

# MAINE STATE LEGISLATURE

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Legislative Record

OF THE

Seventy-Fourth Legislature

OF THE

STATE OF MAINE

1909

**SENATE.**

Thursday, February 4, 1909.

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 amend Section 2 of Chapter 15 of the Revised Statutes relating to transportation of pupils. Came from the House, by that branch referred to the committee on Education. On motion by Mr. Howes of Somerset this bill was tabled for printing, pending reference.

"Petition of Clyde L. Whitney and eight others, praying that not more than 10 fish shall be caught in one day by one person in Pleasant pond." came from the House, that branch non-concurring with the Senate in the indefinite post-ponement of the Petition, and referring the same to the committee on Inland Fish and Game. Mr. Howes of Somerset, moved that the Senate recede and concur with the House in its reference.

Mr. DONIGAN of Somerset: Mr. President: That petition is signed by people living about seventeen miles from Pleasant pond, and the people living near Pleasant pond object to having so few fish taken from the water in any one day. We have no objection to having ten pounds of fish, but we do object to having ten fish, as that might not be over three or four pounds, and the gentleman that runs the hotel is the only one anywhere near the pond that wants that bill passed, and I object to it because the people who have signed the petition live so far from the pond.

Mr. HOWES of Somerset: Mr. President: These people have petitioned this legislature, signing a petition, and I believe these petitioners have a right to be heard before the committee on Inland Fisheries and game. If we are to get into the habit of not giving the people a right to come to this legislature to be heard, we are getting into a pretty bad condition; and, what is more, if this petition

is not right, it can be reported back in a new draft. I hope the motion to recede and concur will prevail.

Mr. DONIGAN: I wish to withdraw my objection.

The question being put upon the motion to recede and concur, the motion prevailed.

**House Bills Read and Assigned.**

Resolve in favor of J. W. Haines, Town Clerk of Dexter.

Resolve in favor of David E. Knight, Town Clerk of Garland.

An Act to extend the charter of the Merchant's Trust Company.

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

**Judiciary.**

By Mr. Macomber of Kennebec: Bill, An Act to change the name of the Unitarian Society of Augusta, Maine.

By Mr. Reynolds of Kennebec: Bill, An Act to extend the charter of the Waterville and Winslow Bridge Company.

**Legal Affairs.**

By Mr. Hamilton of York: Bill, An Act relating to the powers of the board of prison and jail inspectors. On motion by the same senator, this bill was tabled for printing pending reference.

By Mr. Knowlton of Piscataquis: Bill, An Act to create a lien on Shovel Handle Blocks. On motion by the same senator this bill was tabled for printing, pending reference.

By Mr. Donigan of Somerset: Bill, An Act to amend Chapter 93, Section 46 of the Revised Statutes, relating to liens on logs and lumber. On motion by the same senator this bill was tabled for printing, pending reference.

By Mr. Gowell of York: Bill, An Act to extend the charter of the Wells Telephone Company.

Also: Bill, An Act to extend the charter of the Wells Electric Light and Power Company.

**Appropriations and Financial Affairs**

By Mr. Wheeler of Cumberland: Resolve in favor of the Board of Commissioners of Pharmacy.

By Mr. Smith of York: Petition of Judson Roberts and others of Waterboro in favor of an appropriation for the Webber Hospital of Biddeford.

By Mr. Hamilton of York: Petition of George Sylvester and others of Day-ton in favor of same.

By Mr. Gowell of York: Petition of W. T. Elliott and others of Berwick in favor of same.

#### Interior Waters.

By Mr. Hamilton of York: Bill, An Act providing for the appointment of a Water Storage Commission. On motion by the same senator this bill was tabled for printing, pending reference.

By Mr. Knowlton of Piscataquis: Bill, An Act to authorize and empower the Guilford Manufacturing Company to erect and maintain piers and booms in the Piscataquis River. On motion by the same senator this bill was tabled for printing, pending reference.

#### Ways and Bridges.

By Mr. Lowe of Androscoggin: Petition of J. H. Woodman and 48 others of Norridgewock in favor of the Donigan Bridge Bill.

Also: Petition of Otis Martin and 60 others of Guilford in favor of same.

