

# MAINE STATE LEGISLATURE

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# EIGHTY-SECOND LEGISLATURE

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**H. P. No. 201**

**H. D. No. 230**

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House of Representatives, Feb. 25, 1925.

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

CLYDE R. CHAPMAN, Clerk.

Presented by Mr. Martin of Augusta.

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## STATE OF MAINE

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IN THE YEAR OF OUR LORD ONE THOUSAND NINE  
HUNDRED AND TWENTY-FIVE

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RESOLVE, Authorizing Michael Burns to Bring a Suit at  
Law Against the State of Maine.

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*Resolved:* That Michael Burns of Augusta in the County  
2 of Kennebec and State of Maine, the respondent in criminal  
3 proceedings brought by the State of Maine in eighteen hun-  
4 dred eighty-seven for illegal sale of intoxicating liquors, be  
5 and hereby is authorized to bring a suit at law in the Supreme  
6 Judicial Court, in the County of Kennebec, within one year  
7 from the first day of October, in the year of our Lord nine-  
8 teen hundred twenty-five, against the State of Maine to  
9 recover damages sustained on account of such prosecution.

The writ issuing out of said Supreme Court under the

2 authority of this resolve shall be served on the Secretary  
3 of State by an attested copy thirty days before the return  
4 thereof by the sheriff of said county or either of his deputies.  
5 The conduct of said suit shall be according to the practice  
6 of suits between parties in said Court and the attorney  
7 general is hereby authorized and designated to appear and  
8 answer to said suit.

Any judgment that may be recovered in such suit shall  
2 be payable from the treasury of the State of Maine on final  
3 process issued by said Court out of any money not other-  
4 wise appropriated and costs may be taxed for the said  
5 Michael Burns if he recovers in said suit. The presiding  
6 justice or the jury hearing the cause may add such interest  
7 as is fair and just between said Michael Burns and the  
8 State of Maine.

## 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 a license, under 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 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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\$1,279.94

The total expenses incurred in defense of prosecutions being one thousand two hundred and seventy-nine dollars and ninety-four cents, exclusive of interest on same for thirty-five years.

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.

The itemized statement does not include approximately \$1,500. expended in trips to Washington, Liverpool, and for department and customs 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.