

MAINE STATE LEGISLATURE

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Legislative Record

OF THE

Seventy-Fourth Legislature

OF THE

STATE OF MAINE

1909

ERRATA:

**The following errata are
inserted because one or more pages
in this session day have errors
noticed and corrected here.**

ERRATA.

Page 39, for Long Monson Pond read Long Mousam Pond.

94, after the words "Probation Officers" omit the words "relating to State Detectives."

105, 302, 316 and 333, for State Prison read State pension.

118, 146, 165 and 170, for supplementary associations read supplementary assessments.

168, for Coolidge River read Cambridge River.

174, for \$50 read \$50,000.

182, for Oakland read Oakfield.

185, for Rines road read Kineo road.

219, for Mineral Spring Co. read Merrill Springer Co.

226, for investigation of vital statistics read registration of vital statistics.

243, for town of South Portland read town of Southport.

309, for town of Wales read town of Wells.

325, for foreigners read coroners.

343, for Bed Cambridge River read Dead Cambridge River.

360, for boys read buoys.

377, for Corners Knob read Conary's Nub.

377, 462, 496, for Prescott read Trescott.

379, for Pittsburg read Phippsburg.

462, 496, for Chronological read Pomological.

494, for Township E read Township 2.

510, 538, for Central Railroad Co. read Jonesport Central Railroad Co.

520, for Penobscot Electric Co. read Penobscot Bay Electric Co.

525, for Colcord read Concord.

544, 556, for town of Brewer read town of Bremen.

551, 587, for Monmouth Ridge Sanitary Association read Monmouth Ridge Cemetery Association.

646, for Androscoggin Valley Company read Androscoggin Valley Railroad Company.

648, for Central Fire Insurance Co. read Central Maine Fire Insurance Co.

654, 670, for Jimmy pond read Jimmy brook.

655, 671, for Straw's Island read Swan's Island.

667, for transmitted in Maine read transacted in Maine.

677, 698, for municipal court in town of Portland read municipal court in town of Farmington.

687, for Trusett read trustee.

700, for pension members of Building Commission read pension members of Fire Department.

788, for Howard read Howland.

835, for Chapter 138 of the Public Laws of 1905 read Chapter 138 of the Public Laws of 1895.

844, for bridges of municipal officers read duties of municipal officers.

928, for identifying animals read identifying criminals.

974, for Herbert A. Bradford read Herbert A. Lombard.

1022, for Stonington Trust Company read Stonington Water Company.

1064, for Biddeford read Portland.

1244, for Daniel's Pond read Donnell's Pond.

1275, for Acatous Lake read Nicaious Lake.

1313, for establish read abolish.

SENATE.

Monday, March 29, 1909.

Senate called to order by the President.

Prayer by Rev. Mf. Clark of Gardiner.

Journal of the previous session read and approved.

Papers from the House disposed of in concurrence.

Orders.

Ordered, The Senate concurring, that a special joint committee of two on the part of the House with such as the Senate may join be appointed to inquire into the laws controlling the most successful juvenile courts especially the system outlined by the Hall bill, so-called, to draft such laws for the establishment of such a court in Maine with such necessary laws to go with the same best suited to our needs and conditions. Said committee is hereby authorized to sit during any recess or after the adjournment of the present Legislature, with full power to employ a stenographer and shall report in writing with recommendations a bill or bills which report, recommendations and or bills shall be filed with the clerk of the House not later than December 1, 1910, and be referred to the next Legislature without further action thereon.

On motion by Mr. Shaw of Kennebec, this order was laid on the table pending its passage in concurrence.

"An Act to amend Section 41 of Chapter 9 of the Revised Statutes as amended by Chapter 69, Section 1 of the Public Laws of 1905, relating to collection and payment of county taxes by State treasurer." (This bill was by the Senate passed to be engrossed without reference to a committee. By the House it was referred to the committee on appropriations and financial affairs. On motion by Mr. Mullen of Penobscot, the Senate voted to recede and concur with the House in the reference of this bill to the committee on appropriations and financial affairs.)

"An Act additional to and amendatory of Section 22, Chapter 37 of the Revised Statutes in regard to the support of minor children." (This bill was by the Senate passed to be engrossed.

By the House it was passed to be engrossed as amended by House Amendment A. On motion by Mr. Staples of Knox, the Senate voted to reconsider its vote whereby it passed this bill to be engrossed; and on his further motion, House Amendment A was adopted in concurrence, and the bill as amended was passed to be engrossed.)

"An Act to extend the open season on deer in the towns of Unity and Burnham." (This bill was by the House passed to be engrossed. The Senate voted to indefinitely postpone. The House insists on its action and asks for a committee of conference. On motion by Mr. Knowlton of Piscataquis, the Senate voted to insist on its action and to join the committee of conference. The President stated that he would announce a committee of conference on the part of the Senate.)

House Bills in Second Reading.

An Act to incorporate the Farmington Power Co. (On motion by Mr. Staples of Knox, under suspension of the rules, this bill took its second reading and was passed to be engrossed.)

