

# MAINE STATE LEGISLATURE

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**NOTE:**

**No Legislative Record has  
been found for the  
Adjourned Session  
on September 1, 1903.**

**The relevant pages  
from the House and Senate Journals  
are therefore provided to indicate  
proceedings in the chambers  
on that day.**

JOURNAL

OF THE

SENATE OF MAINE

1903

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SEVENTY-FIRST LEGISLATURE

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AUGUSTA  
KENNEBEC JOURNAL PRINT  
1903

## STATE OF MAINE.

EXECUTIVE DEPARTMENT,

AUGUSTA, March 28, 1903.

*To the Honorable Senate and House of Representatives:*

I transmit herewith a list of the acts and resolves passed during the present session of the legislature, and approved by me, numbering 664 acts and 148 resolves.

I have no further communication to make.

(Signed)

JOHN F. HILL.

The communication was read and sent to the House.

On motion by Mr. STETSON of Penobscot,  
Adjourned.

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TUESDAY, September 1, 1903.

Senate called to order by the President.

Prayer by Rev. Mr. Hayden of Augusta.

Journal of Saturday, March 28, 1903, read and approved.

The following communication was received from the justices of the supreme judicial court:

*To the Senate:*

The undersigned justices of the supreme judicial court give the following as their opinion on the questions submitted to the justices in the foregoing Senate orders of March 23d and 25th, 1903.

The two questions submitted are practically identical since they both are as to the constitutionality of the same section of the same statute.

In considering the question we confine ourselves exclusively to the statute cited in the Senate order, viz: Section 1 of chapter 18 of Public Laws of 1895. We also confine ourselves to

the question of constitutionality, ignoring all other questions. The first clause in that section is as follows: "Sect. 1. No fire insurance company shall issue fire insurance policies on property in this state other than those of the standard form herein set forth, except as follows:" Then follow certain exceptions allowed none of which affect the questions submitted. In the standard form set forth in this section is the clause, cited in the Senate order, stipulating in effect that the amount of the loss or damage under the policy shall be determined by three arbitrators, instead of by a jury,—unless such stipulation be waived.

We assume as too evident for argument or discussion that the words "fire insurance company" in such a statute and in such connection mean incorporated companies, or corporations, and are not to be extended beyond them. Again, it not being otherwise stated in the Senate order, we understand we may assume that in none of the charters of domestic fire insurance companies is there any limitation upon the power of the legislature "to amend, alter or repeal" their charters as reserved in R. S. (1883) Ch. 46, Sec. 23. The question submitted is, therefore, narrowed down to this: Is the legislature inhibited by any provision in the Constitution of the United States or of this State from exercising the power of thus limiting incorporated insurance companies to the issuance of one standard form of fire insurance policy, even though such standard form contain a clause that there shall be no right of action on the policy until the amount of the loss or damage be determined by three arbitrators, or there be a waiver of such clause by both parties? It may be assumed, *arguendo* only, that by accepting such a fire insurance policy the assured waives any right to a jury trial upon the question of the amount of his loss or damage, but there is no statutory compulsion on fire insurance companies to issue such policies, nor upon property owners to accept them.

We do not find in either constitution, federal or state, any section or clause in terms inhibiting such an exercise of the legislative power over fire insurance companies. While the individual has existence and consequent rights independent of the legislature, the corporation or incorporated company derives its existence and rights solely from legislative action. The legislature may refuse to grant any corporate rights or powers whatever, and even existence, or it may grant one only. Until

