

# MAINE STATE LEGISLATURE

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**Legislative Record**

of the

**Seventy-Third Legislature**

of the

**State of Maine.**

**1907.**

**SENATE.**

Thursday, Jan. 31, 1907.

Senate called to order by the President.

Prayer by Rev. Mr. Clark of Gardiner.

Journal of the previous session read and approved.

Papers from the House disposed of in concurrence.

Bill, "An Act to encourage the cultivation and preservation of forests and wood lots" came from the House, that body non-concurring with the Senate in its reference to the committee on taxation and by that branch referred to the committee on forestry and water supply. On motion by Mr. Sewall of Sagadahoc the Senate voted to recede and concur with the action of the House in its reference to the committee on forestry and water supply.

Bill, "An Act to amend Section 6 of Chapter 9 of the Revised Statutes relating to the exemption from taxation of land set apart for forest cultivation" came from the House, that body non-concurring with the Senate in its reference to the committee on taxation and by that branch referred to the committee on forestry and water supply. On motion by Mr. Sewall of Sagadahoc the Senate voted to recede and concur with the action of the House in its reference to the committee on forestry and water supply.

A communication was received from Hon. Pascal P. Gilmore, treasurer of State-elect, submitting his official bond for the years 1907 and 1908. The same was referred to the committee on appropriations and financial affairs.

The following communication was received from the Governor:

**STATE OF MAINE.**

Executive Department.

Augusta, Jan. 31, 1907.

"To the Honorable President of the Senate:

"I beg to transmit herewith the report of the committee to examine the

account of the State treasurer for the year ending Dec. 31, 1906.

Very truly yours,

(Signed) W. T. COBB.  
Governor of the State of Maine.

which was referred to the committee on appropriations and financial affairs.

**Judiciary.**

By Mr. Simpson of York—"An Act to ratify the action of the committee appointed to build a bridge across the York river.

**Legal Affairs.**

By Mr. Irving of Aroostook—Bill "An Act relative to the care of steam heating plants."

**Appropriations and Financial Affairs.**

By Mr. Simpson of York—Petition of Frank M. Ross of Kennebec and 11 others for resolve in favor of Maine State Sanatorium Association.

**Education.**

By Mr. Mills of Hancock—Resolve in favor of the Castine Normal School.

By Mr. Houston of Piscataquis—Petition of C. F. Scales and 74 others, citizens of Guilford, for the adequate support of the University of Maine.

By Mr. Theriault of Aroostook—Petition of Peter C. Keegan and others, trustees of Van Buren College, for an appropriation in aid of building an additional building for college purposes.

**Mercantile Affairs and Insurance.**

By Mr. Heselton of Kennebec—Bill, "An Act to establish a law uniform with other states relative to Insurance Policies."

**State Lands and State Roads.**

By Mr. Parkhurst of Penobscot—Resolve in favor of appropriating money for the re-establishment of boundary lines of plantations.

**Inland Fisheries and Game.**

By Mr. Bailey of Somerset—Petition of E. C. Hatch and others of Hartland, for a law to prevent the carrying of firearms into unincorporated townships in close time on game, and also to provide means for feeding the fish in our hatcheries for a longer time, before liberating them.

**Shore Fisheries.**

By Mr. Mills of Hancock—Bill "An Act to amend Section 34 of Chapter 41 of the Revised Statutes relating to bait barrels."

**Claims.**

By Mr. Rice of Franklin—Resolve in favor of Harry A. Furbish.

**Labor.**

By Mr. Philcon of Androscoggin—Petition of Auburn Art Club to amend Chapter 40 relating to employment of minors.

By Mr. Curtis of Cumberland—Petition of Deborah V. Morton in favor of Child labor bill.

By Mr. Ayer of Kennebec—Petition of Henrietta W. Fairbanks and 14 others relating to the employment of minors.

By Mr. Rice of Franklin—Petition of Mrs. I. B. Allen and 10 others asking for the passage of bill relative to child labor.

By Mr. Bailey of Somerset—Petition of Charlotte E. Griffin and 14 others, members of the Pittsfield Tuesday Club, to amend Chapter 40 of the Revised Statutes in regard to employment of minors in manufacturing and mechanical establishments in the State.

**Read and Assigned.**

An Act to extend the charter of the Stonington Trust Co.

An Act to extend the charter of the Bethel Trust Co.

An Act to amend Section 5 of Chapter 203 of the Private and Special Laws of 1883 entitled "An Act to incorporate the Portland Trust Company."

Resolve for State pension.

Resolve in favor of Lydia A. Cummings of Rockland, county of Knox.

Resolves providing for the preservation of regimental rolls in the adjutant general's office.

Resolves in relation to extra pay of Maine volunteers in the war with Spain.