An Act to increase the authority of the Fort Halifax Power Co. (On motion by Mr. Staples of Knox, under suspension of the rules, this bill took its second reading and was passed to be engrossed.)

Bill relating to juvenile court. (On motion by Mr. Staples of Knox, the Senate concurred with the House in referring this bill to the next Legislature.)

An Act to prefer Maine labor and Maine contractors upon all work performed for State, municipal, charitable and educational institutions, buildings or public works, or any building or institution supported or aided by the State or municipalities. (This bill took its first reading, and, on motion duly seconded, under suspension of the rules, took its second reading. On motion by Mr. Colcord of Waldo, Senate Amendment A was adopted; and, on his further motion, the bill with the amendment was laid on the table.)

An Act to incorporate the Brunswick Power Co. (On motion by Mr. Wheeler of Cumberland, under suspension of the rules, this bill took its two several

readings and was passed to be engrossed.)

An Act to incorporate the Calais Power Co. (On motion by Mr. Wheeler of Cumberland, under suspension of the rules, this bill took its two several readings and was passed to be engrossed.)

An Act to establish a municipal court in the town of Millinocket. (On motion by Mr. Wheeler of Cumberland, under suspension of the rules, this bill took its two several readings and was passed to be engrossed.)

An Act to authorize the town of York to aid the York hospital. (On motion by Mr. Wheeler of Cumberland, under suspension of the rules, this bill took its two several readings and was passed to be engrossed.)

Resolve in favor of State House employes. (On motion by Mr. Wyman of Washington, under suspension of the rules, this bill took its two several readings and was passed to be engrossed.)

Resolve in favor of W. S. Bemis. (On motion by Mr. Wyman of Washington, under suspension of the rules, this bill took its two several readings and was passed to be engrossed.)

Resolve in favor of shorthand reporter to committee on railroad and expresses. (On motion by Mr. Wyman of Washington, under suspension of the rules, this bill took its two several readings and was passed to be engrossed.)

Resolve in favor of A. H. Miller, secretary of pension committee. (On motion by Mr. Smith of York, under suspension of the rules, this bill took its two several readings and was passed to be engrossed.)

Resolve in favor of the town of Harmony. (On motion by Mr. Smith of York, under suspension of the rules, this bill took its two several readings and was passed to be engrossed.)

Resolve in favor of the clerk, stenographer and messenger of the legal affairs committee. (On motion by Mr. Smith of York, under suspension of the rules, this bill took its two several readings and was passed to be engrossed.)

Resolve in favor of the clerk and stenographer to the committee on State lands and State roads. (On motion by Mr.

Reynolds of Kennebec, under suspension of the rules, this bill took its two several readings and was passed to be engrossed.)

Resolve in favor of L. A. Davis, clerk of the committee on public health and public buildings and grounds. (On motion by Mr. Reynolds of Kennebec, under suspension of the rules, this bill took its two several readings and was passed to be engrossed.)

Resolve in favor of clerk of the committee on interior waters. (On motion by Mr. Reynolds of Kennebec, under suspension of the rules, this bill took its two several readings and was passed to be engrossed.)

Resolve in favor of the official reporter of the House. (On motion by Mr. Looney of Cumberland, under suspension of the rules, this bill took its two several readings and was passed to be engrossed.)

An Act to incorporate the Scarboro and Cape Elizabeth Railway Company. (On motion by Mr. Looney of Cumberland, under suspension of the rules, this bill took its two several readings and was passed to be engrossed.)

An Act to prevent noise from motor boats on Moosehead lake. (This bill came from the House, by that branch indefinitely postponed. On motion by Mr. Looney of Cumberland, the Senate voted to concur with the House in the indefinite postponement of the bill.)

An Act to regulate fishing in Royal's river and tributaries in Cumberland county. (On motion by Looney of Cumberland, under suspension of the rules, this bill took its two several readings and was passed to be engrossed.)

An Act establishing a close time on lobsters in the bays of the towns of Gouldsboro, Eden, Trenton, Lamoine, Hancock, Sullivan and Sorrento. (On motion by Mr. Walker of Hancock, under suspension of the rules, this bill took its two several readings and was passed to be engrossed.)

An Act to amend Section 1 of Chapter 357 of the Special Laws of 1907, entitled "An Act establishing a close time on lobsters in the bays of the towns of Harrington, Milbridge, Steuben and Gouldsboro. (On motion by Mr. Walker of Hancock, under suspension of the rules, this bill took its two several readings and was passed to be engrossed.)

An Act to regulate the herring fisheries in the town of Roque Bluffs. (On motion by Mr. Walker of Hancock, under suspension of the rules, this bill took its two several readings and was passed to be engrossed.)

An Act prohibiting the building of smelt traps in the waters of Harrington river, Washington county. (On motion by Mr. Walker of Hancock, under suspension of the rules, this bill took its two several readings and was passed to be engrossed.)

