control it, and therefore the big floods which they have are the source of very great danger. I remember particularly the flood in December, 1901, and at that time the flood waters came just as near to doing very severe damage in Waterville as it was possible for water to rise without causing very serious trouble.

Mr. LOUIS C. STEARNS of Bangor: Mr. Chairman and Gentlemen, I am legislative counsel for the Great Northern Paper Company, and I am directed to say this, and no more. Four years ago we favored most heartily the Kennebec Storage bill as presented and hoped very much for the passage of that bill. At the same time and at the same session of the Legislature we were opposed to the so-called Dead River bill, which was the so-called lease bill. At the present time our preference would be very much for the Kennebec Storage bill, so-called. On the other hand, we have greater preference to seeing storage development on the Kennebec River, and we are not so anxious with respect to the vehicle as we are to see the storage; and if in the discretion of this committee it shall seem best to pass a bill substantially like the Dead River storage bill, that is, a lease bill, the Great Northern Paper Company will come in and operate under the same and pay its proper share of the expense.

Mr. W. J. THOMPSON of South China: Mr. Chairman, I simply wanted to make this statement. Four years ago when this Legislature refused six corporations on the Kennebec River the privilege of this storage dam I heard many business men say that a great deal of land had been lost for development. I am not clear in my own mind on this question of a lease. I hardly understand why Mr. Skelton used in the bill or in the amendment the term "State lands." He was asked how much the State owned in that vicinity. I will say that the State does not own an inch of land, wild land in the State of Maine, and I am unable to understand this proposition of a lease.

These so-called public lots are held in trust by the State in case the town should ever become incorporated. The State does not own them. And whatever they get for these public lots, either through a sale or a lease, must be held in trust to be turned over to the town eventually, as I understand it, with interest. You will recall perhaps the fact that the money that was received from these so-called public lots and was held in trust, at the session of the Legislature four years ago by a provision made at that time this money was to be loaned to the farmers at five per cent interest, and it was so loaned. This money, as I understand it, would not go to the State, but it must go into this trust fund and can be loaned to the farmers.

If the lease is proper of these public lots, and if they were to be leased, then of course there is the question of taxes, and a million or two dollars would bring a very substantial tax into the State treasury at a seven mill rate, or perhaps a higher rate. Then there might be the question of whether it would invalidate the question of the State tax if it came directly to the State. I am not interested in the technicality of the terms, but it seems to me that this committee should consider the matter carefully, and while this land is held in trust, whether the State would require more for that land than that of a citizen owning the adjoining land, if the lease was to be substantially more than the value to be paid for adjoining land held by some private citizen—it is all a question to be carefully considered by the committee. I think I am not wrong in relation to the matter of public lots. There has been so much discussion of this question, that I am somewhat in doubt about the proper solution.

The CHAIRMAN: Is there anyone else appearing as opposed to this measure. No one else appearing, we will declare the hearing closed and the matter will be laid upon the table for executive session.