**Reports of Committee.**

By Mr. Putnam for the Aroostook delegation committee reports that the Bill, entitled, "An Act to amend Section 7 of Chapter 11 of the Revised Statutes relating to the transfer of the

office of the registry of deeds for the northern district of Aroostook county from Madawaska to Fort Kent, and provide a suitable building in which to keep such office," ought not to pass.

By Mr. Rice for the committee on inland fisheries and game reports that the "petition of C. S. Perry and 99 others praying for changes in the law relating to fishing in Sandy river, and for a law to prohibit the putting of mill refuse into a portion of the same," have had the same under consideration and that the petitioners have leave to withdraw.

By Mr. Hastings of Oxford for the committee on judiciary reports that the order relating to the expediency of regulating by a general law the location and use of wires transmitting high tension electric currents, and report by bill or otherwise, reports that legislation thereon is inexpedient.

By same senator for same committee reports that the bill entitled, "An Act to authorize the Great Northern Paper Co. to own and operate mills in any county in the State, and to hold stock in the Northern Maine Power Packer Company," that same ought to pass.

By Mr. Rice of Franklin for committee on telegraph and telephones, reports that the Bill, entitled, "An Act to incorporate the Island Telephone Company" ought to pass.

By Mr. Houston of Piscataquis for the committee on interior waters, reports that the "Resolve in aid of navigation on Moosehead lake" under new draft under same title, ought to pass.

By Mr. Stearns of Penobscot for the committee on interior waters, to which was referred the "Resolve for buoys and lights on Rangeley lakes" have had the same under consideration, report the same under new draft under same title and that it ought to pass.

Mr. Ayer for the committee on interior waters on Bill, "An Act to amend the charter of the North Branch Dam Company," reported same in new draft under same title and that it ought to pass.

Mr. Stearns for the committee on interior waters on Bill, "An Act to authorize the Milo Lumber Company to erect piers and booms" reported same

in new draft under same title and hat it ought to pass.

Mr. Rice for the committee on inland fish and game on Bill, "An Act for the protection of deer in the town of Isle au Haut, county of Hancock, reported that same ought to pass.

Mr. Staples for the committee on legal affairs on "Petition of the Maine State Detective Association" praying that Section 3 of Chapter 115 of the Revised Statutes, relating to bonds and sureties of State detectives, reported Bill, "An Act to amend Section 3 of Chapter 115 and Section 13 of Chapter 121 of the Revised Statutes of 1903, relating to private detectives," which was sent down for concurrence.

The foregoing reports of committees were accepted and bills and resolves which were reported ought to pass were tabled for printing under the joint rules.

#### Passed to Be Engrossed.

An Act to amend the charter of the Augusta Water District.

An Act to change the name of the Maine Congregational Charitable Society.

An Act in relation to the Employment of Custodians of Elevators.

An Act to extend the charter of the Mattanawcook Manufacturing Company.

An Act to incorporate the Shore Acres Water Company.

Resolve in favor of King's Daughters' Union of Bangor.

Resolve in favor of the Children's Aid Society of Maine.

Resolve in favor of the Bar Harbor Medical and Surgical Hospital located at Bar Harbor, Maine.

Resolves in favor of the Eastern Maine General hospital.

Resolve in favor of the Eastern Maine Insane hospital.

#### Passed to Be Enacted.

An Act additional to Chapter 49, Revised Statutes, providing for the transmission to register of probate of the names of all qualified corporate surety companies.

#### Finally Passed.

Resolved in favor of Home for Friendless Boys.

Resolve in favor of Healy Asylum.

Resolve in favor of Eastern Maine Insane hospital.

#### Orders of the Day.

On motion of Mr. Deasy of Hancock the order relative to the opinion of the justices of the supreme judicial court on law relating to rebate of State tax on the Bangor & Aroostook and other railroads, was taken from the table.

Mr. Deasy thereupon moved that the consideration of said order be indefinitely postponed.

Mr. STAPLES of Knox: Mr. President, before that vote is taken, I desire the attention of this Senate that I may briefly give my reasons for submitting that request. I introduced the order from no other motive than to ascertain what I believe the good people of the State of Maine desire to know; whether that rebate and that law is constitutional or not. You and I know that for the last two years there has been much doubt as to whether the law was constitutional at the time it was passed. I have no doubt and I venture the assertion that there is not a lawyer in this body who values his reputation but will agree with me, that the law so passed exempting the B. & A. Road, the Washington Road and the Somerset Road from taxation for 20 years, was entirely unconstitutional.

The people of this State have a right to know whether it is constitutional or not; and we know that there is an unrest among the people regarding this question.

We have five judges of the supreme court of Maine whose duty it is, upon all solemn occasions or when great legal matters are in dispute, to advise us upon the constitutionality and legality of various propositions. They are paid for that purpose and we have a right to their opinion and the people of this State have a right to know whether the rebate upon these three railroads is constitutional or not.