An Act to amend Chapter 144 of the Revised Statutes relating to the insane hospital. (On motion by Mr. Shaw of Kennebec, under suspension of the rules, this bill took its two several readings and was passed to be engrossed.)

An Act to amend Section 15 of Chapter 54 of the Revised Statutes, relating to expenses of the inspectors of boilers, engines, etc., of steamboats upon inland waters. (On motion of Mr. Hastings of Oxford this bill was tabled pending its second reading.)

An Act to authorize the city of Biddeford to acquire land for a police station and a central fire station. (On motion by Mr. Hastings of Oxford, under suspension of the rules, this bill took its two several readings and was passed to be engrossed.)

Senate Bill on First Reading.

An Act to prohibit corporations from transmitting electric power beyond the confines of the State. (On motion by Mr. Macomber of Kennebec, pending its second reading, this bill was laid on the table.)

Reports of Committees.

Mr. Eaton, from the committee on Insane hospitals, on reports of the Maine Insane hospital at Augusta and Eastern Maine Insane hospital at Bangor, reported that the same be placed on file. (The report was accepted.)

Mr. Reynolds from the committee on telegraphs and telephones;

Mr. Macomber from the committee on banks and banking;

Mr. Eaton from the committee on Insane hospitals; presented their final reports.

Finally Passed.

Resolve laying tax on the counties of the State for the years 1909 and 1910. (This resolve contained the

emergency clause, and, being put upon its passage, 27 senators voted in favor of its passage and there were no votes opposed.)

Orders of the Day.

On motion by Mr. Staples of Knox, majority report, legal affairs committee, ought not to pass, on Bill, to allow Lewiston to take ice from Androscoggin river, Lake Auburn and other ponds, and sell the same, minority report, same committee on same bill, ought to pass," was taken from the table.

The same senator moved to concur with the House in substituting the minority for the majority report.

Mr. STAPLES of Knox: Mr. President: By the consent of Senator Hamilton, who tabled these reports, I have taken them from the table. I move, Mr. President, to concur with the House in substituting the minority for the majority report.

This is a bill providing for the city of Lewiston to be allowed to furnish ice for themselves. I regret that I lack the requisite ability to do justice to this cause, which I think is the most important which has been before this Legislature at this session. It is a matter in which I have no personal interest, but only an interest for the people of the State. I have ever believed in municipal ownership of public utilities, and this is one of them.

The question came before our committee on legal affairs. The proponents of the bill came there in great force and comprised the best citizens of Lewiston. They presented a petition signed by 3500 of the people of that city, asking for redress against what they conceived to be a misuse by the present company which furnishes them with one of the necessities of life, ice, in hot weather.

The petition was signed by some of the best men of the city of Lewiston and was obtained in a canvass of two days. I am informed, and, from personal observation, I think, being in the city of Lewiston last Tuesday night, that seven-eighths of the people of that city, including ministers, lawyers, merchants, professors and men in all walks of life, were included. The petition is one that must appeal to

your good judgment and one that cannot be thrown aside. It is signed by every professor of Bates College and by about all of the business men of Lewiston and ex-officers of the county, and many others, and such that, if you were to take them out of the city of Lewiston, there would be left but few to do the business of the city.

It is a matter of general sentiment and it is neither partisan or political. It comes from both parties. They come here asking you for this matter in behalf of their families and because of the necessity of sanitary and curative conditions for the people of Lewiston. They ask you to give them the right to take by eminent domain, the property of this ice company, and there has been much said upon either side. The defence altogether relied upon the legality of this proposition. There is one thing that is well settled, and that is that the exigency of the occasion is a matter for the determination of the Legislature. Whether it is, or is not, a public use, is a matter for the court to decide. We cannot decide constitutional questions, for we have no authority to do that.

I would not have voted for that building committee when the right was given them of eminent domain to take that company's property without a full, fair and complete consideration therefor. I do not think it would be right and I would not stand here to give to the city of Lewiston the right to take the property from the present company, unless there was a provision, which there is in this amendment of the bill, that they shall take the property of the present ice company in Lewiston at a fair consideration. This ice company stands upon both sides of the river. If they cannot agree upon a price, they are to choose one man, the city of Lewiston the other, and the chief justice of the supreme court of Maine, the third. But it is said upon the other side, that part of this property is in Auburn, and so it is. They own some up and down the Androscoggin river; and that is the rights which the city of Lewiston can have. If you pass this bill, the city of Lewiston may, if it has occasion, go into the ice business.

Two years ago, they had two competing companies in the City of Lewiston, and, shortly afterwards, those two companies consolidated, and then they had a monopoly of the business, and the City of Lewiston could not help itself, a city of 30,000 inhabitants. They were at the mercy of this company. The people rebel against this. One of the companies paid to the other a large sum in order to effect the consolidation. One which, in fact, is worth \$120,000, is taxed in the City of Lewiston by the assessors' books, at less than \$20,000. I believe that no man should take another's property without fair and just remuneration, and we have left it to the people of Lewiston by the amendment to this bill to agree as to the value of this property, as the amendment provides. I think it would be just and right that these three appraisers should value the whole property, and then, if the City of Lewiston does not want to take it, they need not. If you pass this bill, and they submit it to the people of Lewiston to vote on, whether they shall do this business or not—and they go further than that—if the price agreed upon is a large price, then by the bill, it is submitted to the people of Lewiston to say whether they shall buy or not.

