

# MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION  
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE  
4

5 Legislative Document

No. 1683  
6

7 H.P. 1186 House of Representatives, December 18, 1985

8 Approved for introduction by a majority of the Legislative Council  
pursuant to Joint Rule 26.

9 Received by the Clerk of the House on December 18, 1985. Referred to  
10 the Committee on Judiciary and 1,600 ordered printed pursuant to Joint Rule  
14.

EDWIN H. PERT, Clerk

Presented by Representative Holloway of Edgecomb.

11 Cosponsored by Representative Reeves of Pittston and Senator Violette  
of Aroostook.

12 STATE OF MAINE  
13

14 IN THE YEAR OF OUR LORD  
15 NINETEEN HUNDRED AND EIGHTY-SIX  
16

17 Resolve, Authorizing Jeanette Hodgdon Brown,  
18 Administratrix of the Estate of  
19 Kenneth R. Hodgdon, to Recover  
20 Judgment Entered in Her Favor against  
21 the State in Lincoln County  
22 Superior Court.  
23

24 Jeanette Hodgdon Brown, right to recover judgment  
25 entered in her favor against the State autho-  
26 rized. Resolved: That Jeanette Hodgdon Brown, admin-  
27 istratrix of the estate of Kenneth R. Hodgdon, be au-  
28 thorized to receive the judgment entered in her favor  
29 in the Lincoln County Superior Court in the amount of  
30 \$121,500 in damages, plus prejudgment interest to the  
31 date of the entry of judgment in the Superior Court  
32 and post-judgment interest at the rate allowed by law  
33 from that date and court costs as originally allowed  
34 by the Superior Court.

35 In 1939 the Department of Transportation changed  
36 the intersection of Routes 197 and 127 in Dresden  
37 from a traditional T-shaped intersection to a

1 Y-shaped intersection. Route 197 is a state highway  
2 and Route 127 is an improved state highway. For more  
3 than 10 years prior to the date of the accident, cit-  
4 izens had complained to the department that the in-  
5 tersection was dangerous because drivers approaching  
6 from opposite directions could not see each other in  
7 time to stop, especially at the posted speed of 50  
8 miles an hour. The department examined the intersec-  
9 tion at various times prior to the accident and was  
10 aware that conditions at the intersection were such  
11 that sight distances for stopping were below national  
12 standards, but only minor improvements were made.  
13 During this period other accidents and several  
14 near-miss accidents occurred. On June 30, 1978,  
15 Kenneth R. Hodgdon was killed, leaving a widow,  
16 Jeanette, when his motorcycle collided with an auto-  
17 mobile at the intersection. Mr. Hodgdon was wearing a  
18 helmet, but died instantly when he was thrown from  
19 his motorcycle.

20 On May 22, 1980, Mr. Hodgdon's widow filed a  
21 wrongful death action against the driver of the other  
22 car, the Town of Dresden and the State. The basis of  
23 her complaint against the State was that the inter-  
24 section was in a defective condition as a result of  
25 the negligent maintenance and traffic control by the  
26 State. Papers turned over by the department in the  
27 court case proved that prior to and after the acci-  
28 dent in question the danger posed by the intersection  
29 was known by the department and the town, but because  
30 of the joinder of state and stateaid highways, uncer-  
31 tainties and differences concerning the need for re-  
32 pairs and proper funding sources between the town and  
33 the State delayed reconstruction. After the fatal ac-  
34 cident, more than 1,000 people signed a petition re-  
35 questing that the intersection be fixed, but differ-  
36 ences between the State and town persisted concerning  
37 which of them should pay for the work. The State ul-  
38 timately reconstructed the intersection with mainte-  
39 nance funds when a local private citizen proposed a  
40 simple and very inexpensive solution.

41 On June 20, 1980, the State filed a motion to  
42 dismiss Mrs. Hodgdon's suit on the grounds that the  
43 State was immune to suit in these circumstances. Al-  
44 though a Justice of the Superior Court denied that  
45 motion, the motion was renewed at various points

1 throughout the litigation and denied by 2 other Jus-  
2 tices of the Superior Court. In order to avoid the  
3 question of immunity, in 1981 a resolve was intro-  
4 duced in the Legislature, L. D. 614, to waive the  
5 State's immunity and to go forward with the trial.  
6 The resolve was reported by the Joint Standing Com-  
7 mittee on Legal Affairs unanimously "ought-to-pass,"  
8 passed in the House of Representatives, but was  
9 narrowly defeated in the Senate on the grounds that  
10 the Maine Tort Claims Act should govern the pending  
11 case.