We submit this to the justices of the supreme judicial court because we have confidence in them. No better supreme court exist in this country than we have in the State of Maine. They are able, honest and honorable men who

give us their opinion according to their own good judgment.

We have a law passed in this State rebating from the B. & A. Road, the Somerset Road and the Washington County Road 95 per cent. of their taxes for 20 years and I find upon going to the State treasurer's office that those roads have been rebated to the amount of \$225,000 under the law and when I find that Art. 9 of the Constitution of this State says that the State of Maine shall not surrender the power of taxation, I claim that they had no right to surrender that power here. I find that I am backed up by authorities in this country that no Legislature has a right to rebate over one session of the Legislature. I deny the right of the Legislature of Maine to exempt for more than two years, and yet for 20 years the B. & A. Road has been exempted. Therefore I say it is a grave and solemn question and one which should be submitted to the supreme court and I am surprised that anybody should object to it. I am not partisan in this matter. It is a matter which the taxpayers of the State in every county demand to know whether this Legislature can exempt for 20 years a part of this property from taxation and in 20 years they have taken from the taxpayers of Maine by this exemption \$225,000 and I say that it is a grave question to the taxpayers of the State; whether it is constitutional or not. I do not ask you to consider merely what I say about this matter for I know it is the opinion of a great many lawyers in the State that it is unconstitutional. Fortunately, in pursuing this matter, I find that the supreme courts in many of the states of this country have declared such a law to be unconstitutional; and not only that, but the supreme court of the United States as well. And I ask: Is it not a grave question, and one which is fitting should be submitted to the supreme court of the State of Maine for its opinion?

I wish to incorporate in the few remarks which I have to make the opinion of Justice Bean of the Oregon supreme court in the case of "T. Egerston Hogg, receiver of the Willamette Valley & Coast R. Co., resp't., vs. Wil-

liam MacKay, sheriff of Benton county, appt. (...or....) A commutation of all taxes on the property of a railroad company for 20 years in consideration of its carrying all troops and munitions of war which the State requires to be carried without charge, violates a constitutional provision that all taxation shall be equal and uniform and requiring "just valuation for taxation of all property" excepting certain classes such as that used for municipal and charitable purposes.

Appeal by defendant from a decree of the circuit court for Benton county in favor of plaintiff in a suit brought to enjoin the collection of certain taxes which had been assessed against plaintiff's property.

This is a suit to enjoin the sheriff of Benton county from collecting, or attempting to collect, the state and county taxes assessed and levied upon the property of the plaintiff for the year 1889, and involves the constitutionality of Section 11 of "An Act to provide for the construction of the Willamette Valley & Coast Railroad," which reads as follows: "Section 11. That if said Willamette Valley & Coast Railroad Co. shall, within 90 days, after the approval thereof by the governor, file in the office of the secretary of state its agreement, duly executed under its corporate seal, obliging itself to carry all troops and munitions of war of this state required to be conveyed on its road without charge to the state for a period of 20 years from and after such approval, without other compensation than the moneys arising from taxes assessed, levied, or collected on the property of said company, then, in consideration of said agreement and said services, done, or to be done, for said period of 20 years, said company shall have and receive during all said term all the taxes levied, assessed, or collected or which might have been levied, assessed, or collected by the state, upon all its property, real and personal, and said taxes are hereby appropriated therefor." The contention is that this section is in violation of the provisions of the Constitution of this State that "all taxation shall be equal and uniform," and that the Legislature "shall provide by law for uni-

form and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, both real and personal, excepting such only for municipal, educational, literary, scientific, religious, or charitable purposes, as may be specially exempted by law.

The power of taxation and the right to prescribe what property shall be taxed is a sovereign right, belonging to the State in its sovereign capacity, and in the absence of a constitutional restriction, necessarily implies the power to prescribe what property shall be exempt from taxation and hence it has been held that, when not prohibited by the State Constitution, Legislature can bind the State, by a contract with either an individual corporation, to surrender the right of taxation, by the grant of either a perpetual or transient immunity from taxation, either in the form of a contract to pay a fixed sum in lieu of all taxes or by way of "commutation," whatever the latter term may mean; and as to sufficiency of the consideration for such contract the Legislature is the sole and exclusive judge. But this doctrine has been questioned by the courts of many of the states, as well as by able dissenting opinions in the supreme court of the United States upon the principle that the Legislature has no right to bargain away the taxing power of the State, so as to place it beyond the control of succeeding Legislatures. But, however this may be, in the absence of a constitutional limitation, it seems to us that there is no room for argument that under our Constitution no power exists in the Legislature to exempt, by contract, commutation, or otherwise, any property whatever, except certain classes especially enumerated therein from bearing its just proportion of the burdens of government. The provisions of the Constitution are mandatory that all taxation shall be equal and uniform, and the Legislature shall prescribe regulations for a just valuation of all property for taxation, excepting only the enumerated classes. The language of the Constitution is plain, simply and easily understood, and manifestly operates as an absolute in-

hibition against the exemption, either directly or indirectly of any property from taxation except that specially enumerated. In *Crawford vs. Linn County*, 11 Or. 494, *Waldo, Ch. J.*, in speaking of the effect of the latter clause of Section 1, Art. 9 of the Constitution, says that "actually forbids the exemption from taxation of any property whatever, except that specially enumerated in the clause \*\*\*"