This is a humane matter. Water is becoming a necessity, and time and time again, the people of this State and the Legislature has said that it is an emergency, or an exigency rather, that the people should have pure water, and the Court has decided that it was for the public use. There are only two legal questions to be presented; and one is the question as to whether, in this case, it constitutes an emergency or an exigency, and I tell you, if there ever was anything to constitute in this State such an exigency it has now arisen in the City of Lewiston at the behest of this company.

Until this amendment was put in, I was disposed to be against the bill. The hired attorney came here representing this humane company. This was their method: You take 25 pounds of ice and they charge you 25 cents; a poor man says that he cannot afford to pay 25 cents, but wants a quarter of the amount, and they charge him 15 cents for it; and the company takes the other half and goes to another customer, and, if he cuts that in two, he

makes 40 cents on the amount, where the poor man is not able to pay 25 cents for the whole, and it may be it is for the purpose of keeping his children from dying with disease. Are you going to say that this company shall continue to do this in any city in New England? I tell you that ice has become a public necessity, and, as I said, there are only two questions; and one is: Has an exigency arisen in this matter?

We have the power to take over water companies in this State and have done it a great many times. If that is an exigency, pray tell me, with the increased use of ice and the sanitary conditions which are involved, whether or not ice is not also an exigency; and, if it is an exigency, then this Legislature has a right to vote for it. Whether it is a question of public good is a question for the Supreme Court of this State.

Ice and water are twin sisters. Water is a public necessity, and ice is only frozen water. That is the only difference. We could not get along in the State of Maine without an ice plant of some kind, to keep the poor man's food from spoiling and for the furnishing of the necessary sanitary family conditions.

It may be that Lewiston will never go into the ice business, but they want the right to do it if this company does not reform and give them more ice and deal more fairly and decently with them. If they do not do it, the whole City of Lewiston will rise up as one man and buy out at a fair appraisal that property and go into the business themselves.

When this ice company of the City of Lewiston was here with their attorney beside of them, and somebody asked how much was your profit last year, their attorney said: Don't you answer that question. And he insisted that they should not answer it, and they did not answer it; they did not dare to tell you, and there were three of them sitting right there in these chairs. It was then that I said: My friends I am against you. I think that my learned friend who appeared for them at that Committee hearing, made a great mistake when he did not let those fellows come up and be honest about it and tell the City of Lewiston how much money they had made out of the poor man, the sick men, the

sick children, and everybody in the City of Lewiston.

They could have augmented their petition from 3500 to 10,000 in two days more, if they had gone around for that purpose.

There has been much said by the opponents of this bill to the effect that it was unconstitutional. Now, I will read to you, Senators, from the 150 Mass., an opinion from the Supreme Court of Massachusetts, which I have and which tells this matter. The citation is 150 Mass., Page 593. It was in a case where the Legislature of Massachusetts asked the opinion of the Court, and the discussion was as to electricity and gas, whether the cities and towns had a right by eminent domain to take the property of private individuals for the benefit of the public, and they decided that an exigency existed for them to take that; and, if that is so in regard to electricity and gas, let me ask you, my fellow Senators, don't you think that ice is as much an exigency for the public good as gas and electricity? Lights can be furnished in many ways. Ice cannot be. An individual cannot go out and get his own ice where he lives in the city, but he must rely on a company or a plant to furnish him, and he ought to have it just as cheap as he can get it. It is a necessity of life and an exigency in every family in the city; it has got to be used in almost every family. They will tell you that Lewiston does not care to go into the ice business.

Now, let me read you from the citation which I have referred to:

"In considering the questions asked, we assume that the power to be conferred is not merely a power to receive and use property given in trust for the purposes named, but is a power to raise money by taxation, and by means of it to construct and maintain works for the manufacture and distribution of gas or electricity, to be used by the municipalities for lighting the public streets and buildings, and by the inhabitants for lighting the land and buildings which are their private property.

We also assume that the gas or electricity to be furnished to the inhabitants for their private use is to be paid for by them at rates to be established, which shall be deemed sufficient to reimburse to the cities and towns the reasonable

cost of what is furnished, and that all the inhabitants of a city or town are to have the same or similar rights to be supplied with gas or electricity, so far as is reasonably practicable, and the capacity and extent of the works, which it is deemed expedient to maintain, will permit. Whether cities and towns can be authorized to give gas or electricity to their inhabitants, or to sell either to them, at varying and disproportionate prices, selecting their customers, selling to some and arbitrarily refusing to sell to others, are questions which it is not necessary to consider.