Also: Petition of L. B. Waldren, 1st Selectman and 52 others of Dexter in favor of same.

Also: Petition of B. B. Preston and 15 others of Cherryfield in favor of same.

By Mr. Therriault of Aroostook: Resolve in favor of a highway bridge over St. John River between Van Buren and St. Leonards, N. B.

#### Order.

On motion by Mr. Hastings of Oxford, it was—

Ordered, the House concurring, that when the Senate and House adjourn, they adjourn to meet on Friday, February 5, at nine o'clock in the forenoon. This order was subsequently returned from the House, that branch concurring in its passage.

#### Reports of Committees.

Mr. Colcord, for the committee on Railroads and Expresses, on "Bill, An Act to amend Section 53, of Chapter 51 of the Revised Statutes, relating to Railroad Commissioners," reported same ought not to pass. Report accepted.

Mr. Mullen, for the committee on Taxation, on Report of the Maine Tax Commission appointed under provisions of Chapter 108 of the Resolves of 1907, together with bill, "An Act for the assessment and taxation of certain public service companies," reported that the bill ought not to pass. On motion by Mr. Staples of Knox, the bill was tabled, pending the acceptance of the report.

Mr. Osgood, for the committee on Appropriations and Financial Affairs, on "Resolve in favor of Bangor Children's Home" reported same ought to pass.

Mr. Irving for the same committee, on Communication from the State Auditor, reporting claims, accounts and demands against the State, amounting to \$28,903.18 on account of deficiency in appropriation for the prevention and extinguishment of forest fires; reported accompanying Resolve, entitled "Resolve providing for the payment of claims, accounts and demands against the State accrued during the year 1908 on account of deficiency in appropriation for prevention and extinguishment of forest fires; and that it ought to pass.

Mr. Wheeler, for the committee on Taxation, on bill, "An Act to amend sections 27 and 28 of Chapter 97 of the Revised Statutes, relating to taxation" reported same in new draft, under same title and that it ought to pass.

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

#### Passed to Be Engrossed.

Resolve in favor of the Bridgewater Classical Academy.

An Act to provide for the purchase of a farm on which to conduct scientific investigations in orcharding. On motion by Mr. Staples of Knox, this bill was tabled, pending its passage to be engrossed.

Resolve in favor of Holy Innocents Home for Infants in the City of Portland.

Resolve in favor of Eastern Maine General Hospital.

**Read and Assigned.**

Resolve in favor of L. M. Staples, Chairman of Committee on Home for Feeble Minded.

An Act to amend Section 1 of Chapter 24 of the Public Laws of 1907, in relation to reports of hearings in vacation in law or equity.

An Act to extend the charter of the Central Aroostook Electric Company.

An Act to extend the charter of the Washburn Electric Company.

An Act to extend the charter of the Northern Aroostook Electric Company.

An Act additional to Chapter 144 of the Revised Statutes, providing for the recovery of money improperly paid by the State for the support of insane paupers.

**Finally Passed.**

Resolve in favor of Bath City Hospital.

Resolve authorizing a temporary loan for the year 1910.

Resolve authorizing a temporary loan for the year 1909.

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

Resolve in aid of the Temporary Home for Women and Children at Portland.

**Orders of the Day.**

On motion by Mr. Baxter of Cumberland, Senate Doc. No. 103, Bill, relating to tenure of office of janitors and engineers of city of Portland; Senate Doc. No. 105, Bill, Relating to time of service of members of Portland Fire Department; and Senator Doc. No. 106, Bill, Relating to tenure of office of Portland City Electrician, were severally taken from the table; and, on further motion by the same senator, the same were severally referred to the Portland Delegation.

On motion by Mr. Baxter of Cumberland, the Senate voted to reconsider the vote whereby it passed to be engrossed, House Doc. No. 31, "Resolve in favor of St. Elizabeth's Roman Catholic Asylum of Portland." On further motion by the same senator, Senate amendment A, to amend by striking out the word "orphan" in the third line thereof, was adopted, and

the bill, as amended was passed to be engrossed.

On motion by Mr. Milliken of Aroostook, Senate Doc. No. 101, Bill, relating to equitable assessment of taxes, was taken from the table, and on further motion by the same senator, the same was referred to the committee on Taxation, in concurrence.

