

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

---

---

EIGHTY-FOURTH LEGISLATURE

---

---

Senate Document

No. 141

---

---

S. P. 265

In Senate, Feb. 6, 1929.

Referred to Committee on Claims and 500 copies ordered printed. Sent down for concurrence.

ROYDEN V. BROWN, Secretary.

Presented by Senator Carlton of Sagadahoc.

---

---

STATE OF MAINE

---

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

---

RESOLVE, in Favor of D. B. Cornish to Reimburse Him  
for Road Construction in Phippsburg, Maine.

---

Resolved: That there be paid to D. B. Cornish of Bow-  
2 doinham, to reimburse him for the building of fourteen  
3 hundred and eight (1408) feet of road in Phippsburg,  
4 known as the Popham Beach road, during the summer of  
5 nineteen hundred and twenty-seven, twenty-three hundred  
6 (\$2300) dollars.

## STATEMENT OF FACTS

D. B. Cornish built, under contract with the county of Sagadahoc, fourteen hundred and eight (1408) feet of road at Popham Beach. Subsequently it appeared as the result of legal proceedings that neither the town nor the county was liable for the road. But the road was built. There is no question regarding the sufficiency of its construction. It is in use by the citizens of Phippsburg and of the county of Sagadahoc, and by the citizens of the state and all others visiting Popham Beach.

The loss of this money will, practically speaking, wipe him out financially. He is paying interest on the money borrowed to build the road. The contract price was two thousand dollars to be paid in September, 1927. Interest from that date until the money could be payable to him under this resolve is approximately three hundred dollars. The proposal of this resolve is to reimburse D. B. Cornish for work honestly done and expenditures honestly made in the construction of a road now in use by the citizens of Maine and their summer resident guests. The state is asked to pay because neither town nor county can legally pay and because the road is usable by all the citizens of the state at this summer resort.

To state the facts in more detail:

## DETAILED STATEMENT OF FACTS

On July 21, 1924, certain petitioners described as "resident and non-resident taxpayers of the town of Phippsburg," in which the summer resort of Popham Beach is located, requested of the Selectmen of Phippsburg the laying out of a highway at Popham Beach. Hearing was had on September 3, 1924, and the petition denied. It appears that a reason, if not the controlling reason for the refusal was that the road did not accommodate merely the inhabitants of Phippsburg but, instead, was a road designed to serve others as well.

On July 20, 1925, a further petition was addressed to the county commissioners requesting the laying out of the road by the county under Revised Statutes of 1926, Chapter 24, and acts amendatory thereto. Hearing was had September 5, 1925. January 5, 1926, a return of the findings of the county commissioners was made and filed, the case being continued to the March term of the county commissioners for final action. On March 2, 1926, the case was closed, the petition for the road being granted.

The basis of this decree was that the selectmen had unreasonably refused to lay out the road, i. e., that they should have laid it out as a town road.

Subsequently, the selectmen of Phippsburg petitioned the county commissioners to reverse this decree. After hearing, the county commissioners declined.

The county commissioners advertised for bids and on July 29, 1927, made a written contract with D. B. Cornish for construction of the road in accordance with the specifications. All parties to the litigation concede that Mr. Cornish thereafter constructed the road in accordance with the specifications and ought to be paid by somebody.

But the selectmen of Phippsburg persisted. They instituted an action of certiorari alleging various legal objections to the decision of the county commissioners and taking the case to the State Supreme Court. Hearing was held before Mr. Justice Spear at Bath, Maine, August 6, 1927. By his decision rendered some time later, the writ of certiorari was denied: the action of the county commissioners approved, and the matter presumably closed.

Meanwhile, D. B. Cornish continued to finish his road in accordance with his contract.

The selectmen of Phippsburg persisted still further. They alleged exceptions from the decree of Mr. Justice Spear to the Maine Law Court. The case was printed. A copy of the entire printed record is submitted with this resolve. The Law Court considered the matter and by opinion of March 8, 1928, sustained the exceptions to Judge Spear's decision, finally holding that the action of the county commissioners had certain legal defects rendering it fatal. *Inhabitants of Phippsburg v. County Commissioners of Sagadahoc County*, 127 Maine, 42.

But, meanwhile, the road had been built and finished by D. B. Cornish in accordance with his contract. He was in no way a party to the litigation or to the disputes between the inhabitants of Phippsburg, the county commissioners and other inhabitants of the county who at various times came into the case.

Following this decision of the Law Court, Cornish, having completed his road the fall before, brought suit against the county commissioners of Sagadahoc for his money. That he had properly performed his work and that someone should pay him was conceded. Counsel for the county commissioners defending Cornish's suit stated in their brief to the presiding Judge of May 14, 1928:

"You will recall my verbal statement as to the attitude of county commissioners. They admit that Cornish has fully performed his contract for building the road and willingly concede that upon principles of natural justice and equity he should receive his pay. The only question is whether the county is legally liable."

Various citizens of Sagadahoc county objected as taxpayers in accordance with their right to the payment by the county to Cornish of any money where it had been determined that the county had not properly ordered the road constructed. The result was that by judicial decision the suit of D. B. Cornish to recover his money failed although all the parties litigant agreed that he had done his work, that the road was of con-

venience to the citizens of Maine and that he should be paid by someone.

Meanwhile, Cornish, the innocent builder of the road, in no way interested or involved in the disputes and the reasons for the difficulties between the town and the county, had spent his money, borrowed substantial sums to complete his work, and now finds himself long after his work has been done in debt for the money borrowed to do the work and never having received any pay whatever. The attempt, through legal counsel, to secure his money failed through no fault of his, but due to the legal questions and technicalities involved in litigation to which he was not a party.

Under these circumstances, he presents his petition to the state for reimbursement.