By the Constitution, full power and authority are given to the General Court to make 'all manner of wholesome and reasonable orders, laws, statutes, and ordinances,' not repugnant to the Constitution, which 'they shall judge to be for the good and welfare of this Commonwealth,' etc., and 'to impose and levy proportional and reasonable assessments, rates, and taxes upon all the inhabitants of and persons resident, and estates lying within the said Commonwealth—for the public service, in the necessary defense and support of the government of the said Commonwealth, and the protection and preservation of the subjects thereof,' etc.

The extent of the right of taxation is not necessarily to be measured by that of the right of eminent domain, but the rights are analagous. Private property can be taken without the consent of the owner only for public uses, and the owner must be paid full compensation therefor; otherwise, he would contribute more than his proportional share toward the public expenses. By taxation the inhabitants are compelled to part with their property, but the taxation must be proportional and reasonable, and for public purposes. Taxes may be imposed upon all the inhabitants of the State for general public purposes, or upon the inhabitants of defined localities for local purposes, and when distinct private benefits are received from public works special assessments may be laid upon individuals.

We have no doubt that, if the furnishing of gas and electricity for illuminating purposes is a public service, the performance of this service can be delegated

by the Legislature to cities and towns for the benefit of themselves and their inhabitants, and that such cities and towns can be authorized to impose taxes for this purpose upon their inhabitants, and to establish reasonable rates which the inhabitants who use the gas or electricity can be compelled to pay. The fundamental question is whether the manufacture and distribution of gas or electricity to be used by cities and towns for illuminating purposes is a public service.

The maintenance of public streets and buildings is a public service, and it may be reasonably necessary to light them in order that the greatest public benefit may be obtained from using them. To say nothing of the usefulness of lighting streets as a means of promoting order and of affording protection to persons and property, the common convenience of the inhabitants may require that they be lighted. Cities and thickly settled towns have for a long time been accustomed to light their public buildings and some of their streets at the public expense. If the streets and public buildings are to be lighted, the means is a matter of expediency. If the Legislature can authorize cities and towns to light their streets and public buildings, it can authorize them to do this by any appropriate means which it may think expedient. As a question of constitutional power, we cannot distinguish the right to authorize cities and towns to buy gas or electricity for their own use, from the right to authorize them to manufacture it for their use. We therefore answer the first question in the affirmative.

The second question is one of more difficulty. It is impossible to define with entire accuracy all the characteristics which distinguish a public service and a public use from services and uses which are private. The subject has been considered many times in the opinions of the court of which we are now the justices, and *Lowell v. Boston* is a leading case. It is there said, that 'an appropriation of money raised by taxation, or of property taken by right of eminent domain, by way of gift to an individual for his own private uses exclusively, would clearly be an excess of legislative power;' that 'the promotion of the

interests of individuals, either in respect of property or business, although it may result incidentally in the advancement of the public welfare, is, in its essential character, a private and not a public object; and that the appropriation of property for turnpikes and railroads 'can only be justified by the public service thereby secured in the increased facilities for transportation of freight and passengers, of which the whole community may rightfully avail itself.' It is said that the essential point is that a public service or use affects the inhabitants 'as a community, and not merely as individuals.'

It was early decided that 'the prevention of damage by fire is one of those objects affecting the interest of the inhabitants generally, and clearly within the scope of municipal authority.' Although the property to be protected is private property, the need of protection is felt by every owner in the city or town; the property of one may be endangered by the burning of that of another; efficient means of protecting his property cannot well be furnished by every inhabitant; and there is a necessity of common action which makes the expenditure of money for the purpose properly a municipal expense.

The maintenance of sewers and drains is a public service. One object is the preservation of the public health; but apart from this they are of great convenience to the inhabitants whose estates can be drained by them. It is impracticable for every owner of land in cities and towns to construct and maintain sewers and drains exclusively on his own account; they cannot ordinarily be constructed over any considerable territory without using the public ways, or exercising the right of eminent domain; they are therefore regarded as of common convenience and are constructed at the public expense.

The furnishing of water for cities and towns for domestic use affords perhaps the nearest analogy to the subject we are considering. It was long ago declared that 'the supply of a large number of inhabitants with pure water is a public purpose.' The statutes are well known which authorize cities and towns to maintain water works for supplying their

inhabitants with water, and the constitutionality of these statutes has not been doubted. Water cannot ordinarily be supplied to a large city or town from ponds or streams without the exercise of the right of eminent domain and the use of the public ways; every inhabitant needs water, and often the only practicable method of obtaining it is by the agency of corporations or of the municipality. The land for the public ways having been taken for a public use, it may be subjected to other public uses, but it cannot be subjected to strictly private uses without the consent of the owners of the fee when the fee remains in the rebutters. There is therefore often a necessity of having water, common to the inhabitants of a community, which cannot well be met except by the exercise of public rights, and therefore the furnishing of water has been considered a public service.