On motion by Mr. Macomber of Kennebec, Senate Doc. No. 95, Bill, relating to mortgage liens on insurance policies, was taken from the table, and on further motion by the same senator, the same was referred to the committee on Mercantile Affairs and Insurance.

On motion by Mr. Howes of Somerset, Senate Doc. No. 108, Bill, to amend Revised Statutes relating to commercial fertilizers, was taken from the table. On further motion by the same senator, the same was referred to the committee on Agriculture.

On motion by Mr. Knowlton of Piscataquis, Senate Doc. No. 104, Bill, relating to Ice Fishing in ponds in Penobscot and Piscataquis counties, was taken from the table. On further motion by the same senator, the same was referred to the committee on Inland Fisheries and Game.

On motion by Mr. Donigan of Somerset, Senate Doc. No. 102, Resolve, proposing constitutional amendment relating to date of State election, was taken from the table. On further motion by the same senator, the same was referred to the committee on judiciary.

On motion by Mr. Reynolds of Kennebec, Senate Doc. No. 98, Bill regulating interest on savings deposits, was taken from the table. On further motion by the same senator, the same was referred to the committee on banks and banking.

On motion by Mr. Irving of Aroostook, under suspension of the rules, it was—Ordered: That 500 extra copies of Senate Doc. No. 12, and also 500 extra copies of Senate Doc. No. 40 be printed for distribution.

On motion by Mr. Looney of Cumberland, under suspension of the rules, it was—Ordered: That 500 copies of

Senate Doc. No. 33 be printed for distribution.

On motion by Mr. Hamilton of York, Senate Doc. 107, Bill, to establish public abattoirs in cities and towns, was taken from the table. On further motion by the same senator the same was referred to the committee on agriculture.

On motion by Mr. Hamilton of York, Senate Doc. No. 64, "An Act to establish a uniform Poll Tax," assigned for today, was taken from the table.

The same senator also moved that the bill be indefinitely postponed.

Mr. HAMILTON of York: Mr. President and Gentlemen of the Senate: I will detain you but a few moments. I regard this bill as a very important one. I do not believe we should take from the towns any rights they have in the management of their own financial affairs. If we are to have town officers, we should give them all the powers we can to manage their own affairs. By so doing, and by their taking the responsibility, we have better towns and better governed towns, and better managed towns, because all are interested.

Now, this statute has been in force for a long while, and the towns have become familiar with it. That is one reason for retaining it. Another reason is that the only direct tax that is paid is the poll tax. We had a man in our city that paid between five and seven thousand dollars of taxes, and I asked him what he paid; and he said: Nothing, his tenants paid the tax. But a poll tax is different. It comes from a man's own pocket. Now, if any town is so situated in its financial affairs that it can aid anyone, and does not need a large poll tax, they can establish one dollar, by statute, or up to three dollars; and why should not they have that right. There are poor men in the towns, and if the towns are well fixed financially, why, then they can afford to aid the poor working men. We have men in our towns that have large families of children, and that three dollars is a great deal to them. It buys their children shoes. Race suicide has not invaded our towns, and the town ought to have

that privilege of taxing one dollar instead of three, and letting them have that two dollars; and then they can hold their heads up, and dress their children, with two dollars in shoes, and not become subject to the pauper law. For that reason, I oppose the passage of this bill.

I am certainly in favor—should be, and am—of the towns having more authority in their municipal affairs, to the extent of even not taxing certain property that would bring industries into our towns. It is what is called local option, in that respect; and certainly what privileges they have, they should retain. That is one thing; and, another thing is that we should not bother the towns with all these statutes where there is no occasion for it, because there is no complaint, as there is where each year we are changing their laws.

Mr. MACOMBER of Kennebec: Mr. President: As a member of the committee on taxation which reported this bill, it is perhaps incumbent on me to explain somewhat to the Senate, the reasons which actuated the committee.

