

# MAINE STATE LEGISLATURE

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# FIFTY-FIRST LEGISLATURE.

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SENATE.

No. 58.

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## REPORT.

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The Committee on Claims to whom was referred the petition of Neal Dow and J. B. Cummings, asking for an equitable adjustment of their liabilities to the State as sureties on the bond of B. D. Peck, State Treasurer for 1858, find that the legal claims of the State against the bondsmen for that year, amount to \$63,184.36, with seven names on the bond as sureties. As the two petitioners are alone pecuniarily responsible at the present time, the legal claims of the State hold good against them for the full amount. In considering the equities of the case, we find that the State's attorney in bringing suit against the bondsmen, omitted to attach real estate. No direct evidence aside from statement of counsel was presented to show that the several bondsmen were pecuniarily responsible at that time, but the statement was not questioned, and the Committee were fully satisfied that had such an attachment been made one seventh part of the deficiency could have been collected from each of the bondsmen, instead of the whole amount resting upon two of the number as at present. Therefore the Committee are of the opinion, that the adjustment of this claim on equitable principles, demands that the petitioners should be discharged from further liability, on the payment by them severally of one seventh part of the amount which may be found due.

The report of an investigating committee submitted to the Legislature, February 19, 1861, says that the sum of \$4,038.44 "was undoubtedly in payment of checks already included in the sum for which they are held accountable;" the Committee decided to give the petitioners the benefit of the doubt, and deduct this amount from the claim.

It was urged in the hearing before the Committee, that the legal claim would have been reduced in amount, had not the overruling

of demurrer filed by their counsel, not only relieved the State from the burden of proof, but debarred the petitioners from presenting evidence to the courts bearing upon the subject; and had it not been for this change in the position of parties, the State could not have sustained the (to them) incredible claim made by a former committee, that the defalcation was increased \$22,000 from Jan. 1 to Feb. 4, 1859. On this ground the petitioners claim that in equity there should be a further reduction in the amount of the legal claims the State holds against them. The Committee could not view it in this light. The principle of equity must apply to both parties, if the State must abandon five-sevenths of their legal claims, making a reduction of \$42,247.09, because their servant made a mistake in not attaching real estate, (and your Committee are of the opinion that very few men under the circumstances would have taken a different course,) and a farther reduction of \$4,038.44 because some doubts existed in the case, making a total reduction of \$46,285.53 on equitable principles. Then, on the same principle, the petitioners must accept the legitimate results arising from the action taken by their own servants. It certainly cannot be equitable that the mistakes made by the servants of the State, and the servants of the petitioners, should both be made to accrue wholly to the detriment of one party, and to the benefit of the other.

It was further urged that in equity interest should not be added to the amount reported by the Committee of 1860, on the ground that the petitioners had been willing and anxious from the first, to have this matter arranged. While this may have been correct in the case of one of the petitioners, the sureties as a body contested the claim of the State at every point, and from the very nature of the case, the State must treat with them as a whole, and we could not doubt that, had the demurrer been sustained, all would have been ready and willing to have shared the benefit. But in equity and on common business principles, the Committee could see no reason for allowing this claim of the petitioners. Any course of reasoning that will sustain the claim of the State for the principal, will apply with equal force to interest on the same. The full amount of the State's claim to-day is no heavier a burden than would have been the payment in 1860 of the amount reported by the second investigating committee, with the advantage to the petitioners of having had the use of the money since that time, at less than current rates of interest,

It was further urged that after the State, by a Committee ap-

pointed for the purpose, had examined the Treasurer's account, and pronounced it correct, then the liabilities of the sureties ceased. To determine this, we must take into account the conditions on which the bond was given.

If A promises in four months to pay a certain sum to B or order, and B passes that promise with his endorsement to another party, it is with the understanding in law, that he endorses it for the period of four months, and if at the expiration of that time, he is not notified that the note is due and remains unpaid, his liability ceases. But if B endorses the promise which A makes to the order of some other party than himself, then he becomes a joint promisor, and his liability does not cease, either with the maturity of the note or from any failure to notify him at maturity that it was due and unpaid. In one case the liability ceases when the note matures, unless legal notice is given on that day that the note is due and remains unpaid; in the other, the liability does not cease till the note is paid, without regard to notice being given. The case of these sureties is on the principle of the second example given. They are joint promisors with B. D. Peck, that his duties as Treasurer of the State for 1858 shall be properly performed, and their liability does not cease till the full performance of those duties.

