

MAINE STATE LEGISLATURE

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N I N E T Y - F O U R T H L E G I S L A T U R E

Legislative Document

No. 685

H. P. 1305

House of Representatives, February 11, 1949.

Referred to Committee on Judiciary. Sent up for concurrence and ordered printed.

HARVEY R. PEASE, Clerk.

Presented by Mr. House of Lincoln.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FORTY-NINE

RESOLVE Authorizing Donald S. Porter of Lowell to Sue the State of
Maine.

Donald S. Porter given right to sue state. Resolved: That Donald S. Porter, of Lowell, in the county of Penobscot and state of Maine, who suffered, on the 31st day of October, 1946, serious personal injuries while a passenger in an automobile being operated on a Maine highway, to wit, State road route No. 16, between said Lowell and the town of Enfield in said county and state, due, as he claims, to the failure of the state to properly maintain a certain iron pipe fence by and along said highway route No. 16 in said town of Lowell, and in permitting said iron fence to fall into a state of disrepair, be, and he hereby is, authorized to bring a suit at law in the superior court for the county of Penobscot within 1 year from the 1st day of August, 1949, at any term thereof, against the state of Maine, and the writ issuing out of said superior court under the authority of this resolve shall be served on the secretary of state by attested copy 30 days before the return day thereof by the sheriff or either of his deputies of any county of the state of Maine, and the conduct of said suit shall be according to the practice of suits and proceedings between parties and suitors in said superior court and the liabilities of the parties shall be the same as the liabilities between individuals; and the attorney general is hereby authorized and designated to appear and to answer to said suit to recover the damages sustained

by the said Donald S. Porter by reason of the injuries aforesaid, and any judgment that may be recovered in such suit at law shall be payable from the general highway fund of the state of Maine on final process issued by said court in said suit at law, and costs may be taxed for the said Donald S. Porter, if he recovers in said suit.

DONALD S. PORTER vs. STATE OF MAINE

STATEMENT OF FACTS

The accident on which the within claim is based took place on October 31, 1946 at approximately 3:30 P. M. The claimant, Donald S. Porter, was a passenger in the automobile of one Tyler Curtis, of Burlington, Maine who was then and there operating his automobile, a 1935 Ford coach, on Maine highway route No. 16 in a generally northerly direction between Lowell, Maine and Enfield, Maine. In the vicinity of the town of Lowell near the home of one George Chandler, the said highway curves sharply to the left. At a point somewhat south of this curve there exists a portion of an iron pipe railing or guard rail, which was originally some 150 feet in length on each side of the highway, closely adjacent thereto with the upright supports being mounted in concrete bases. Over a period of years portions of the said guard rail have fallen down and have been permitted by the State Highway Commission, through its agents, servants or employees, to lie by the side of the road. No repair or maintenance of the guard rail has been made for a number of years although the Road Commissioner for the Town of Lowell, the State patrolman, and the officers of the Town had actual notice of the condition of disrepair and the State Highway Commission through its agents, servants or employees had knowledge or should have known of these defects.

Tyler Curtis was driving an automobile on his own side of the highway at a speed of approximately 35 miles per hour with Donald S. Porter as a passenger. He was on an open highway and in a 45 mile an hour zone, when he met an automobile proceeding in the opposite direction around the said curve, the said automobile being nearly in the center of the highway. In order to avoid a collision with the oncoming automobile Mr. Curtis gave way to his right as far as reasonably possible and still remain within the highway, the right hand side of his car being at this time approximately 2 feet from the line of said iron guard rail. Nonetheless, despite the fact the Curtis automobile was in its proper place in said highway a section of said guard rail was caused to pass through the windshield directly in front of Donald Porter, striking him in the face and continuing on through the steel top of the car for a distance of several feet. Mr. Porter at no time observed the pipe or had any occasion to feel that they were in any danger from such source. Mr. Curtis stopped his automobile immediately following the impact and it was brought to a rest at a point in the main highway parallel to the iron fence and approximately 2 feet distant therefrom.

As a result of being struck by the end of the said pipe, Mr. Porter's face was laid open, his left eye virtually removed, the upper portion of his nose demolished, his jaw fractured in several places, and his skull fractured.

An ambulance was immediately called and Dr. Albert J. Gulesian was immediately brought to the scene of the accident where he administered first aid. Mr. Porter was then taken to the Eastern Maine General Hospital in Bangor, Maine where an immediate operation was performed in which his left eye was removed, the displaced sections of the skull were replaced, damages to the broken jaw were repaired, and portions of the brain which were exposed were protected. He was then removed to the Veterans Administration Hospital at Togus, Maine for a period of rest and recuperation, following which he was transferred to the Veterans Administration Hospital at White River Junction, Vermont where over a period of several months, interrupted only by periods of rest and recuperation, some 13 operations were performed, during which a substantial portion of the nose was replaced by plastic surgery. He was then removed to the Cushing General Hospital in Framingham, Massachusetts where a plastic eye was made for him and inserted.

During all of this period of hospitalization, Mr. Porter underwent great pain and suffering, particularly since some of the operations had of necessity to be performed under local anesthesia and he became so conditioned and immune to the use of such anesthesia that in some instances it did not serve to allay the pain.

The driver of the other automobile involved did not stop at the scene of the accident, nor has any information been obtained to date as to the names of the owner or operator of such automobile.