the legislature acts, these do not and cannot exist. So the legislature may by general law, or special act, "amend, alter or repeal" any corporate charter, or corporate right or existence once granted (except of course where it has stipulated not to do so), and in so doing it may cut away the powers of a corporation one after another and from time to time, and finally destroy the last one and the corporation itself. It cannot, of course, confiscate the property of the corporation once lawfully acquired. It cannot impair the obligation of a contract once lawfully made by a corporation. So far, the legislature is restrained by the State and federal constitutions. But it can prohibit the acquisition of any more property by the corporation; it can prohibit the making of any new contracts whatever by the corporation, or any new contract except one of a particular prescribed kind and form with prescribed stipulations therein. This power, sweeping as it is in its scope, is necessarily implied and included in the reserved power to amend, alter or repeal the very legislative acts which gave life, powers and rights to the corporation. This power is inherent in the legislature unlimited by any section or clause in the federal or State constitution which we have been able to find. *Head v. Providence Insurance Co.*, 2 Cranch, 127; *Bank of Augusta v. Earle*, 13 Pet. 519; *Miller v. New York*, 13 Wall 478; *Greenwood v. Union Freight Co.*, 105 U. S. 13; *Spring Valley Water Works v. Schollter*, 110 U. S. 347; *Norfolk and Western Railroad Company v. Pennsylvania*, 136 U. S. 114; *State v. Brown Manufacturing Co.*, 18 R. I. 14; *Schaffer v. Union Mining Co.*, 55 Md. 74; *State v. Maine Central R. R. Co.*, 60 Me., 488, affirmed in 96 U. S. 499.

As to foreign fire insurance companies, those incorporated in other states and countries, they, of course, are equally subject to the legislative power of this state so far as the exercise of their rights or powers, and their presence or existence within this State are concerned. They are not protected by the interstate commerce clause of the federal constitution. *Hooper v. California*, 155 U. S. 648. The legislature can wholly exclude them from the state, and hence can impose such conditions and limitations upon the exercise of any rights and powers and business, and even presence, in this State as it sees fit. *Norfolk and Western Railroad Company v. Pennsylvania*, 136 U. S. 114;

*Hooper v. California*, 155 U. S. 648; *Dryden v. Grand Trunk Ry. Co.*, 60 Me., 512.

The statute does not offend against the XIV amendment to the Constitution of the United States, since it bears equally upon all fire insurance companies domestic and foreign without attempting any discriminations, and does not deprive any person of life, liberty or property without due process of law.

There is another phase of the question which may be suggested and hence should be considered, viz: Whether the statute infringes any constitutional right of the individual irrespective of its limitation of the powers of insurance corporations. The constitutional right of trial by jury is a right, not a duty, and may be waived by the individual. It is waived by him as to the assessment of his damages if he voluntarily enters into a contract like the statutory standard insurance policy wherein it is mutually stipulated that the damages provided for shall be determined by arbitration. It may be urged, however, that this contract, the terms of which are prescribed by statute, is not voluntary, in that the individual is practically prevented from making contracts for the protection of his property by insurance, except such contracts as require him to waive his right of trial by jury; in that he is practically compelled to enter into that particular contract or go without insurance protection.

But the broad question of the constitutional right of the individual to make and enforce contracts for the acquirement, possession and protection of property by insurance or otherwise free from legislative interference is not presented here. Whatever the extent of the constitutional right of the individual to make insurance contracts with other individuals, or unincorporated associations of individuals, we think it clear from the principles above stated that he has no constitutional right to make any particular insurance contract with a corporation. True, the complete power of the legislature to limit or destroy the right of a corporation to make contracts necessarily includes the power to limit or destroy the right of the individual to make contracts with it, but this incidental result cannot be held to limit the power of the legislature over its own creature, the corporation. The legislature is not required by the constitution to create corporations for individuals to make contracts with,

nor is it prohibited from limiting or dissolving corporations with which individuals may wish to contract.

It follows that the statute cited and inquired about is constitutional, being within the legislative cognizance and not forbidden by any section or clause of the constitution, state or federal.

We answer both questions in the affirmative.

PORTLAND, July 1, 1903.

(Signed)

Andrew P. Wiswell,  
Lucilius A. Emery,  
Wm. P. Whitehouse,  
Sewall C. Strout,  
Albert R. Savage,  
Frederick A. Powers,  
Henry C. Peabody,  
Albert M. Spear.

The communication was read and ordered entered in the journal.

Mr. GOODWIN from the Committee on Revision of the Statutes, submitted the report of the committee, with accompanying bill, entitled "An Act to revise and consolidate the Public Laws of the State," and that the same ought to pass.