In the case of water, as in that of sewers and drains, a portion of the service is exclusively public, and the benefit to individuals cannot be separately estimated from that of the community; but a part of the service is rendered to individuals, and the benefit of this can be separately estimated. The inhabitants therefore are required to pay for the water furnished for their private use, and special assessments for the use of sewers and drains are laid upon estates specially benefitted; and for the same reasons, while in laying out highways the expense is public, betterment assessments may be laid upon the owners of lands specially benefitted.

Artificial light is not, perhaps, so absolutely necessary as water, but it is necessary for the comfortable living of every person. Although artificial light can be supplied in other ways than by the use of gas or electricity, yet the use of one or both for lighting cities and thickly settled towns is common, and has been found to be of great convenience, and it is practically impossible for every individual to manufacture gas or electricity for himself. If gas or electricity is to be generally used in a city or town, it must be furnished by private companies or by the municipality, and it cannot be distributed without the use of

the public streets, or the exercise of the right of eminent domain.

It is not necessarily an objection to a public work maintained by a city or town, that it incidentally benefits some individuals more than others, or that from the place of residence or for other reasons every inhabitant or the city or town cannot use it, of every inhabitant who is so situated that he can use it has the same right to use it as the other inhabitants. It must often be a question of kind and degree whether the promotion of the interests of many individuals in the same community constitutes a public service or not. But in general it may be said that matters which concern the welfare and convenience of all the inhabitants of a city or town, and cannot be successfully dealt with without the aid of powers derived from the Legislature, may be subjected to municipal control when the benefits received are such that each inhabitant needs them and may participate in them, and it is for the interest of each inhabitant that others as well as himself should possess and enjoy them.

If the Legislature is of opinion that the common convenience and welfare of the inhabitants of cities and towns will be promoted by conferring upon the municipalities the power of manufacturing and distributing gas or electricity for the purpose of furnishing light to their inhabitants we think that the Legislature can confer the power. We therefore answer the second question in the affirmative.

We notice that the bill, a copy of which was enclosed with your order, relates to the manufacture and distribution of gas or electricity, not only for furnishing light, but also for furnishing heat and power. We have not considered whether the furnishing of gas or electricity for supplying either heat or power can be regarded as a public service. We have confined our opinion to the questions asked, which, as we understand them, relate to the manufacture and distribution of gas or electricity solely for the purpose of furnishing light.

MARCUS MORTON,
WALBRIDGE A. FIELD,
CHARLES DEVENS,
WILLIAM ALLEN,

CHARLES ALLEN,
OLIVER WENDELL HOLMES, Jr.
MARCUS P. KNOWLTON."

In *Brown v. Gerald et al.*, 100 Me., 352, the Courts say:

"Whether a public exigency exists for the granting of the exercise of the right of eminent domain, is for the Legislature to determine. Whether the use for which it is granted is a public one, the court must decide."

In 155 Me., 666: "Although all kinds of business may be regulated by the Legislature, yet to buy and sell coal and wood for fuel requires no authority from the Legislature, and requires the exercise of no powers derived from the Legislature, and every person who chooses can engage in it in the same manner as in the buying and selling of other merchandise. We are not aware of any necessity why cities and towns should undertake this form of business any more than many others which have always been conducted by private enterprise, and we are not called upon to consider what extraordinary powers the Commonwealth may exercise, or may authorize cities and towns to exercise, in extraordinary exigencies for the safety of the State or the welfare of the inhabitants. If there be any advantage to the inhabitants in buying and selling coal and wood for fuel at the risk of the community on a large scale, and on what has been called the co-operative plan, we are of the opinion that the Constitution does not contemplate this as one of the ends for which the government was established, or as a public service for which cities and towns may be authorized to tax their inhabitants.

We therefore answer the questions in the negative.

WALBRIDGE A. FIELD,
CHARLES ALLEN,
MARCUS P. KNOWLTON,
JAMES M. MORTON,
JOHN LATHROP."

I do not want to be unfair and I do not want to ask you to injure anybody, but we would have the company treat us fairly and, if they will do so, we will take their ice and have no municipal corporation, but we want you to treat us as people in other cities are treated. I have occupied too much of your time. I have

no personal interest in the matter, but let us not turn down the petition of the people of Lewiston.

Expediency was the question raised in the case which I have read, but we do not go so far as that. The court of this State says that an exigency must exist, not an expediency, and we say an exigency has arisen here and we only ask for what is right and fair, to pass this bill in the interests of the city of Lewiston so that they can be protected against the manner in which the company has conducted its business.

On motion by Mr. Donigan of Somerset, the Senate took a recess until 8.00 o'clock P. M.

Senate, 8 o'clock, P. M.

Senate called to order by the President.

The PRESIDENT: The matter under consideration is bill to authorize the city of Lewiston to take ice from the Androscoggin River, Lake Auburn and other ponds in Androscoggin county and to sell same at cost to its inhabitants. The pending motion is the motion of the senator from Knox, Mr. Staples, to substitute the minority report "ought to pass" for the majority report "ought not to pass," and the senator from York, Mr. Hamilton, has the floor.

