

# MAINE STATE LEGISLATURE

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**Legislative Record**

of the

**Seventy-Third Legislature**

of the

**State of Maine.**

1907.

**SENATE.**

Wednesday, January 23, 1907.

Senate called to order by the President.

Prayer by Rev. Mr. Lawton of Gardiner.

Journal of previous session read and approved.

Papers from the House disposed of in concurrence.

**Read and Assigned.**

Resolve in favor of the purchase of the Maine State Year Book and Legislative Manual for the years of 1907 and 1908.

"An Act to incorporate the Mars Hill Trust Company."

On motion by Mr. Garcelon of Androscoggin the Senate nonconcurring with the House in the reference to the Committee on Legal Affairs of Bill An Act to amend An Act relating to the Municipal Court of the city of Lewiston and on further motion by the same senator said bill was referred to the Committee on Judiciary.

The following communication was received from the Secretary of State: "To the President and Speaker of the House:

I have the honor to herewith transmit the report of the Commissioner of Highways for the year 1906.

Your obedient servant,

(Signed) A. I. BROWN,

Secretary of State."

and the same was referred to the committee on State Lands and State Roads.

The following bills, petitions and resolves were presented and referred:

**Judiciary.**

By Mr. Deasy of Hancock: Bill, "An Act to abolish the January term of the Supreme Court for the County of Hancock."

By Mr. Deasy of Hancock: Bill, "An Act granting certain powers to the Northeast Harbor Water Co."

By Mr. Deasy of Hancock: Petition of John W. Somes and thirteen others asking for a Charter to supply water to the village of Somesville in the town of Mount Desert.

By Mr. Deasy of Hancock: Bill, "An

Act to incorporate the Somesville Water Company."

By Mr. Merrill of Cumberland: "An Act to enable cities to assess taxes for street sprinkling.

**Legal Affairs.**

By Mr. Merrill of Cumberland: Bill "An Act to incorporate the Myles Standish Rifle Club of Portland."

By Mr. Barrows of Penobscot: Bill "An Act to prevent the pollution of the waters of Lake Nokomis."

**Appropriations and Financial Affairs.**

By Mr. Putnam of Aroostook. Resolve providing for an Epidemic or Emergency Fund."

By Mr. Sewall of Sagadahoc: Petition of R. D. Bibber, M. D., of Bath, J. C. Lowell and others for Resolve in favor of Maine State Sanatorium Association.

**Railroads and Expresses.**

By Mr. Irving of Aroostook: Bill "An Act to extend the Charter of the Aroostook Valley Railroad Company."

**Mercantile Affairs and Insurance.**

By Mr. Deasy of Hancock: Bill "An Act to amend sections one hundred and eight, one hundred and eleven and one hundred and twelve of chapter forty-nine of the Revised Statutes, relating to Credit Insurance and Title Insurance."

**Banks and Banking.**

By Mr. Barrows of Penobscot: Bill "An Act to continue in force the Charter of the Newport Trust Company."

**Inland Fisheries and Game.**

By Mr. Barrows of Penobscot: Resolve in favor of the town of Newport, county of Penobscot and State of Maine.

**Temperance.**

By John H. Proctor of Cumberland: Petition of forty-three citizens of Bridgton, Cumberland County, in favor of supporting the present prohibitory law, and remonstrating against the re-submission of the prohibitory amendment.

By Mr. Mills of Hancock: Remonstrance of Arthur H. Freeman and

forty-seven others of Southwest Harbor against resubmission of Fifth Amendment.

By Mr. Curtis of Cumberland: Remonstrance against Resubmission by Charles M. Woodman and sixty-nine others.

#### Taxation.

By Mr. Deasy of Hancock: Bill "An Act to amend section forty-eight of chapter eight of the Revised Statutes, relating to Taxation of Insurance Companies."

#### Orders.

On motion by Mr. Simpson of York it was Ordered, That the President of the Senate appoint a Committee of the Senate on Rules and Business of the Senate, consisting of three members.

The President appointed as such committee Messrs. Heselton of Kennebec, Parkhurst of Penobscot and Putnam of Aroostook.

#### Reports of Committees.

Mr. Rice for the Committee on Inland Fisheries and Game, on "Resolve for the purpose of operating fish hatcheries and feeding stations for fish and the protection of fish" reported that same ought to pass.

Mr. Barrows for the Committee on Pensions on "Resolve in favor of John D. Bubier" reported that same ought to pass.

Also on "Resolve in favor of Lottie A. Robinson" reported that the same ought to pass.

The foregoing reports were accepted and the several Resolves were tabled for printing under the joint rules.

#### Passed to Be Engrossed.

An Act authorizing the Erection of a Bridge of a Roadway across tide-water between Mackey's or Mackworth Island in the town of Falmouth and the mainland of said town.

Resolve in relation to early York Deeds.

Resolve in favor of the Central Maine General Hospital.

Resolve in favor of the York Hospital.

Resolve in favor Young Women's Home in Lewiston.

#### Orders of the Day.

Mr. DEASY of Hancock moved that the vote whereby it was

"Ordered, that the Justices of the Supreme Judicial Court be requested to furnish their opinion of the Constitutionality and Legality of the law rebating ninety per cent. of the State tax assessed upon the Bangor and Aroostook, and Somerset Railroad and Washington County Railroads.

Second; If said railroads or any one of them extend their road during the life of their contract, would such extension be exempted from taxation the same as that part of the road in use at the date of the contract.

The three contracts to accompany the request."

be reconsidered.

Mr. STAPLES of Knox: Mr. President: I do not know what the Senator's desire is in this matter, or his object in moving the reconsideration of that vote.