Your Committee have not attempted in this report to meet all the points presented in hearings which extended to eleven hours, a large part of which had but little if any bearing upon the subject; but they present for the consideration of the Legislature, a simple statement of the principles by which they arrived at the conclusion, embodied in the annexed resolve.

## STATE OF MAINE.

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RESOLVE relative to the bondsmen of B. D. Peck.

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*Resolved,* That the governor and council be directed  
2 to grant to Neal Dow and J. B. Cummings, a full dis-  
3 charge from their liabilities as sureties on the bond of  
4 B. D. Peck, for the proper performance of his official  
5 duties as state treasurer for the year eighteen hundred  
6 and fifty-eight, on the payment by them severally  
7 into the state treasury of eight thousand four hundred  
8 forty-nine and forty-two one-hundredths dollars.

## SUPPLEMENT TO REPORT OF COMMITTEE ON CLAIMS.

The undersigned wish to supplement the report of the Committee on petition of Neal Dow and J. B. Cummings, by a brief statement and recommendation.

Mr. Cummings is now 73 years of age; has been a mechanic and dealer in lumber, but is now past active business or labor; by economy and industry he had acquired a competency, but a large portion of his property was swept away in the great fire of 1866. He was insured very largely, if not wholly, in The Portland Mutual, which was able to pay but a mere nominal sum on their losses. It was in evidence before the Committee, that his property is now taxed at less than \$19,000, with incumbrances amounting to \$12,000. In view of the peculiar severity of the case, we feel that he is entitled to more favorable terms of settlement than the law, or the equities of the case admit.

Gen. Dow is 68 years of age. It is hardly necessary to remind you of his public record. More than half of the best years of his life have been cheerfully given without pecuniary compensation, to the moral reformation of society. His personal efforts, and the influence he exerted to induce men to join the army, his services and sufferings in the war, not only entitle him to the gratitude and esteem which is felt for him by the people of this State, but taken in connection with the fact that this unfortunate matter which is the subject of the Committee's report, has already cost him nearly \$11,000, entitles him, as we believe, to such consideration as neither the law, nor a rigid application of the equities of the case would permit, but which the Legislature, as the highest power in the State, have a right to grant.

Both of the petitioners promptly paid their portion of the deficiency of 1859 eleven years ago, and notwithstanding five of the bondsmen have become insolvent, and the whole legal claim of \$63,184.36 now stands against these two petitioners alone, they have taken no measures to evade any claims the State may see fit to enforce against them.

You must bear in mind that on the strength of an examination of the Treasurer's accounts in January, 1859, Peck was elected

for a third term, and these men were induced to again go upon his bond. And in settlement of the deficiencies of that year, on the supposition that the indebtedness of 1858 had been settled, Peck's property was allowed to go for the benefit of the bondsmen for 1859, instead of a portion being appropriated to the indebtedness of 1858, as would have been the case had the facts been known.

In view of the facts presented, the peculiar hardship of the case, and the evident wishes of the people of the State at large, we respectfully recommend the Legislature to authorize the settlement of the claim against the petitioners, on the payment by them severally, of one seventh of \$35,192.75, being the original amount of the claim without interest, and submit the annexed resolve.

CHAS. J. MORRIS.  
P. C. KEEGAN.  
JOHN LAMBERT.  
HILTON McALLISTER.  
C. A. ERSKINE.  
CHARLES DEERING.

## STATE OF MAINE.

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RESOLVE relating to the bondsmen of B. D. Peck.

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*Resolved,* That the governor and council be directed  
2 to grant to Neal Dow and J. B. Cummings, a full  
3 discharge from their liabilities as sureties on the bond  
4 of B. D. Peck, for the proper performance of his official  
5 duties as state treasurer for the year eighteen hundred  
6 and fifty-eight, on the payment by them severally into  
7 the state treasury of five thousand twenty-six and  
8 eleven one-hundredths dollars.



STATE OF MAINE.

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IN SENATE, February 17, 1872.

Reported from the Committee on Claims, by Mr. MORRIS, and  
on his motion laid on the table and ordered to be printed.

SAMUEL W. LANE, *Secretary.*