Mr. HAMILTON: Mr. President and Gentlemen of the Senate: Before recess we listened to one of the grandest tributes to ice that you or I ever heard. There is nothing like it among the great orators of ancient times. The senator from Knox described to you the suffering that had been had at Lewiston and the poor children that died and the women that have walked up and down the streets, and of the many deaths there had been there on account of this monstrous ice company that is now doing its business in Lewiston. He also swung high in air the petition of thirty-four or thirty-five hundred of the citizens of Lewiston asking for the passage of this bill, that they might have ice at cost.

I have no doubt but what he could have got more to sign that petition that they could have had ice at cost. I have no doubt but what he should have got as many on a petition that they might have groceries at cost. I have no doubt but that he could have got as many on a

petition that they might have all of the necessities of life at cost, and that they might get all the dry goods at cost. And he might have got a petition as large that all the commodities that enter into the lives of the people ought to be had at cost.

I want to call your attention for a few minutes, and but for a few minutes, to the facts in this case.

It seems here that some years ago, two companies were in existence in Lewiston selling ice. I say to you that we carefully examined this case and we gave both sides a candid hearing. We discussed the matter and, after discussing it with the facts that were before us and the law, eight of us thought that it was a dangerous proceeding to pass the bill, or to bring it before the Senate—that it was wrong—and so we brought in a report that it ought not to pass.

First, there was one company there, and then another company came in, as they had a right to, and they started to put up ice. They ran there four or five years in fierce opposition to each other and the price of ice was run down to a low figure. One company at that time had lost about \$12,000 and the other company had just about held its own because it had other business to do and could use its teams and its men to advantage. This company that got their ice from Lake Auburn lost the amount of money which I have stated. They got their ice from Lake Auburn some three miles down. The old company got theirs upon the banks of the Androscoggin and they could sell cheaper than the company that had to take their ice from the Auburn lake. And so, two years, later, these two companies were sold to six young men. One company did not consume the other, but these six young men, as it appeared before us, bought out both companies. Whether they paid high or low, is of no consequence, but it is said that they paid one hundred thousand dollars for their ice houses and all fixtures, and all the rights which the old company had, to which I will call your attention a little later on. They started then putting up ice to sell to the citizens of Lewiston. They had one ice house which was quite costly—I believe it cost originally somewhere in the neigh-

borhood of \$40,000, and that was in Lewiston. The three other houses were in the city of Auburn. Of course, they put up ice and they sold it for a profit. They did not sell it, as has been stated, for extreme prices, but they sold it lower than it has been sold in other neighboring cities. I will read to you—and this is not denied and never has been denied before—I never heard it denied until the gentleman from Knox denied it—they sold their ice, fifteen pounds per day, at the monthly rate of \$1.25. Gardiner sold the same amount of ice, at the same rate, at \$1.50, for a monthly rate. Following is a comparative list of prices:

COMPARATIVE PRICES OF ICE.

City.	15 lbs. per day Monthly rate.	25 lbs. per day Monthly rate.	Retail price per 100 lbs.
Lewiston,	\$1.25	\$1.50	.15
Gardiner,	1.50 (20 lbs.)	2.00	.20
Bangor,	1.25	2.00	.20
Waterville, (no rate)		1.50	.25
Portland,			
(Beechwood)	2.00	3.00	.25
Portland,			
(Clark)	2.00	3.00	.25
Bath,	1.50	(no rate)	.15 to .20
Augusta (2 companies) (no rate)		1.80	.16

So, gentlemen, they sold ice there cheaper than it was sold in either of these towns and cities above named. And so you may go all over the State. The rate at which the Lewiston Ice Company furnished the people there in Lewiston was lower than any city that I have found in the State of Maine. This fact was before us and was not denied. Instead of the rates being exorbitant, as has been stated by the gentleman from Knox, they were lower than any of the cities which had any of the conveniences for cutting ice. Portland, of course, was higher because they have not the conveniences that Gardiner, Bangor, Augusta, Bath and Waterville have, but they, with all the conveniences they had, charged more for ice than was charged by this new company that was formed there in Lewiston.

Mr. STAPLES: Do you compare the quantity?

Mr. HAMILTON: It is the same quantity, fifteen pounds a day, monthly rates, and twenty-five pounds a day monthly rates, and retail prices for one hundred pounds. I have read to you these rates and every place is higher than was charged in the city of Lewiston for the ice which they furnished the people there.

This new company was not formed, as I say, by the consolidation of these two companies. It was formed by young, progressive, business men. It was formed as a business proposition. They have given to the city of Lewiston a good, fair rate, and there was no one before us that complained but what they were so served. The complaint was that they charged too much, that they charged more than that when the two companies were in competition and when they were losing money—how much more I do not know. Neither did it appear before the committee how much more this company charged than the old companies, but they charged more; and that was the complaint, and at no time was there any complaint made to the company, but one time, and that was the case of a man who lived some three-quarters of a mile away and he was the only one taking ice in that neighborhood, and he complained that they refused to furnish him ice because he lived at a distance and they couldn't afford to drive there for the ten pounds of ice per day which he required. That was the only person who complained but what they were well served, but that they were not served for the prices that were formerly served, and that the prices were too high, and they didn't get that quantity of ice.