While counsel for plaintiff frankly admit that the Legislature, under the Constitution, had no power to exempt the property of their client from taxation, they urge that Sec. 11 of the Act of 1874 is not an exemption of the property from taxation, but a commutation of the taxes, for what the Legislature determined to be an adequate equivalent, and therefore is not obnoxious to the constitutional provisions. A sufficient answer to this position is that the Legislature cannot do indirectly what it is prohibited from doing directly. The right to commute is simply an incident of the right to exempt, and the denial of the power to exempt must necessarily preclude the existence of the power to commute. As was said by *White, J.*, in *Louisiana Cotton Mfg. Co. vs. New Orleans*, 31 La. Ann. 440, the right to commute may be said to be "a payment of a designated sum for the privilege of exemption, or the selection in advance of a specific sum in lieu of an ad valorem tax. If the first, it is indubitably an exemption; if the second, then it is a specific tax, and hence violates the rule of ad valorem, which prescribes that all property shall be taxed according to value." Either view is fatal to plaintiff's contention in this case. The Constitution absolutely prohibits the exemption of any property, except for municipal, educational, literary, scientific, religious or charitable purposes; and, as no part of plaintiff's property is included within any of these enumerated classes, any law which attempts to exempt it from taxation is void, and any law which indirectly produces such exemption must be equally void. That cannot be accomplished indirectly which the organic law declares shall not be done directly."

The provisions of our Constitution

were manifestly intended to require and insure equality in the manner and mode of the assessment and the levy and collection of taxes for the support of the government, and to impose an equal proportion of these burdens upon all persons within the limits of the taxing district, and, to that end, to prohibit special or class legislation of the character sought to be upheld in this case. If the Legislature can, for any consideration it may deem adequate, exempt or commute the taxes on one class of property, or on the property of one tax-payer, it can do the same with any or all property, and the proportion of the burden maintaining the government borne by any taxpayers will depend, not on the amount of value of his property, but upon his success in securing advantageous legislation. If such a doctrine should be recognized by the courts, the Constitution will put no hindrance to rich and powerful corporations or rich men making contracts with the Legislature for perpetual exemption from all the burdens of supporting the government, and the property owner who is unable to obtain such contracts or commutation will be compelled alone to bear such burdens. "The result of such a principle," says Mr. Justice Miller, "under the growing tendency to special and partial legislation, would be to exempt the rich from taxation, and cast all the burden of supporting the government and the payment of its debts on those who are too poor or too honest to purchase such immunity."

The Constitution of Maine requires that taxes shall be equal and uniform, and if you exempt this property from taxation, I ask you gentlemen. Is it a uniform tax? I have no fear of submitting this matter to the supreme court. If the supreme court says it is constitutional it will allay the feeling of unrest among the taxpayers of Maine; and I shall be content. I always submit to the decisions of the justices of the supreme court. If, upon the other hand it is not constitutional, let these judges say so; and then this law will be remedied and we shall have uniform taxation.

In the case to which I have referred

the court goes on to cite decisions of the United States court. Now, Mr. President, in fairness to ourselves and to the taxpayers of the State of Maine let us submit this question to the justices of the supreme judicial court for their decision, for I say to you that a majority of the courts of the states of this Union have declared it to be unconstitutional and I have reason to believe without calling names here, from the powerful lobby which these three railways have had here for the last week on this matter, they know that it is unconstitutional.

They have been here laying down on the legislators of this State not to submit this matter to the supreme court of this State. What are they afraid of? If it is constitutional and right, you and I can find no fault, but if it is wrong, why then—in heaven's name—let's right the wrong just as soon as we can by submitting it to the supreme court of the State, and then all will be well. Two hundred and twenty-five thousand dollars of rebate, most of it to the B. & A. Road because the other two roads did not come into existence until later—means a good deal to the taxpayers of the State. Let us be fair with them. They are looking to us in this matter which has been talked from the stump. And I beg of you that you will not attribute to me any political motive whatever. I, as a taxpayer, talk to you as a taxpayer and demand to know whether this law is constitutional or not.