In the first place I want to read the recommendation of the tax commission on this particular proposition:

"Cities and towns assess upon each poll a tax for local purposes varying from one to three dollars. The commission is of the opinion that the tax should be uniform throughout the State. There seems to be no sound reason why a person subject to a poll tax should not pay the same amount whether he resides in Fort Kent or Kittery. Many towns have complained that they lose a large part of the amount levied on polls because of the removal from town between the time of assessment of the tax and the commitment to the collector. We recommend a provision authorizing the municipal officers to make a special commitment of such portions of the levy as they certify may be lost by further delay."

Mr. President, the whole gist of the recommendations of the tax commission looks to uniformity—not only uniformity with reference to the poll tax, but uniformity in the assessment of

all taxes; and bills have been presented to the tax committee to carry out that idea of the tax commission. We assigned a hearing for this bill, and the chairman of the tax commission came before us, and urged very strongly that some system—some general system that might be understood by everybody throughout the State should be adopted by this Legislature. The chairman of the Board of State Assessors took exactly the same position. He said that, in towns, where there were two together, for instance like the cities of Lewiston and Auburn, Lewiston had a poll tax rate of two dollars while Auburn had three; and more or less citizens from one of those towns would go and register in the other town for the sake of saving a dollar. It seems to be a small proposition; but it causes confusion to the local assessors; and he urged very strongly that we should put this bill in shape and bring it before this Legislature.

It would, of course be uniform if it was all fixed at two dollars, or any other sum; and I do not know that the committee have any special reason for making it three dollars, outside of the fact that the towns themselves have very generally made it three dollars.

I took occasion to look up to find how this matter is divided among the towns of the State. In the county of York, represented by my friend from Biddeford, there are 14 towns that now charge three dollars; none one dollar. The assessors never found that party that you thought ought to get it down to a dollar a year. None of the towns in York county have got the tax down to one dollar. Anroscoggin has five at three, and eight at two; Aroostook, 30 at three dollars, and 11 at two dollars; six at one dollar. Cumberland, 12 at three dollars, seven at two dollars—and it very often happens, gentlemen, that in those towns coming right alongside of each other, like the cities of Biddeford and Saco, Biddeford has two dollars and Saco has three dollars. Auburn has three dollars, Lewiston, two dollars. Augusta has three dollars, and Hallowell, right adjoining practically the same town, two dollars. So that it causes con-

fusion—causes more or less going back and forth, and registering in those towns to save this additional dollar; and, without going into details, of the 477 towns in the State, 315 of them are now assessing their polls at three dollars; 10 at \$2.75; 44 at \$2.50; two at \$2.25 and 85 at only two dollars. Leaving, out of the 477 cities and towns and plantations in the State, 315 out of the 477 are now assessing at three dollars; and it was the feeling of the committee that, in any system of evening up and making uniform, that it was wiser to make the uniform rate three dollars, rather than to make any reduction.

Now I do not understand that this takes away from the assessors the right to abate any part of this tax, if they see fit. It does simply make a uniform tax of three dollars; and if the assessors in any city or town find a family where a man is unable to pay the poll tax, they can make it right. It seems to me to be in the line of good legislation; and I hope the Senate will not vote to indefinitely postpone.

Mr. STAPLES of Knox: Mr. President, I did not intend to say a word on this matter, but I do not like the tendency of the Legislature of Maine to take away the rights and powers of the towns. I do not believe in the principle. I believe that every town should have a right to assess the poll tax according to the exigencies of that town and according to its needs. To the gentleman who has just spoken, one or two or three dollars would not amount to a great deal; but we have, in the majority of our towns, a great many poor people who have to pay a poll tax; and, as the senator from York says, two dollars to them means a good deal of money. Two dollars saved here and two dollars there may be the means of keeping a man and his family from charity. I believe we want to keep the power of the people down to the people just as near as we can. I do not believe in that legislation that says that a bank shall not be taxed only upon so much, and upon that line the gentleman, I apprehend, poses in favor of this resolve. Let the city of Augusta manage its affairs in its own way. Let my town manage them in its own way. If we can save a hundred people two dollars, why let that

town do it, if they don't need the money; and not come to this Legislature and say that in my town or your town we should tax those men two dollars. The senator says they can abate it. Of course they could if they saw fit; but that would cause a great deal of trouble and time. I say, let the town of Washington, or the city of Rockland, or the city of Bangor say how much poll tax they shall have. The assessors know the necessities of that town. The great tendency today is to take the power from the people, from the towns, and lodge it in the hands of someone else. Let us call a halt where we are and let the towns have a right to manage their own affairs in their own way, and everybody else mind their own business.