The report was read and accepted, and on motion by Mr. GOODWIN of Somerset, the accompanying bill entitled "An Act to revise and consolidate the Public Laws of the State," was read twice under suspension of the rules without further reference and passed to be engrossed.

The same senator from the same committee, submitted bill entitled "An Act to repeal the acts consolidated in the Revised Statutes of the year 1903," and that the same ought to pass.

The report was read and accepted, and on motion by Mr. GOODWIN of Somerset, the bill was read twice under suspension of the rules without further reference and passed to be engrossed.

The commissioner on the revision and consolidation of the Public Laws of the State of Maine, Hon. John A. Morrill of Auburn, submitted his report.

The report was read and accepted.



Severally sent down for concurrence.

Bill "An Act to provide for the representation of the State of Maine at the Louisiana Purchase Exposition at St. Louis, Missouri, and making an appropriation therefor," came up from the House that branch insisting on its action in passing the bill to be engrossed, and asking another committee of conference, appointing

Messrs. Shaw of Bath,  
Drew of Portland,  
Briggs of Auburn,

as conferees on the part of the House.

Mr. GOODWIN of Somerset :

*Mr. President:* I rise to a parliamentary inquiry in regard to this matter. As I understand the parliamentary situation, it is this. That committee of conference was appointed, met and reported to the Senate. The Senate, at that time voted to recede and concur, and your committee of conference was discharged. We did recede and concur. Thereupon, later in the day, a motion was made to reconsider the vote whereby we receded and concurred, which was done. Then a motion was made to indefinitely postpone, which was carried by the Senate. Then a motion made to reconsider that motion was lost; and, therefore it would be impossible to reconsider that motion at the present time. That is the way I understand the parliamentary situation stands at the present time. The report of the committee of conference which you have before you on the table was acted upon at one time in the Senate, action was taken by the Senate and the bill indefinitely postponed, reconsideration refused, and, as far as the Senate is concerned, Mr. President, it seems to me that the affair is buttoned up and closed; and that no request from the House at the present time, on that report, is proper to be laid before the Senate.

The PRESIDENT: The Chair will state, from his recollection that the remarks of the senator from Somerset are, in the main, correct, that the record of the Senate was that a committee of conference was appointed, were unable to agree, and the House members of the conference committee reported back to the House and the Senate members of that committee reported back to the Senate, which was incorrect procedure. Under the rules,

the report should have been made to the House, that body having requested the conference, and the Senate would not have had the papers before it for any further action upon it, until the report came from the House. The senator is correct in his statement that, later in the proceedings the Senate voted to indefinitely postpone the bill. Then the senator from Somerset moved to reconsider the vote whereby the Senate voted to indefinitely postpone the bill, which vote was lost. The Chair will now rule that the intention of the rules providing for a committee of conference is that the two bodies may get together if they so desire; and that a motion to insist and join a committee of conference is in order, notwithstanding the motion to indefinitely postpone and the refusal to reconsider that vote. The reason of the rule requires that procedure. Notwithstanding the vote passed by the Senate, the Senate has not adhered in its action in refusing to join a committee of conference; and if the House calls for it, the Senate may grant its request and appoint a committee of conference. The Chair will rule that such a motion is in order.

On motion by Mr. RANDALL, of Cumberland, the Senate insisted on its action in indefinitely postponing the bill.

On motion by Mr. GOODWIN of Somerset, the yeas and nays being desired by one-fifth of the senators present,

Those who voted in the affirmative were:

Messrs. Buck, Clark, Currier, Gardner, Guernsey, Maddocks, Manley, Morrison, Philbrook, Plummer, Randall, Rankin, Stetson, Titcomb, Wilson, Wing—16.

Those who voted in the negative were:

Messrs. Alden, Bryant, Burleigh, Dudley, Goodwin, Knowlton, Morse, Pierce, Pike, Staples of Cumberland, Staples of Knox—11.

