

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

Seventy-First Legislature

OF THE

STATE OF MAINE.

1903.

SENATE.

Wednesday, January 28th, 1903.

Senate met according to adjournment, and was called to order by the President.

Prayer by the Rev. Mr. Hope of Augusta.

Journal of yesterday read and approved.

At this point Mr. Bryant of Somerset assumed the Chair, and presided.

Papers from the House disposed of in concurrence.

The following communication was received from the Secretary of State:

To the President of the Senate, and Speaker of the House of Representatives:

I have the honor to herewith transmit a communication from the National Good Roads Association.

Very respectfully,

Your obedient servant,
(Signed) BYRON BOYD,
Secretary of State.

which was referred to the Committee on State Lands and State Roads.

At this point the President resumed the Chair and presided.

The following bills, petitions, etc., were presented and referred:

Judiciary.

By Mr. Guernsey of Piscataquis: Petition of Hon. S. O. Brown and 180 others in favor of amendment to charter of Dover and Foxcroft Village Fire Company, as provided by bill now before the Legislature.

Legal Affairs.

By Mr. Goodwin of Somerset: Remonstrance of Mary Little Thompson and 20 others against woman suffrage.

Education.

By Mr. Pierce of Aroostook: Resolve in favor of Madawaska Training School.

Railroads, Telegraphs and Expresses.

By Mr. Dudley of Aroostook: Bill, An Act to incorporate the Mapleton and Presque Isle Railroad Company.

Banks and Banking.

By Mr. Alden of Kennebec: Bill, An

Act to incorporate the Kennebec Trust Company.

Interior Waters.

By Mr. Gardner of Penobscot: Bill, An Act to amend Chapter 145 of the Private and Special Laws of 1895, entitled An Act to incorporate the Winn Water and Power Company.

Inland Fisheries and Game.

By Mr. Staples of Cumberland: Petition of Frank Leighton and 187 others for modern fish hatchery in the vicinity of the shores of Sebago Lake.

Also petition of D. N. Woodman and 35 others for same.

Also petition of L. S. Ingalls and 6 others for same.

Also petition of John C. Wells and 9 others for same.

Also petition of J. A. Bennett and 13 others for same.

Also petition of J. H. Allen and 9 others for same.

Also petition of Norman H. Libby and 74 others for same.

Also petition of William H. Stevens and 10 others for same.

Also petition of W. T. Graham and 21 others for same.

Also petition of L. O. Buzzell and 14 others of Standish for same.

Also petition of A. P. Reed and 28 others for same.

Also petition of W. H. McDonald and 20 others for same.

Also petition of Albert Ames and 35 others for same.

Also petition of D. A. Lowell and 39 others for same.

Also petition of J. B. Plummer and 40 others for same.

Also petition of E. A. Snow and 11 others for same.

Also petition of L. W. Wood and 8 others for same.

Also petition of M. P. Fitch and 25 others for same.

Also petition of A. N. Witham and 5 others for same.

Also petition of H. E. Emmons and 82 others for same.

Also petition of George H. Hudson and 29 others for same.

Also petition of B. C. Peabody and 18 others for same.

By Mr. Morse of Waldo: Bill, An Act to regulate the killing of deer in the county of Waldo.

Temperance.

By Mr. Manley of Kennebec: Remonstrance of Dr. George D. B. Pepper and 52 others of Waterville, against resubmission of the Prohibitory Law.

By Mr. Bryant of Somerset: Remonstrance of J. S. Laughton and 52 others of Ripley against resubmission.

By Mr. Morse of Waldo: Remonstrance of Albert H. W. Hasson and 51 others of Winthrop against resubmission.

Reports of Committees.

Mr. Wing, for the Committee on the Judiciary, on Bill, An Act to further regulate the rights of minority stockholders, reported same ought not to pass.

The same Senator for the same committee, on Bill, entitled An Act to authorize the Biddeford and Saco Water Company to issue bonds, and for other purposes, reported same ought to pass. Bill tabled for printing under the joint rules.

Mr. Pierce for the Committee on Legal Affairs, on Bill, An Act additional to and amendatory of Chapter 318 of the Private and Special Laws of 1901 entitled An Act to incorporate the Bridgton Water Company reported same ought to pass. Report accepted. On motion by Mr. Staples of Cumberland this bill took its first and second reading under suspension of the rules, and was passed to be engrossed.

Mr. Staples of Cumberland: Mr. President, I make this motion so that the new management can take possession on the first of February.

Passed to be Engrossed.

An Act additional to and amendatory of Chapter 318 of the Private and Special Laws of 1901 entitled An Act to incorporate the Bridgton Water Company.