I introduced this in good faith and I believe the taxpayers demand it at your hands. There is no living person afraid of it but the lobby of the railroads here in this State House. They are the ones who are afraid of it—not the people. It is a grave question, Mr. President, and the court of Oregon, whose constitution upon these matters is similar to our's—having exactly the same case before them—they exempted a railroad there and the consideration was the carrying of troops in time of war—that was a cunning provision in that contract, was it not—especially that of the Somerset Railroad—exempted for 20 years for carrying troops from Oakland down to Birch Point—exempting them from taxes



for 20 years, and yet our constitution says there shall be no surrender of the power of taxation under any circumstances.

I hope the Senate will not indefinitely postpone this matter, but will submit it to the supreme court for decision; and I move, Mr. President, that when the vote is taken it be taken by the yeas and nays.

Mr. DEASY of Hancock: Mr. President, having made the motion for the indefinite postponement of consideration of this order, it is perhaps incumbent upon me, or at all events appropriate for me, to state as briefly as I may the reasons that have led me to make that motion.

I shall speak only of the contract made by the State with the Bangor & Aroostook Railroad. The considerations that apply to that apply also to the Washington County Railroad and to the Somerset Railroad. It is true there are some slight differences; the only one of which I will refer is this: That while no member of this Senate is directly responsible for the contract made with the Bangor & Aroostook Railroad, the contract made with the Somerset Railroad was authorized unanimately, without a dissenting vote, by the Legislature of 1903; and one of the distinguished and influential members of that Legislature which authorized and directed that contract was the senator from Knox, Mr. Staples.

In 1891 the Legislature of Maine, without a dissenting voice or vote, after a full and free discussion, participated in by members of the Legislature, by the press and by the people, authorized the making of a certain contract with the Bangor & Aroostook Railroad Company. In pursuance of, and as directed by that vote, the contract was made and the great seal of the State of Maine was put upon it. By that contract the State of Maine bound itself for the term of 20 years to pay to that railroad company each year a sum of money—a sum of money to be determined by the tax imposed upon that railroad company—the sum of money paid, being 25 per cent. of their tax.

Relying upon that contract, the Ban-

gor & Aroostook Railroad Company sold its bonds, sold its stock and built its road into Aroostook county, developing an important section of the State.

Now, after the lapse of 16 years, it is proposed to ask the supreme court for its opinion as to the constitutionality of that act and as to the validity of that contract.

There can be but one purpose, sir, in asking the supreme court for its opinion in this case, and that is the purpose of repudiating that contract.

Notwithstanding the gentlemen's accusations, I do not believe there is a single member of this Senate that is in the slightest way influenced by any railway lobby. I assure the gentleman (and I think no other senator needs my assurance) that I have no connection, direct or indirect, with the Bangor & Aroostook Railroad or with any of these railroads; but standing here as a citizen and a senator, realizing as I believe the solemnity of my oath as a senator, I decline to be made a party in any such act of repudiation or in any act looking toward or leading toward it.

It is not important, Mr. President, for us to consider whether this act was wise or not. If it were important for us to consider that I would undertake to convince any fair-minded man—I would almost undertake to convince the senator from Knox—that that act, assuming it to be constitutional, was one of the wisest acts that any Legislature ever wrote into any statute book, and that that contract was one of the most beneficent that the State of Maine ever made; nor is it important for us to consider the constitutionality of the question. We cannot decide that question. My opinion is of no importance upon it. The opinion of the senator from Knox is of little importance. The opinion of the Senate is of little importance. But, if it were important—if we could, Mr. President, decide this question, I should suggest to him that this case of Hogg against McKay, the Oregon case cited with so much unction, comes very, very far from being decisive of the question. I would suggest that the case involves consideration

of the constitution of Oregon, and not of Maine; and that the constitution of Oregon differs in very important particulars from the constitution of Maine. I should also suggest to him that that decision rests upon a fundamental proposition established in that case by the supreme court of Oregon that: Where a constitution provides for equality in taxation, a Legislature bound by that constitution not only can not exempt property from taxation, but cannot commute a tax—cannot authorize under any circumstances the acceptance of a lump sum of money or of any service in lieu of taxes; and I should suggest to him also that the supreme court of Illinois has repudiated and denied that doctrine and established the contrary principle and that the supreme court of Illinois' decision—the citation of it—is right before him in the book from which he read.

I should also suggest to him that the supreme court of the United States had denied and repudiated that principle and established the contrary principle. I would also suggest to him what is more important, and that is: That the supreme court of the State of Maine in the case of Portland against the Portland Water Company, and the Waterville case have established the contrary principle. I do not mean to say that the supreme court of Maine or of the United States have decided any case exactly in point. I do not mean to say that there has been a decision made by either this State or the United States which absolutely decides the question; but the fundamental proposition upon which the Oregon case rests has been denied and repudiated by the United States supreme court and by the court of this State.