I introduced that order in good faith, believing it to be the desire of a large portion of the legal fraternity of this State that the decision of the Supreme Court, or their opinion, be had upon its constitutionality. I am surprised that there is anybody upon either side of this Chamber who is afraid to take the opinion of the Justices of the Supreme Court upon this most important matter to the taxpayers of the State of Maine. It has agitated the people of the State for the last year and is of great importance to the taxpayers of the State, and it is of great importance that the question be settled, and at once, as to the constitutionality of a rebate of 95 per cent. upon free railroads of this State.

It is a serious question whether the State of Maine has a right to give away the taxation of free railroads without any consideration except the frivolous one of their carrying troupes, in time of peace, if we were to have a war. I know there is unrest among the people of the State regarding it and that two of these roads have asked for an extension of their lines; and I introduced the order for no other purpose but to test the constitutionality of

it by the opinion of the Justices. We do not know, and we cannot know, until we get an opinion of the Justices of the Supreme Court whether, when those lines are extended some forty-five miles—as they are intended to be—whether that rebate will extend to those extensions, or not. It is but fairness to the people of this State and to the taxpayers that we have an opinion of the Supreme Court of the State of Maine; and I hope the motion of the Senator from Hancock will not prevail. It does not cost anything to have the opinion of the Supreme Court of Maine. They are servants of the people; and if we have their opinion it will settle once for all the legality of these contracts. If the contracts are not legal and have no consideration to make them binding upon the State of Maine, the sooner the taxpayers know it, the better. If they are, the sooner we know it the better; and I can see no earthly reason why we should not have the opinion of the Supreme Court upon this question.

Mr. DEASY of Hancock: Mr. President, I am not afraid, and I do not know of any Senator who is afraid to take the opinion of the Supreme Court upon the question of the constitutionality of this law; but I am a little bit ashamed to submit to the Supreme Court a question as to the constitutionality of a law when it appears upon opinions rendered within a few years by the court that the court will refuse to answer.

It is well settled by recent opinions of the court, I submit, that the court will not answer questions submitted by the Senate or by any department of government in reference to matters where they will be obliged to pre-judge the rights of a party who is not represented; and that is true in this case.

Furthermore, the court has decided it will not answer a question submitted by any department of government, by either Senate or House of Representatives, unless the Senate or House has before it some measure that is affected by the opinion which is sought from the court. For these reasons,

and because in my opinion and the opinion of many members of the Senate, the court is not bound to, and will not answer this question because it is not a "solemn occasion" requiring an answer.

I ask that it be reconsidered, and if reconsidered I shall ask that it be laid on the table until I can confer with Senator Staples with reference to its disposition.

Mr. STAPLES: Mr. President: I would like to ask the Senator from Hancock whether, if the extension of these roads is made today, he is prepared to say that it would be constitutional or not that the rebate should apply to both of them.

Mr. DEASY: Mr. President: I certainly am not prepared to answer off-hand any questions of constitutionality. If it were for us here to decide questions of constitutionality the fact that, in the Legislature of 1891 which authorized the contract made with the Bangor and Aroostook Railroad, there were very many of the best lawyers in the State, Charles F. Libby, President of the Senate, and Judge Wiswell, Speaker of the House, and two Judges of the Supreme Court who are now Judges, sat in that Legislature and were I think upon the very committee that passed it—I say that those facts furnished presumptive evidence that the act is constitutional; and that presumption is not wholly overcome by the doubts of the Senator from Knox.

Mr. STAPLES: Mr. President: I wish to say just a word in reply. I differ from the Senator from Hancock that a matter must be pending before this body before a question can be asked of the Supreme Court. But a question is already presented in the application of an extension of the lines of these two railroads.

I did not know yesterday that the railroad companies, those interested in this Bill, had come down here and would lay down on this Senate. I accept the alternative. If they are afraid to test the constitutionality of that law I accept the alternative and we will appeal from you to the people.

The question being put the motion from the Senator from Hancock pre-

vailed; and, on further motion by that Senator, the order was tabled.

On motion by Mr. Simpson of York: Bill, "An Act to preserve trees abutting public ways and other places," was taken from the table, and on further motion by the same Senator the Bill was referred to the Committee on Judiciary.

On motion of Mr. Theriault of Aroostook the Senate adjourned.

## HOUSE.

Prayer by Rev. Mr. McKenney of Bridgton.

Papers from the Senate disposed of in concurrence.

The joint order that committees be instructed to have all notices published in the *Le Messenger*, a tri-weekly French paper of Lewiston, comes back from the Senate, that branch non-concurring with the House in its passage of the order, and indefinitely postponing it.

On motion of Mr. Morneau of Lewiston the vote was reconsidered whereby the order received a passage in the House, and on further motion by Mr. Morneau the House concurred with the Senate in indefinitely postponing the order.

Mr. Morneau then introduced the following and moved its passage:

Ordered, The Senate concurring, that the committees be instructed to have all Legislative notices pertaining to the Franco-American people and all legislative notices affecting the interests of Androscoggin county published in the *Le Messenger*.

The order received a passage.

### Senate Bills on First Reading.

An Act to incorporate the Frontier Trust Co.

Resolve in favor of the finance committee.

The Speaker joined on the part of the House to the committee on the proper observance of the Longfellow centennial, Messrs. Knowlton of Monson, McKenney of Bridgton, Gleason of Mexico, Newbert of Augusta, Spear of South Portland, Stubbs of Strong and Hall of Caribou.

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

### Judiciary.

By Mr. Merriam of East Livermore—Petition of selectmen of East Livermore for incorporation of Livermore Falls Water District.

By Mr. Gleason of Mexico—Petition of John P. Swasey and 18 other members of the Oxford County Bar in fa-