

# MAINE STATE LEGISLATURE

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SEVENTY-NINTH LEGISLATURE

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HOUSE

NO. 186

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House of Representatives, Feb. 19, 1919.

Reported by Mr. Barnes from Committee on Judiciary and ordered printed under joint rules.

CLYDE R. CHAPMAN, Clerk.

Presented by Mr. Arthur of Farmingdale.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD ONE THOUSAND  
NINE HUNDRED AND NINETEEN

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RESOLVE, in favor of Ida E. Heath of Chelsea, Maine.

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Resolved: That there be, and hereby is, appropriated, to  
2 be paid to Ida E. Heath of Chelsea, Maine, widow of Orrin  
3 E. Heath of Chelsea, deceased, the sum of six hundred dol-  
4 lars (\$600.00) as additional compensation for the death of  
5 her husband, killed Nov. 8th, 1916, while working on state  
6 aid road in the town of Chelsea.

## STATEMENT OF FACTS.

Orrin E. Heath of Chelsea was employed during the fall of 1916 assisting in the construction of a section of state aid road being built in the town of Chelsea. The work was done under the direction of a foreman who was a resident of Chelsea, recommended either by the road commissioner of Chelsea, or by some of the town officials, and appointed foreman by the State Highway Department.

On the morning of Nov. 8th, 1916, about 9.30, the foreman and another employee went to the top of the gravel bank in which Heath and others were then working, to remove a section of fence. In doing so, the foreman dislodged a large stone which struck Heath on the head, and as a result, he died at five o'clock that afternoon.

Mr. Heath was then a man in full strength and vigor, industrious and of temperate habits. He left a widow, Ida E. Heath, and one son, who is married and lives with the widow. Heath left practically no estate. The widow, a woman now about 51 years old, is not in very good health. The son has all he can do to care for his own family.

At the time of the accident, there was no way in which the widow could recover any compensation, except by the assistance of the Legislature. The case of Graffam vs. the Town of Poland since reported in the 115th Maine on Page 375, had just been decided by the Law Court. That was a case where the facts were the same as in this. The Law Court held that the work was not being done for the town, and the town was not responsible, and while performed under the supervision of a town official, he was, nevertheless, under the direction of the Highway Department, and the whole state aid construction was under the control of the state. In other words, that the state was the employer. The attorney general had ruled that the state need not carry Workman's Compensation Insurance, and there was no insurance to protect these men employed on the Chelsea work. The State Highway Department at that time had assumed the duty of caring for persons injured in purely state highway construction, but not in state aid work. It is

exceedingly doubtful if the foreman could have been held responsible for the accident, and even if he could have, he was financially irresponsible, so that no recourse could be had to him.

Mrs. Heath therefore had a Resolve introduced in the Legislature in her favor, and referred to the Judiciary Committee at the session of 1917. That committee granted her one thousand dollars, which was paid in quarterly installments, the last one being paid December 31st, 1918. As a result of this case and the Graffam case, the 1917 Legislature passed a law making the State liable for injuries received by persons while in the employment of the state, to the same extent as private employers. Could Mrs. Heath have known that this law would have been passed, and would have been retroactive and presented her case before the Industrial Accident Commission, it is certain that she would have received for 300 weeks half of what she could prove to be her husband's average weekly wage for a year previous to the accident. She will expect to prove to the committee that his average wage was about eleven dollars a week. In that event, before the Industrial Accident Commission, she would have been entitled to an award of sixteen hundred and fifty dollars (\$1650). She has, however, received one thousand dollars (\$1000) in the period of two years. It seems fair to say that \$600 additional would be less than she would have received before the Industrial Accident Commission, but perhaps it would not be unfair in view of the shorter period of time in which the money will be paid. She cannot ask this or any additional sum through the Industrial Accident Commission, both because the 1917 law is not retroactive, and because she did not and could not give the statutory notice to the employer, the state. Again her only recourse is to the Legislature. The purpose of this Resolve is to give her the balance of the compensation which she would have received if her husband had been employed by a private employer, or if at the time of the accident the state law had required the state to do what it was compelling employers located within its boundaries to do.