So it was a vote to insist on the previous action of the Senate, and the committee of conference was joined by the appointment of:

Messrs. Randall of Cumberland,  
Pike of Washington,  
Bryant of Somerset,

as conferees on the part of the Senate.

Bill "An Act to amend section 3 of chapter 258 of the Public Laws of 1893, relating to school funds derived from savings bank tax," came up from the House, that branch insisting on its action in passing the bill to be engrossed, and asking a committee of conference, appointing:

Messrs. Drew of Portland,  
Davis of Waterville,  
Thompson of China,

as conferees on the part of the House.

On motion by Mr. STETSON of Penobscot, the Senate insisted on its action indefinitely postponing the bill, and joined the committee of conference, appointing:

Messrs. Stetson of Penobscot,  
Burleigh of Aroostook,  
Morrison of York,

as conferees on the part of the Senate.

On motion by Mr. TITCOMB of York, a message was sent to the executive department requesting the return to the Senate of bill "An Act to amend section 10 of chapter 19 of the Revised Statutes, relating to the law of the road."

The secretary conveyed the message, and subsequently reported that the bill had been returned to the Senate.

On motion by Mr. TITCOMB, the vote whereby the bill was passed to be enacted was reconsidered and it was referred to the next legislature.

Sent down for concurrence.

Papers from the House:

Report of the committee of conference on bill "An Act to provide for the representation of the State of Maine at the Louisiana Purchase Exposition, at St. Louis, Missouri, and making an appropriation therefor," that they are unable to agree, came up from the House accepted, that branch further insisting on its action, and asking another committee of conference, appointing:

Messrs. Smith of Presque Isle,  
Littlefield of Rockland,  
Barker of Bangor,

as conferees on the part of the House.

The report was read and accepted, and on motion by Mr. GOODWIN of Somerset, the bill was laid on the table.

That the Secretary of the Senate and Clerk of the House make up a pay-roll of the employees of the Senate and House for their attendance at this adjournment of the session of the 71st legislature of Maine, as follows: Senate: C. H. Lovejoy, Messenger, \$15; J. F. Ashford, Assistant Messenger, \$15; W. G. Fuller, Folder, \$15; J. J. Dearborn, Assistant Folder, \$15; T. A. Anderson, Postmaster, \$15; S. D. Lord, Doorkeeper, \$15; E. K. Milliken, Reporter, \$25; S. C. W. Simpson, Page, \$15; A. W. Buck, Page, \$15; Chaplain, \$2. House of Representatives: G. H. Fisher, Messenger, \$15; W. J. Smith, First Assistant Messenger, \$15; W. H. Holmes, Second Assistant Messenger, \$15; H. P. Hawes, Mail Carrier, \$15; H. R. Coolidge, Assistant Mail Carrier, \$15; J. H. Dixon, First Folder, \$15; Chapin Lydston, Second Folder, \$15; L. E. Thornton, Third Folder, \$15; R. C. Noyes, Doorkeeper, \$15; E. P. Craig, Assistant Doorkeeper, \$15; J. S. Estes, Reporter, \$25; A. H. Whitman, Reporter, \$25; W. B. Webb, Page, \$15; Chas. Knowlton, Page, \$15; Chaplain, \$2. Making a total of \$379. This amount shall be drawn from the contingent fund of the legislature.

(Signed)

T. S. BURNS,

*Chairman on the part of the Senate.*

WALDO PETTENGILL,

*Chairman on the part of the House.*

E. C. DUDLEY, *Secretary.*

The order was read, and Mr. GOODWIN of Somerset, offered Senate amendment "A" as follows:

"Amend by inserting 'J. Perley Dudley, clerk to Committee on Revision of the Statutes, fifteen dollars', making a total of \$394."

The same senator offered amendment "B," as follows:

"Insert 'Miss Ethel Hodgkins, stenographer to President and Secretary of Senate, \$15; Miss D. B. Bartlett, stenographer to Speaker and Clerk of the House, \$15 and change the total to \$424.'"

The amendments were adopted, and the order as amended given a passage.

Sent down for concurrence.