12 After the trial, the jury unanimously found that  
13 the State was negligent in its maintenance of the  
14 road and was 60% responsible for Mr. Hodgdon's death,  
15 while the other driver was 40% responsible. The jury  
16 found that Mr. Hodgdon was not at all responsible for  
17 the accident. Damages were assessed against the State  
18 for its share of the liability in the amount of  
19 \$121,500, plus interest and costs as allowed by law.  
20 After the judgment, the State appealed to the Law  
21 Court, which held that even if the State were negli-  
22 gent, it was protected from liability by its sover-  
23 eign immunity and that the town was not in any way  
24 responsible for state highways or stateaid highways.  
25 Despite the jury verdict, judgment was entered in the  
26 State's favor because of its immunity.

27 The Legislature determines and finds that this  
28 resolve is necessary and proper because of the unusu-  
29 al and unique circumstances of this case, namely,  
30 that a jury of Maine citizens has unanimously found  
31 the State negligent and responsible for the death of  
32 Mr. Hodgdon, who was not at all responsible for the  
33 accident and that this is a case that has clarified  
34 the questions of state law regarding town and state  
35 responsibility for these roads. Other resolves have  
36 been passed by the Legislature in cases in which the  
37 State's responsibility was not proven and for amounts  
38 of money higher than the judgment sought to be col-  
39 lected in this case.

40 The judgment entered in the Superior Court on the  
41 verdict, plus prejudgment interest and costs as al-  
42 lowed by the Superior Court and post-judgment inter-  
43 est from the date of the entry of the judgment, shall  
44 be payable from the State Treasury, notwithstanding

1 the decision of the Law Court, the immunity of the  
2 State hereby being waived pursuant to the general  
3 power of the Legislature and the Maine Tort Claims  
4 Act, the Maine Revised Statutes, Title 14, section  
5 8105, subsection 3.

6 STATEMENT OF FACT

7 The purpose of this resolve is to waive the  
8 State's immunity so that Jeanette Hodgdon may recover  
9 the judgment awarded to her by a jury for the State's  
10 negligence in the death of her husband, Kenneth. Mrs.  
11 Hodgdon's husband was killed in an accident at the  
12 intersection of Routes 127 and 197 in Dresden on June  
13 30, 1978. State records produced at the trial indi-  
14 cate that, for several years before the accident, the  
15 State was aware that the intersection was dangerous  
16 and that sight restrictions were below national stan-  
17 dards. The State failed to reconstruct the intersec-  
18 tion until after the accident, when more than 1,000  
19 people sent a petition to the Commissioner of Trans-  
20 portation.

21 In 1980 Mr. Hodgdon's widow filed an action  
22 against the State and the town, both of which moved  
23 to dismiss the case on the grounds that the State was  
24 immune to suit. Although a Judge of the Superior  
25 Court denied the motion, a resolve was introduced in  
26 Mrs. Hodgdon's behalf to waive the State's immunity.  
27 The resolve was reported out by the Joint Standing  
28 Committee on Legal Affairs unanimously  
29 "ought-to-pass" and passed in the House of Represent-  
30 atives, but was narrowly defeated in the Senate on  
31 the grounds that the Maine Tort Claims Act case  
32 should run its course. After a 2-week trial, the jury  
33 unanimously found that the State was negligent and  
34 that Mr. Hodgdon was not at all responsible for the  
35 accident. Damages of \$121,500 were awarded to Mrs.  
36 Hodgdon, plus interest and costs as allowed by law.

37 The State appealed on the grounds that, regard-  
38 less of the jury finding, the State was immune to  
39 suit in the first place. The Law Court did not set  
40 aside the jury finding of the State's negligence, but  
41 did hold that the State was immune to suit in this

1 kind of case. The court reversed Mrs. Hodgdon's  
2 judgment, with the result that the State now seeks to  
3 recover from Mrs. Hodgdon more than \$5,000 in court  
4 costs, mostly the cost of a transcript the State or-  
5 dered for the appeal and the time of a Department of  
6 Transportation employee in preparing charts for the  
7 State's case at trial.

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