Mr. HAMILTON: Mr. President, when I was a good deal younger than I am now I spent some little town in practicing law. I had the city marshal come into my office one day with a Frenchman that had some small dogs that seemed to disturb the neighbors. The Frenchman did not understand why he was arrested, and neither could I; and so he said to the marshal: "If the little dogs want to bark, let them bark; if they don't, let 'em don't."

Now, the senator from Kennebec has furnished the best argument for this that anyone could. If Biddeford wants to consider a poor man, and don't want to press the "crown of thorns" upon his brow, only two dollars worth, as the Frenchman said: If they do, let 'em do; and if they don't, let 'em don't.

Now this is a vastly different thing from taxing real estate. It is not personal property. It is the human body, you understand; and when you equalize the taxes, which I believe in, of all that sort of property, that is right. But when you come to the municipal affairs of the town and say to that town that they cannot ease up, and your circumstances are such that you can as well as not ease up, that you shall not ease up, is wrong in theory and wrong in principle.

There are different circumstances in every town; and I say, Mr. President, and gentlemen of the Senate, in God's name give the towns that chance to use those circumstances for the benefit of their towns and the poor people that are in them. It is not like taxes upon real es-

tate and personal property. That is tangible but it is taxes, as I say, upon the person.

In my own town, where we have plenty of money, and where we have no debt, and have no paupers and all that sort of thing—we do not want paupers. We do not want those people to come around begging of the assessors to abate their taxes. Men do not like to do it. If they are poor, they have pride. They have pride in York county. If the circumstances are such as that they need the three dollars, let them demand it; and if they do not need it in the management of their affairs, and have poor men that do need it, let them have that privilege.

The question being put upon the motion to indefinitely postpone, the yeas and nays were called for and ordered, and the vote being had resulted as follows:

Those voting yea were: Messrs. Colcord, Donigan, Gowell, Hamilton, Hastings, Knowlton, Lowe, Minott, Staples (9). Those voting nay were: Messrs. Baxter, Boynton, Eaton, Emery, Howes, Irving, Kellogg, Looney, Macomber, Milliken, Mullen, Reynolds, Shaw, Smith, Theriault, Walker, Warren Wheeler, Wyman (19). So the motion was lost.

On motion by Mr. Staples of Knox the bill was laid on the table, that senator stating that he desired later to offer an amendment to the bill.

On motion by Mr. Hamilton of York, Senate Doc. 88, "An Act to amend Section 46 of Chapter 106 of the Revised Statutes, relating to the appointment of surveyors in real actions," was taken from the table, the same having been assigned for today. The same senator moved that the bill be indefinitely postponed.

Mr. HAMILTON of York: Mr. President, this bill read:

"Section forty-six of Chapter one hundred and six of the Revised Statutes is hereby amended by inserting after the word 'action' in the second line thereof the following: 'Or in an action of trespass in which the title to land is involved as shown by the pleadings filed,' and also by adding to said section the following: 'The fees and necessary expenses of such surveyor shall be paid by the county,'" etc.

The substance of the bill is, in a few words, that where a surveyor is appointed, then the county instead of



the parties litigant, pays the expenses of the surveyor. Now, that, Mr. President, is just aiding litigation. I sue a man for trespass, and upon the trial of that party, either party, if the court thinks wise, appoints a surveyor, and then the party that loses pays for it, as it pays for other witnesses. If he is the prevailing party, why, he is all right, and this is as it should be. The only object of this amendment is to have the county pay where the parties have heretofore paid; and I do not believe that it is proper that the county should pay for what is a witness in the case—for evidence in the case, but the parties themselves should pay for it.

It is very nice—I do not suppose lawyers would do that—to bring a suit against a neighbor to establish a line, and go into court and file pleadings and have a surveyor appointed, no matter what it costs, and then have established their lines at the expense of the county. I do not believe in any such law. The law has stood as it is for years now, and the law is well enough, and I do not believe in that change, to take from the parties the expense, and add it to the counties.