At 12 o'clock, noon, on motion by Mr. MANLEY of Kennebec, the Senate took a recess until 2 o'clock P. M.

### 2 O'CLOCK P. M.

The Committee on Engrossed Bills reported as truly and strictly engrossed, the following bills:

"An Act to revise and consolidate the Public Laws of the State;"

"An Act to repeal the acts consolidated in the Revised Statutes of the year 1903;"

Which bills were passed to be enacted in concurrence, and having been signed by the President, were by the Secretary presented to the Governor for his approval.

On motion by Mr. GOODWIN of Somerset, bill "An Act to provide for the representation of the State of Maine at the Louisiana Purchase Exposition, at St. Louis, Missouri, and making an appropriation therefor," was taken from the table.

On motion by Mr. STETSON of Penobscot, the Senate receded from its action indefinitely postponing the bill, and concurred with the House in passing it to be engrossed.

On motion by Mr. STAPLES of Knox, the yeas and nays being desired by one-fifth of the senators present,

Those who voted in the affirmative were:

Messrs. Buck, Burns, Clark, Guernsey, Maddocks, Manley, Morrison, Philbrook, Plummer, Randall, Rankin, Stetson, Titcomb, Wilson, Wing—15.

Those who voted in the negative were:

Messrs. Currier, Dudley, Goodwin, Knowlton, Morse, Pierce, Pike, Staples of Cumberland, Staples of Knox—9.

So it was a vote to recede from the former action of the Senate, and the bill was passed to be engrossed in concurrence.

Subsequently the Committee on Engrossed Bills reported as truly and strictly engrossed, the following bill:

“An Act to provide for the representation of the State of Maine at the Louisiana Purchase Exposition, at St. Louis, Missouri, and making an appropriation therefor,”

Which bill was passed to be enacted in concurrence, and having been signed by the President, was by the Secretary presented to the Governor for his approval.

Papers from the House:

Report of the committee of conference, on bill “An Act to amend section 3 of chapter 258 of the Public Laws of 1893, relating to school funds derived from savings bank tax,” that they are unable to agree, came up from the House accepted, and that branch adhering to its action, passing the bill to be engrossed.

The report was read and accepted in concurrence, and Mr. PIERCE of Aroostook moved that the Senate recede and concur.

Which was lost on a rising vote, 10 in the affirmative, 15 in the negative.

On motion by Mr. WING of Androscoggin, the bill was referred to the next legislature.

On motion by Mr. STAPLES of Knox, the yeas and nays being desired by one-fifth of the senators present,

Those who voted in the affirmative were:

Messrs. Alden, Burleigh, Burns, Currier, Gardner, Guernsey, Manley, Morrison, Philbrook, Plummer, Randall, Staples of Cumberland, Stetson, Titcomb, Wing—15.

Those who voted in the negative were:

Messrs. Buck, Clark, Dudley, Goodwin, Knowlton, Maddocks, Morse, Pierce, Pike, Staples of Knox, Wilson—11.

So it was a vote to refer the bill to the next legislature.

Sent down for concurrence.

A communication was received from the House, that Hon. E. E. Chase of Bluehill had tendered his resignation as member at large on the part of the House on the committee on removal of State Capitol, and that Hon. George D. Bisbee of Rumford Falls, had been appointed to fill the vacancy.

The resignation of E. E. Chase was accepted, and the appointment of George D. Bisbee confirmed in concurrence.

Bill "An Act to amend section 3 of chapter 258 of the Public Laws of 1893, relating to school funds derived from savings bank tax," came up from the House, that branch refusing to recede from its action and concur in the reference of the bill to the next legislature.

On motion by Mr. STAPLES of Knox, the vote whereby the bill was referred to the next legislature was reconsidered.

The same senator moved that the Senate recede and concur with the House,

Which was lost.

On motion by Mr. STAPLES of Knox, the yeas and nays being desired by one-fifth of the senators present,

Those who voted in the affirmative were:

Messrs. Buck, Dudley, Goodwin, Knowlton, Maddocks, Pierce, Pike, Staples of Knox, Wilson—9.