Mr. President, I have made this motion because I believe this is not a proper question to submit to the court and because it is not a proper occasion upon which to submit any question to the court upon this matter; and further, I believe that the time has not yet come when the people of the State of Maine want to repudiate their contracts.

I say, Mr. President, that this is not a proper question to submit to the court—

that it is unfair to the court and that it is not a square deal to the Bangor & Aroostook Railroad to submit to the court this question and to ask them in ex-parte proceeding to determine a question upon which important rights of that railroad rests. But my opinion is of no consequence, and I should not even express my opinion upon that subject were it not for the fact that the same opinion has been expressed by the supreme court of the State of Maine—that court which, as my brother, the senator from Knox, says, is an honest and honorable court and one of the best to be found in the United States.

A few years ago the Governor and Council exercising their constitutional rights to require opinions of the supreme court, submitted to the supreme court justices a question as to whether the Governor and Council, upon charges and hearing, could remove a county attorney and substitute another in his place; and the court declined to answer that question; and in their reply they say that the county attorney cannot be heard upon the questions submitted to us and we think it inexpedient to prejudice the question before any occasion has arisen calling for its legal determination. Would not they? Might not they? Would they not, in answer to this question, say: The Bangor & Aroostook Railroad cannot be heard upon the question submitted to us; we think it inexpedient to prejudice the question before any occasion has arisen calling for its legal determination?

Again I say it is not a proper occasion upon which to submit this question. The constitution of the State of Maine authorizes us to submit to the court important questions of law upon solemn occasions. Now there are differences of opinion among lawyers and among members of the court as to whether the body that asks the question or the body of whom the question is asked has a right to determine as to the solemnity of the occasion. But assuming that we have that power, Mr. President—assuming that that duty rests upon us—we should, in determining whether this is a solemn oc-

cession or not, be governed, I submit, by the opinion of the court construing that section of the constitution in the case of the question submitted a few years ago by the House. The House submitted a question as to whether the same person at the same time could hold the office of fish and game commissioner and also be a member of the House of Representatives, and the majority of the court, in declining to answer the question, said: It is sufficient to say that such an occasion does not exist unless the body making the inquiry has occasion to consider and act upon the question submitted in the exercise of legislative or executive powers entrusted to it by the constitution and the laws of the State. Applying that principle to the present case, we have no occasion to pass upon any question which depends upon an answer to this question. There are some things pending, some acts pending providing for extensions which although they relate to the subject matter, do not depend in any degree upon the answer that the court might give to this. If these contracts are legal and valid, no act on the part of this Legislature can invalidate them. If they are not valid, no action on the part of this Legislature is needed to declare them invalid and no action on the part of the Legislature can make them valid; and the same is true of the extensions. The contract applies to the extension by the language of the act. If the contracts are valid as to the main road, they are valid as to the extension; and if they are not, we cannot make them valid.

Further, Mr. President, I do not believe the time has come when the people of the State of Maine want to repudiate their obligation; and for that further reason because the people are not ready to repudiate their contracts entered into solemnly, I object to the passage of this order and I renew my motion for its indefinite postponement.

Mr. STAPLES: Mr. President, I have great respect for the honorable senator from Hancock but I have been somewhat surprised at what he has said. I can have but little doubt as to what his opin-

ion is in regard to the constitutionality of this contract. He says he should not repudiate a contract. It is always right to repudiate an illegal contract; and that he knows as well as I. Now in this matter, regarding the extension—if this is a legal contract, made under a vote of the Legislature, rebating them for 20 years, I apprehend that he and I would not differ that the extension of 105 miles which they ask for this year—this rebate will apply to those extensions as well as to the original road. I do not think we will differ about that, and I say: For that reason alone let us know whether it does or does not because the question is arising in the minds of good jurists today whether it does or not extend to them. I do not see any great harm in submitting this matter. In 1891 I had the honor of being a member of this body. I was here all alone in 1891 and I had all I could do without looking out for a Republican measure and I did not pay special attention to this one and I did not know until after the Legislature was adjourned that it was passed—it was done so suddenly and so quietly at that time. But no matter about that. The question is: Is it a fair proposition to submit this to the supreme court? Have you any doubt but that this is a grave and solemn question? These contracts for extension are being asked for today. I trust that no harm can be done and it will settle the matter in the minds of the people. If it is a valid contract I will go as far as the senator from Hancock in upholding it; but this is not a legal contract in my judgment and I think it is a solemn occasion; and I ask to have it submitted to the supreme court of the State of Maine.