Mr. WHEELER of Cumberland: Mr. President: In view of the remarks of the senator from York, I fear some members of the Senate, who are not familiar with court procedure, may misunderstand the purpose and effect of this bill.

The law now provides that, in any civil action, the matter may be referred by rule of court to a referee; and such referee decides the case precisely as it would otherwise be determined by the court, or by the jury; and the law expressly provides that the fees of such a referee, appointed under such circumstances, shall be paid from the county treasury upon the filing or acceptance of his report, subject to the approval of the court. The law also provides that in a case involving disputed, unsettled accounts between the parties, the court may appoint, on the request of the parties, an auditor, whose duty it is to investigate those accounts and report to the court what balance is due from one party to the other, and the law provides in

that case that the fees of such auditor shall be paid from the county treasury on the filing or acceptance of his report, subject to the approval of the court. Now there is a further provision of the law that, in any real action—that is, an action brought to determine or establish the title to real estate, on motion of either party, the court may appoint a surveyor to run lines, make plans, etc., and the report of that surveyor is returned to the court. Now, while the law expressly provides that the fees of the referee and of the auditor shall be paid from the county treasury, it is silent as to the manner of compensation of surveyors, and the result is that uncertainty exists throughout the State today as to the manner in which such surveyors shall be paid. In my own county of Cumberland it has been the custom for many years, I believe, to pay such fees from the county treasury; as the judges regard the referees, auditors and surveyors as standing upon a common plane, and having the same relationship to the court and parties. In other counties a different rule prevails. Some of the judges of the supreme court, to my knowledge, have declined to allow fees of surveyors appointed by the court to be paid from the county treasury, because the statute does not expressly authorize it, as it does in the other cases; and other judges of the same court have ordered such fees to be paid by the county assuming the right to order such payment, under the authority which judges of the court now have to approve and allow necessary expenses of the court.

Now there is uncertainty and a lack of uniformity and it seems to me this bill removes that uncertainty and creates uniformity. Of course there can be no difference in principle in the case of these three persons. They all bear the same relation to the court and to the parties. They are officers or agent of the court and not representatives of the parties. Now, what difference is there between paying a referee to determine a controversy between parties, an auditor to investigate and determine an unsettled and disputed account between them and a surveyor to

locate a disputed line. There clearly can be no objection to uniformity in this respect.

This amendment has one further provision. It authorizes expressly the appointment of a surveyor in actions of trespass, in which the title to land is involved. Take for instance, the case of a large wood lot, which is owned by several adjoining owners and the owner of one part decides to cut the timber from his part of the land, and he does so. He is later sued by an adjoining owner, who claims that a large number of valuable trees have been cut down on his land, and that a trespass has been committed. The defendant does not deny the cutting of the trees, but claims the trees cut were all on his own land, and there is an issue which is before the court—where is the dividing line? In such a case, the court should have authority to appoint a surveyor, as it would in a real action, the difference being merely in the form of action, and not in the issue to be determined, although of course, the form of judgment would be different in the two cases. And, I may say that courts now, with great frequency, appoint such surveyors in actions of trespass involving the title to land, although it is not expressly authorized by statute.

It is suggested by the senator from **York** that this would put large expense upon the county; but I think any senator will readily see that it will probably relieve the counties of expense. For it would enable a suit to be determined out of court. Every day the court is in session means a considerable expense to the county. You pay three dollars to each of your jurors, and there are 12 of them and some supernumeraries—several deputy sheriffs and other court officials in attendance, and they are paid for their attendance, and it is much cheaper for the county to pay for one surveyor to run out and establish a line than to spend three or four days threshing that out before the court. It is cheaper for the county. It is not taking all the burden from the parties, and putting it upon the county, but it relieves the counties from considerable expense.

It is urged that, if this bill receives

a passage that it will encourage litigation—that a party would sue his neighbor for the purpose of having a line established at the county's expense; but I think you will easily see that the expense of employing a surveyor to run a line would be very much less than employing a lawyer to bring a law suit with all the expenses of that litigation and pressing it to final judgment. I do not believe the senator from York would advise a client of his that it would be cheaper for him to employ a lawyer, and sue his neighbor, and go into court, and prosecute to judgment in such a case, than to employ a surveyor to run out his line. It would be spending a dollar to save a cent, and I think it is an imaginary danger.