Those who voted in the negative were:

Messrs. Burleigh, Burns, Currier, Gardner, Manley, Philbrook, Plummer, Staples of Cumberland, Titcomb, Wing—10.

So it was not a vote to recede and concur.

On motion by Mr. MANLEY of Kennebec, the Senate adhered to its former action indefinitely postponing the bill.

On motion by Mr. STAPLES of Knox, the yeas and nays being desired by one-fifth of the senators present,

Those who voted in the affirmative were:

Messrs. Burleigh, Burns, Currier, Gardner, Manley, Philbrook, Plummer, Staples of Cumberland, Titcomb, Wing—10.

Those who voted in the negative were:

Messrs. Buck, Dudley, Goodwin, Knowlton, Maddocks, Pierce, Pike, Staples of Knox, Wilson—9.

So it was a vote to adhere to the former action of the Senate indefinitely postponing the bill.

Sent down for concurrence.

Mr. GOODWIN of Somerset, presented the following resolution:

*Resolved*, That a vote of thanks be extended by the Senate to the Secretary and Assistant Secretary of the Senate for the able

and courteous manner in which they have attended to their duties,

Which was read and unanimously adopted.

On motion by Mr. MADDOCKS of Lincoln,

*Ordered*, That the gavel which has been wielded so wisely and impartially by President Virgin be presented to him as a mark of our admiration and esteem,

Which was passed unanimously.

On motion by Mr. BURNS of Cumberland,

*Ordered*, That a message be sent to the House of Representatives, informing that body that the Senate has transacted all the business before it, and is ready to adjourn without day.

Which was read and passed, and the senator from Cumberland conveyed the message, subsequently reporting that he had discharged the duty assigned him.

A message was received from the House by Mr. LITTLEFIELD of Rockland, that the House had transacted all business before it, and was ready to adjourn without day.

On motion by Mr. WILSON of Washington,

*Ordered*, That a committee of three on the part of the Senate, with such as the House may join, be appointed to wait upon the Governor, and inform him that both branches of the legislature having acted on all matters before them, are now ready to receive any communication he may be pleased to make.

Which was read and passed, and the President appointed

Messrs. Wilson of Washington,  
Buck of Hancock,  
Currier of Franklin,

as a committee on the part of the Senate.

Sent down for concurrence.

Subsequently, the foregoing order came up from the House passed in concurrence, and the committee joined as follows:

Messrs. Page of Skowhegan,  
Morrison of Eden,  
Davis of Waterville,  
Pike of Lubec,  
Furbish of Rangeley,  
Irving of Caribou,  
Sutherland of Biddeford.



Mr. WILSON from the committee subsequently reported that they had attended to the duty assigned them, and that the Governor was pleased to say that he would communicate with the two branches forthwith through the Secretary of State, a list of the bills and resolves passed during the session, and that he had no further communication to make.

Thereupon, the following communication was received from the Governor:

## STATE OF MAINE.

EXECUTIVE DEPARTMENT,  
AUGUSTA, September 1, 1903.

*To the Senate and House of Representatives:*

I herewith transmit a list of the acts passed during the adjourned session of the legislature and approved by me today, numbering three.

I have no further communication to make.

(Signed)

JOHN F. HILL,

“An Act to revise and consolidate the public laws of the State;”

“An Act to repeal the acts consolidated in the Revised Statutes of the year 1903;”

“An Act to provide for the representation of the State of Maine at the Louisiana Purchase Exposition at Saint Louis, Missouri, and making an appropriation therefor.”

The communication was read and sent to the House.

The President of the Senate then, on motion by Mr. STAPLES of Knox, at five o'clock P. M., Tuesday, September 1, 1903, declared the Senate of the seventy-first legislature adjourned without day.

KENDALL M. DUNBAR,  
*Secretary.*

I certify that the foregoing is a true record of the proceedings of the Senate of the seventy-first legislature of the State of Maine.

Attest:

KENDALL M. DUNBAR,  
*Secretary.*