Mr. SEWALL of Sagadahoc: Mr. President, if it had not been for two or three observations on the part of the senator from Hancock, I should have been content to have remained silent in this discussion. I am very glad that after the armed truce of three or four days the senator from Hancock has brought out the senator from Knox from behind his fortifications with which his desk has been encumbered; and I am

sure there is no member of the body who does not sympathize with the senator from Knox in his efforts to have combatted single-handed the Republican party of the Legislature, in the Legislature of 1903, and we extend as great a sympathy to him in that matter as we do in his attempt to combat his own party in the present Legislature.

The question that is presented to us here is not, to my mind, so important in the disposition of the immediate subject before us as it is in the precedent that we may establish. For my part, having given some consideration to this question since the senator from Knox introduced the order asking for an opinion of the supreme court upon it, I feel comparatively indifferent to the action of this body in the treatment of that order but I am very strongly of the opinion that, if the Senate should indefinitely postpone the order of the senator from Knox on some of the grounds advocated by the senator from Hancock today, and more strongly advocated the last time he addressed the Senate on the subject, that we would establish an embarrassing precedent and we would limit the constitutional right of this body or of the other body of the Legislature and of the Council to ask of the supreme court its opinion upon any question of law, as this is confessedly, and any question that concerns the interests of the people of the State as this question concerns them.

I think that whatever action that we may take upon this order, it ought to be established—and for my part I wish to go on record to this effect—that this is a question which is within our legislative discretion to ask of the supreme court, and that the supreme court would neither have the right nor would it have the inclination to refuse to answer. I am aware of the seriousness of the question. I think there has been no such serious question before us at this session. I think, if anything were needed to impress this body with the fact that this is a solemn occasion, the learned arguments we have listened to would establish the fact. It is a solemn occasion, perhaps in more senses than one, for anyone who

has studied the opinions which have been given by the court of this State in answering the questions propounded to it either by the Council or the House, the Governor or the Senate. No one can fail to note that the theory that the court can be the judge of the solemnity of the occasion is a theory comparatively lately established, if it shall be established: and has been expounded and enlarged upon by our late lamented chief justice of the State more than by any other member of the court; and it is quite natural and fitting that, in contending for this theory, his friend, the senator from Hancock, should lead. For my own part, since that court in the case cited by the senator from Hancock was evenly divided as regards the living members of that court on the question as to the court itself being the supreme judge of whether it should give its opinion in reply to anybody in the Legislature—I think it is not a question which any member of this body can declare the court would not, as at present organized, give its opinion in reply to.

I know the rashness of any member of this body who has not been in continuous and active practice of the law, in attempting to express an opinion on a great constitutional question like this. I know, and I have good reason to know, that the law is a jealous mistress, and if she rewards those who serve her faithfully she equally refuses to allow fickle suitors to speak in her name, and I do not attempt to argue the legal proposition beyond what I have said in that regard. But this one thing we can all decide, and we must decide for ourselves. It resolves itself to this: Do we wish to ask of the supreme court of the State the question embodied in the order of the senator from Knox? If we do so desire, I believe it is entirely within our discretion and that the court will not decline to answer. To those who do not desire to ask the question of the court I make no particular argument. I can understand the workings of their minds perfectly well. They may admit that it is a serious question and that the court would give a reply to it, but they do not

deem it advisable for the Legislature to adopt these unusual proceedings, for it is unusual in the history of our Legislature to propound a question to the court—they may say, and properly say from their standpoint, that the State has its own remedies; that the treasurer of this State can refuse to pay this rebate and so bring the matter up under judicial process to the court. They could say that although this provision were put in the railroad charters as to the contract for carrying men, that it was really, and so understood by the people of the State and the members of the Legislature who voted for the proposition, a subsidy and additional aid to the building of those roads for which, viewed in that light, those roads have made a magnificent return to the State and I do not doubt that there are some here who, with all respect to the senator from Knox, feel that possibly this question would have not come up here in this body if it had not, as he said to us, been discussed quite freely in the last campaign on the stump. With all those who take that stand I have no argument, but when the senator from Hancock says that we should not send up this question because it is not pending, as a mere matter of record I wish to say that I believe, if you desire to pass this question to the court, that it is pending in all the sense you need to have it pending to demand of the court an opinion. A tax continuously paid out to a railroad is certainly a subject of pending interest to the people of the State; and as for our present Legislature, although we might not get an opinion at this session, we know perfectly well that the Legislature is a continuing body; and if there be other reasons in the minds of the senators to warrant passing it on to the court, I believe it would be a pending question in the fullest sense of the word—a continual payment of the taxes and a continual session of the Legislature. Moreover, it would not be a decision rendered against the roads, if the proposition were propounded, for I think that the senator knows perfectly well, better than I do in fact—that it is in no sense as an adjudication that the opinion is

rendered, and binds neither the Legislature nor the court.

