

MAINE STATE LEGISLATURE

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SEVENTY-FIFTH LEGISLATURE

HOUSE

NO. 8

House of Representatives, Jan. 24, 1911.

Tabled for printing by Mr. Williamson, pending reference to committee.

C. C. HARVEY, Clerk.

STATE OF MAINE

RESOLVE in favor of Michael Burns.

Resolved, That there be paid out of the State treasury to
2 Michael Burns, of Augusta, the sum of three thousand one
3 hundred thirty-two dollars and eighty-six cents, to reimburse
4 him for his expenses incurred in defense of prosecutions
5 instituted against him, without warrant of law under the
6 specific order of the governor, and for loss of property and
7 injury to his business.

STATEMENT OF FACTS.

In 1887, Michael Burns was engaged in the sale of original, unbroken, imported packages of alcoholic liquors in the city of Augusta. Mr. Burns had complied with the United States internal revenue laws, authorizing him to sell the liquors.

This business was then, and always had been, a legitimate business under the statutes of this State and according to three published opinions of the supreme court of Maine.

See: State against Robinson, 49 Maine, 285.

State against Blackwell, 65 Maine, 556.

State against Intoxicating Liquors, 69 Maine, 524.

The law in these cases had been followed by a long line of rulings at nisi prius.

The county attorney and sheriff of Kennebec county both knew that Michael Burns was conducting a legal business. The judge of the municipal court knew that the business was legal. The attorney general knew that the business was legal.

In 1887, it was common knowledge in the State of Maine, among the legal profession and all well informed citizens, that original, imported, unbroken packages of alcoholic liquors were an article of merchandise that could be legally sold in this State. This was being openly carried on in the city of Portland, and in the town of Houlton, like any other legitimate business.

In June, 1887, the governor, by proclamation, directed the attorney general and the county attorney to prosecute Michael Burns, as for illegally selling liquors.

The sheriff of Kennebec county upon a warrant issued upon the complaint of the county attorney acting under the direction of the governor, seized of Michael Burns fifty-six cases of rum, and thirteen cases of whiskey, all being in original, imported, unbroken packages. These liquors were worth in the market at Augusta, four hundred and eighty-three dollars.

Mr. Burns was obliged to employ counsel at great expense to defend the prosecution against himself and also against the liquors. The litigation was prolonged for nearly three years. Finally, the law court of this State in the decision of State against Burns, and State against Intoxicating Liquors, 82 Maine, 558, decided May 29, 1890, sustained the contention of Mr. Burns that his business was a legal business.

In 1890, at the September term of the Superior Court of Kennebec county, the presiding judge ordered these liquors to be returned to Mr. Burns. Previous to that, on August 8, 1890, the President of the United States approved an Act of Congress which made these liquors contraband goods in the State of Maine. The goods were shipped to Boston and sold at a loss of \$300.

Mr. Burns' actual loss on the merchandise seized and expenses for attorney's fees, and other items in his defense was as follows:

H. M. Heath, services in municipal and superior courts	\$111 50
Paid witnesses	28 44
Paid for transcript of testimony.....	10 00
John H. Potter, services in municipal and superior courts	50 00
H. M. Heath, for argument in law court.....	50 00
Judge J. W. Symonds, counsel fees and retainer...	300 00
Patrick A. Collins of Boston, counsel fees and retainer	200 00
Wm. Henry Clifford of Portland, retainer and counsel fees	200 00
Paid clerk in Congressional library for briefing federal statutes	50 00
Loss on liquors seized	300 00
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	\$1,299 94

The total expenses incurred in defense of prosecutions being one thousand two hundred and ninety-nine dollars and ninety-four cents; the interest on this sum for twenty-three years and six months amounts to one thousand eight hundred and thirty-

two dollars and ninety-two cents, making a total of three thousand one hundred and thirty-two dollars and eighty-six cents.

The law court decided in the Burns case that Burns was right and Sheriff McFadden was wrong, yet the Legislature of 1895, by chapter ninety-one of the resolves, voted to pay Sheriff McFadden his expenses in the litigation growing out of the seizure, to the amount of four hundred and eighty-three dollars and sixty cents.

This claim does not include, approximately, \$1,500 expended in trips to Washington, Liverpool, and for department and custom house expenses and counsel fees in establishing the business illegally broken up and destroyed, nor does it include, approximately, \$500 expended in litigation in the United States Court in an action against Charles R. McFadden, nor, approximately, \$600 loss on a shipment of goods in the custom house at the time of the seizure by Sheriff McFadden.