An Act to amend Chapter 61 of the Private and Special Laws of 1899 entitled An Act to establish the Bar Harbor Municipal Court.

Orders of the Day.

On motion by Mr. Staples of Knox Bill, An Act to set off the town of Isle au Haut in Hancock County and an-

nex the same to Knox County was taken from the table; and on further motion of the same Senator, the bill was tabled for printing, pending reference to a committee.

On motion by Mr. Libby of Kennebec, Senate Document No. 6, Report of W. W. Stetson, State Superintendent of Schools in response to order requiring him to make strict investigation of the condition, amount and income of the school funds of the several towns arising from the sale of school lands, was taken from the table; and on further motion by the same Senator, the same was referred to the committee on Education.

Mr. Stetson of Penobscot: Mr. President, The other day An Act was introduced to amend Section 1 of Chapter 18 of the Public Laws of 1895 relating to reference on insurance policies. The act was introduced and referred to the committee on the judiciary, and it was received back and by vote of the honorable Senate it was reconsidered and then placed upon the table and assigned for today. I therefore move that it be taken from the table.

The motion prevailed.

Mr. Stetson then moved that the bill be referred to the Committee on Mercantile Affairs and Insurance and said:—

Mr. President, the position is just this: This bill is a similar bill to one taken up by this honorable body, last week, and referred to the committee on mercantile affairs and insurance, deeming that the committee was broad enough to cover the scope of this bill; and I have no question that the gentlemen, today, will concur with their opinion of last week, when they voted thirty to one that a similar bill should be referred to the committee on mercantile affairs and insurance; and as one bill has already been referred to that committee, it seems to me fitting and appropriate that a similar bill as this is which is now pending reference should be referred to the same committee.

Mr. CLARK of Hancock: Mr. President, I hope this motion will not prevail. It seems to me that this matter has been before the Senate in three different phases, and that the proper

place for this bill is before the judiciary committee. The commissioners appointed by the Legislature in regard to uniformity of laws have investigated this matter quite thoroughly, and in their report say that the constitutionality of this law is a serious question. Now, that report has gone before the committee on judiciary, and I understand that notice has been given for hearing on that report, so that some action will probably be taken by that committee. There is another bill pending in the Legislature which has gone to the House and there tabled, of a similar purport to this bill, although drawn on different lines, yet accomplishing the same purpose. This bill does away, if enacted, with reference on insurance policies.

Now, I have no objection to any committee in this matter. I do not wish to cast any reflection upon the committee on mercantile affairs and insurance. I think the judiciary committee competent to investigate and handle this matter. It is only a few years ago that this Legislature enacted a license law in this State which has been declared unconstitutional by the supreme court of this State, recently. A bill now is pending before the committee on legal affairs to see if we shall not refund the amount received under that unconstitutional act, that people have paid; so that I say it is the safest plan for this Legislature to let no bill pass if it can be helped until the constitutionality of it is investigated. Some have said that only the supreme court can tell whether this bill is constitutional or not. I say this Legislature can determine whether it is constitutional or not; and there are gentlemen upon the judiciary committee who can investigate this matter and decide upon that question. Supposing that an insurance policy be presented to this Legislature of a different form to this, which states what form of action should be brought by an insured against an insurance company in case of loss—supposing the insurance company insist in that policy that you should bring a real action to recover your damage under that insurance policy; wouldn't it be proper for the committee to investigate that and see if it was a proper action to bring,

or whether some other action should be brought? And who can tell unless they are familiar with that form of action? Now, I say there is a question about the constitutionality of this act. I say you should not take away the right to trial by jury, which is one of the most noble heritages of any people on the face of this globe, unless this matter is thoroughly investigated. If you do, you take away something the people have always been in the habit of looking to for their protection, and if you grant this right to the insurance company you have got to grant similar rights and legislation to every corporation in the State of Maine, because they are entitled to the same usage as an insurance corporation. What will the people say if we grant to this corporation these especial rights? What will the farmer in northern Aroostook say, and what the fisherman on Frenchman's bay who has been paying taxes and insurance on that little hut for 25 years, when they find that one of the greatest rights they have, namely the right of trial by jury, has been taken away from them and that when the matter came up for investigation in this Legislature it was not even investigated by a committee of attorneys who could investigate and say whether it is constitutional or not, and who, if they were to bring an action for settlement on this form of policy at their own expense, would find that it would cost them more than the average policy on a small house.