Now the limitations upon our powers here in the Legislature, Executive and Judicial, are defined but there is one invasion of our prerogatives which I think ought to be rebuked sooner or later. We know we have laws upon our statute books which we owe to the influence perhaps of other departments of our State administration; and it is often said, and will be said in this Legislature—perhaps in this body before we adjourn, when a question is pending, that the supreme court will render an adverse decision—that the supreme court will declare such a measure unconstitutional. I have heard, during my legislative experience, members declare that they have talked with a member of the supreme court who expressed himself to such and such an effect. I believe that is the most dangerous form of influence of one department upon another department of our State administration; while here we have a clearly defined constitutional provision which should allow and which does allow us, if we wish to pass on a question to the court. While we may decide not to do it, I think it lies in the mouth of no man who assumes to quote the opinion of the court upon any proposition before us, to refuse to act in this clearly constitutionally provided manner. The court itself would not decline to answer in regard to any question of law which concerns the interests of the State. The court, in replying, would be our servants and not our masters. I shall not vote with the senator from Knox in sending this question up to the court; but I do not do that because I believe we have no right to do it, that my vote to indefinitely postpone should not be misconstrued as a vote which would indicate my sympathy with certain expressions made here that we have no right to propound such a question to the court and that, if we did so, the court would refuse to answer, I make the statement which I have, for there may be questions come up here which we may wish to submit to the court against which the same argument could be used as regards the fitness of

the occasion or the propriety of reference as have been made in the present case, and I wish to keep open for the Senate that power which we have given to us and to put no limitation on it by any act of mine that can possibly be misconstrued.

The question being put upon the motion of the senator from Hancock that the consideration of the order be indefinitely postponed, the yeas and nays were called for and ordered and the vote being had resulted as follows: Those voting yea were Messrs. Ayer, Bailey, Barrows, Brown, Clarke, Deasy, Eaton, Hastings, Houston, Irving, Libby, Mills, Page, Parkhurst, Putnam, Heselton, Rice, Sewall, Simpson, Stearns, Tartre, Theriault and Wyman—23. Those voting nay were Messrs. Curtis, Foss, Garcelon, Merrill, Philoon, Proctor, Staples—7. So the motion prevailed and the consideration of the order was indefinitely postponed.

On motion by Mr. Stearns of Penobscot it was

Ordered, That, the House concurring, the committee on finance be, and is hereby requested to examine into the question of the advisability of requiring all clerks in the State treasurer's office, who duties are to receive or pay out money, to give bond of some reliable surety or guaranty company in place of a bond signed by individuals, and that the premium of said bond or bonds be paid by the State, and that the said finance committee be requested to report by bill or otherwise.

On motion by Mr. Staples of Knox the report of the committee on railroads and expresses, ought to pass, on Bill an act to amend the P. & S. Laws of 1903 relating to extension of Bangor & Aroostook Railroad, was taken from the table and on further motion by the same senator the report was accepted and the bill accompanying said reported was tabled for printing under the joint rules.

On motion of Mr. Wyman of Washington the Senate adjourned.

## HOUSE.

Thursday, January 31, 1907.

Prayer by Rev. Mr. Quimby of Gardiner.

(Mr. Davies of Yarmouth in the chair.)

Papers from the Senate disposed of in concurrence.

### Senate Bills on First Reading.

An Act to incorporate the Maine Insurance Company.

The following Petitions, Bills, etc., were presented and referred:

### Judiciary.

By Mr. McClutchey of Portland—Bill, "An Act to extend the charter of the Peaks Island Water and Light Company."

By Mr. Cyr of Van Buren—Bill, "An Act to authorize the town of Van Buren to issue bonds."

By Mr. Gallagher of Waldoboro—Bill, "An Act to incorporate the Waldoboro Water Company."

By Mr. Cyr of Van Buren—Bill, "An Act to incorporate the Van Buren Light and Power Company."

By Mr. Tucker of Wiscasset—Bill, "An Act to amend Chapter 154 of the Private and Special Laws of 1895 as amended by Chapter 20 of the Private and Special Laws of 1905 relating to the Wiscasset Water Company."

### Legal Affairs.

By Mr. Stover of Brunswick—Petition of George S. Thompson and 32 others to amend Chapter 277 of the Private and Special Laws of 1903 fixing the salary of the recorder of the municipal court of the town of Brunswick; also Bill, "An Act to amend Chapter 277 of the Private and Special Laws of 1903 amending An Act to establish a municipal court in the town of Brunswick."

By Mr. Wardwell of Rockland—Bill, "An Act to amend Section 3 of Chapter 40 of the Revised Statutes relating to Lime Casks."

By Mr. Martin of Bangor—Bill, "An Act to amend Section 1 of Chapter 75 of the Revised Statutes in relation to the Ownership of Down Timber and Bark."

By Mr. Dyer of Buckfield—Bill, "An