This bill was reported to this Legislature from the Judiciary committee. The committee had a public hearing upon it, and considered it in executive session, and it has reported unanimously that the bill ought to pass. I would like to inquire of what use is our present committee system, if recommendations unanimously reported from the committee after careful consideration, are to be lightly and carelessly disregarded. I believe it is the duty of this State to support the report of the Judiciary committee; and I therefore hope that the motion of the senator from York will not prevail.

**Mr. HAMILTON:** Mr. President: I wish I had received such fine recommendations years ago when I was practicing law.

Now, as to Reports of Committees. I suppose that I, myself, and every senator here, whether a committee report is favorable or unfavorable, is to use his own mind, and to act for the interests of the State he represents. I think it is an unwise policy that we must follow after, and support the committees who report. We might as well adjourn, and regard the committee's report as law, as enacted, as to have them go through all of this form which we see here at the President's desk, of bills read and re-read—it would be just as well.

Now, let us go back to this law. An

auditor is appointed. He is appointed to aid the court. He is appointed because it saves time and saves expense to the county. It is an office thus created by law. He acts in a judiciary capacity, far different from that in which a surveyor acts. Follow me along. The Statutes prescribe a referee. That takes the case practically out of the court. That saves expense. That is not as a matter of evidence. But, in the trial of a real estate cause of action, the report of the surveyor who is appointed is more or less a matter of evidence. Does the senator mean to say that he never looks up his case—that he never has his surveyor, and never puts them in at all? That is only one way of obtaining evidence. It does not shut out other evidence, but other evidence comes in and his surveyor, and the surveyor on the opposite side comes in, and his client comes in, and the client on the opposite side comes in; and you might say he is an expert, if you please; but he does not stand in the same relation to the court and the people that the referee stands in, or that the auditor stands in, by any manner of means. Does the jury abide by it, or not? If the other evidence is brought, why it is only a matter of evidence—not final, not binding upon anybody in the least. No good lawyer would ever try a case and submit to a plan before the jury to be drawn by a party that is appointed by the court; but he would certainly investigate it himself, and investigate it through his own surveyor, and then he would bring in his plan, and it would have just as much force and weight with the jury as the plan made by the surveyor appointed by the court. As you might say: It is in the nature of expert testimony. If the courts do what he says they do—allow this—why do we need this statute? Pray tell me where do we want it, if they allow it? But I never knew them to allow it. It is a scheme to put upon the county this extra expense which the parties themselves should pay.

This statute has been here this many, many years, as it is now. We have all practiced according to that statute. We know, if we have surveyors, we must pay for them. The only difference is that, if appointed by the court, the parties get rid of the expense. It is a question of dollars and cents in each county—whether they will go to that expense. They have not for years and years. I do not know how long the statute has been in force, but for years and years; and now he comes in and says they do pay it—the courts do, and wants to make a uniformity of it; and yet the statute is that they shall pay it.

I do not believe in its passage for that same reason. It opens up a great field and you would get the thin edge of the wedge in here, and you could go on and on and keep changing the laws and lumbering up your statutes. I do not believe in it. We have got along well for many years. All new things is not progress. It is progress backwards in my judgment. We do not want them to go into court and have our property confiscated to pay the bills. The people have something to say about it and they should have some rights about it.

The question being put on motion to indefinitely postpone, the yeas and nays were called for, and ordered, and the vote being had, resulted as follows:

Those voting yea were: Messrs. Boynton, Colcord, Gowell, Hamilton, Howes, Kellogg (6). Those voting nay were: Messrs. Baxter, Donigan, Emery, Hastings, Irving, Looney, Lowe, Macomber, Milliken, Minott, Mullen, Osgood, Reynolds, Shaw, Smith, Staples, Theriault, Walker, Warren, Wheeler, Wyman (21). So the motion to indefinitely postpone was lost.

On motion of Mr. Hastings of Oxford the bill was passed to be engrossed.

On motion by Mr. Milliken of Aroostook the Senate adjourned.