Mr. BURNS of Cumberland: Mr. President, I do not understand—I am not an attorney, so that if I am wrong you will pardon me—I do not understand that the judiciary committee has the power to determine upon the constitutionality or unconstitutionality of this law, even if it is referred to that committee. I think the license act that the senator from Hancock refers to was referred to the judiciary committee. Now, even if it were unconstitutional I do not see how you are going to help it by referring it to that committee. If I understand it, it is the decision of the supreme court of this State that decides upon the constitutionality of these questions; and I hope the motion of the senator from Penob-

scott will prevail, and that this bill will be referred to the committee on mercantile affairs and insurance; and we shall be very glad to have the senator from Hancock appear before us and give us information on this point, and show us wherein we need information.

Mr. STAPLES of Knox: Mr. President, I am surprised at the turn this bill has taken. I apprehend that we all desire to know whether that bill is unconstitutional. If I had a question of insurance and I wanted it investigated, I would refer it to the insurance committee. But this is entirely a legal affair. While the insurance committee are gentlemen of intelligence, they are not supposed to be versed in the law, and I am always a little skeptical when a committee wants to take charge of a certain measure. I do know that a matter almost like this bill, the matter of uniformity of legislation, where they only present the committee two matters—the matter of negotiable instruments and the matter of insurance—the arbitration clause in a Maine insurance policy—is before this committee on judiciary. I do know that this matter introduced by me the other day and attempted to be referred to the committee on judiciary was tabled in the House by a member of the judiciary committee. It does seem to me that this matter—as the senator from Hancock has said—is a most important one. It affects the rights of every living person in the good State of Maine, today; and that matter should be considered by men who are versed in the law, as to whether it is constitutional or not. Take away the right of trial by jury! Why! the senator from Cumberland says that the supreme court is to pass upon it in the end. It may be true, but the judiciary committee can report to this body whether they think it is constitutional or unconstitutional—they are capable and learned in the law. The insurance committee is not supposed to be versed in the law. Now, I want to be fair about this thing. Let the judiciary committee have it in the first place. We don't want to divide this bill—send one to the committee on the judiciary and one to the committee on insurance—because, in the first

place a bill similar to this, on uniformity of legislation, has been sent to the judiciary. Now, let them have the whole thing and not divide it up between the committee on insurance and the judiciary committee—then it will come back here to the House, and if the insurance commission think that it is constitutional and want to question that matter, we will have it right before the Senate. But I want it to go to the judiciary committee because that is a vital question and a question which the people, today, are looking to this Legislature to have determined—the constitutionality of it, and while, in the wind-up, the supreme court is the final judge and not the judiciary committee, yet that committee can tell us upon investigation, by comparing it with the constitution, and with the decisions of the courts of this State, whether it is constitutional or unconstitutional; and I hope that the motion of the senator from Penobscot will not prevail.

Mr. GARDINER of Penobscot: Mr. President, I do not understand that the merits of this particular bill are under discussion, but simply the matter of reference. I understood, from the senator from Kennebec, the other day, who was chairman of the judiciary—or inferred, at least, that the matter would probably be referred to the committee on mercantile affairs and insurance and when they have the bill for consideration, if they feel weak in the law, and think they have bitten off more than they can chew, can then ask permission to refer to the judiciary; but I think the matter should first go to the committee on mercantile affairs and insurance and I hope the motion of my colleague, Mr. Stetson, will prevail.

The question being put upon the motion to refer the bill to the committee on mercantile affairs and insurance, the Chair declared the vote doubtful, and thereupon, on motion by Mr. Staples of Knox, the yeas and nays were ordered, resulting as follows:

Those voting yea, were Messrs. Alden, Bryant, Burleigh, Burns, Currier, Gardner, Hyde, Knowlton, Maddocks, Morrison, Morse, Pike, Randall, Rankin, Staples of Cumberland, Stetson, Titcomb, Wilson—18; those voting nay,

were Messrs. Clark, Dudley, Goodwin, Guernsey, Manley, Philbrook, Pierce, Staples of Knox, Wing—9.

So the motion prevailed, and the act was referred to the committee on mercantile affairs and insurance.

A recess of 10 minutes was here taken, at the expiration of which, on motion by Mr. Titcomb of York, it was:

Ordered, the House concurring that the Senate and House convene in joint assembly in the hall of the House of Representatives, this day, at 10.15 o'clock, for the purpose of holding memorial exercises in memory of the late Thomas B. Reed.

And the secretary was instructed to convey a message to that effect to the House, and subsequently reported that he had discharged the duty with which he was charged.

A message was thereafter received from the House conveyed by Mr. Cotton, its clerk, concurring in the foregoing proposition.

The session of the Senate was thereupon suspended, and the senators proceeded to the hall of the House.

(For joint assembly proceedings, see House report.)

At the close of the joint assembly proceedings, the session of the Senate was resumed.

On motion by Mr. Morse of Waldo the Senate adjourned to meet at 10 o'clock A. M. on Thursday, Jan. 29, 1903.