There is something peculiar here. Not a soul that came before us ever said, nor did we have any evidence, that a complaint was made to that company. Their complaint was that they did not furnish enough ice and charged too much, and the first complaint they knew of was when this petition came two or three weeks ago before this Legislature.

Taking these things into consideration, we do not see the exigency or the necessity of this bill even if the functions of the city were such that they could enter into the ice business.

The gentleman from Knox has told you that ice was frozen water, and that water was free. I need not quote any law. It is a matter of common knowl-

edge and has been decided over and over again in this State that ice is a commodity. It is an increment, that when the water freezes, as he says it does, it becomes a commodity. You sell it from the Kennebec river and from all the rivers and you distribute it all over the world almost as a commodity, as something that is tangible, different from water. But you say it is as free as water, but ice is not free. Ice is a tangible substance, something to sell, something to buy, something which you can sell; and the courts recognize that difference. Ice belongs to the party who owns the shore rights, and he has the right to the ice to the center of the stream, where the stream is a floating stream, unless it is a navigable river, as the Kennebec river is, where they can stake out ice.

We looked at this very carefully, and I looked at the law very carefully, and I find that in the 155 Mass., page 598, and I will read because he has read, the opinion of the justices of the Supreme Court, asked by the legislature of Massachusetts:

Whether the legislature could enact a law conferring upon a city or town the power to purchase coal and wood in cases of this order for sale to its citizens;

Whether it is constitutional for a town or city to purchase coal and wood to sell to its own citizens;

Whether the legislature has a constitutional right to authorize towns, municipalities, to establish and maintain fuel and coal yards.

Upon all of these propositions the justices of the Supreme Court decided that each and all were unconstitutional, and say: "This is not only the law of this commonwealth but of the states generally and of the United States."

Now, these do not say "ice," but that coal and wood is a commodity. Ice is a commodity and that ice in the city or town or province could not enter in and had no constitutional right to enter into a sale of any of these commodities, because the State did not grant that function of trade to the town or city and all that.

They go on to say:

"In the opinion of the courts we know of nothing in the history of the adoption of the constitution that gives any countenance to the theory that the buy-

ing and selling of such articles as coal and wood for the use of the inhabitants was regarded at that time (at the time of the adoption of the constitution) as one of the ordinary functions of the government which was to be established." Now if you substitute ice here as a commodity, you have just what is before you, gentlemen.

Again, there are nowhere in the constitution any provisions which tend to show that the government was established for the purpose of carrying on the buying and selling of such merchandise as at the time when the constitution was adopted was usually bought and sold by individuals, and with which individuals were able to supply the community, no matter how essential the business might be to the welfare of the community."

"The object of the constitution was to protect individuals in their rights to carry on the customary business of life, rather than to authorize the commonwealth or the towns, parishes, precinct and other bodies politic, to undertake what had ordinarily been left to the private enterprises or individuals."

In Lewiston, any of them could go into the ice business, and they have a right to go into the ice business. That was a matter of commerce and trade, and, if there was a want there, any of the citizens could go into the ice business and do away with all this suffering which the gentleman from Knox has described.

The object of the constitution was to protect individuals in their rights to carry on the customary business of life, rather than a commonwealth or town or parish or other body politic to undertake what had ordinarily been left to the private enterprises of individuals.

"The question of the distribution of gas or electricity seems to be based upon the proposition that the pipes or wires must be laid in or over the public ways or in or over lands taken for the purpose, which must exercise the right of eminent domain."

Now gas and electricity is carried along underground in your streets, not carried as ice is carried, and peddled as ice is peddled. We will come to that in a moment.

The buying and selling of coal "is a kind of business in which in its relation to the community did not and does

not differ essentially from the business of buying and selling any other of the necessities of life."

Neither does the selling of ice or the cutting of ice essentially differ from any other business.

"All kinds of business may be regulated by the Legislature, yet to buy and sell coal and wood for fuel requires no authority from the Legislature and requires the exercise of no powers derived from the Legislature, and every person who chooses can engage in it in the same manner as in the buying and selling of other merchandise."

This seems to be the leading case in Massachusetts decided, the opinion of which was passed down on May 7th, 1892. The same proposition was discussed on a like request from the legislature by the Supreme Court of Massachusetts in 182 Massachusetts under date of Jan. 28, 1903, which reaffirms all of the provisions laid down in the 155th Massachusetts.

In this latter case, the Courts say, upon the same proposition, "the use of the money of taxpayers for such a purpose would not be a public use, but a use for a special, pecuniary benefit of those who happened to be affected by the state of the coal market." It is also stated in the opinion that it might be "different were there an absolute famine, caused by impossibilities to obtain a reasonable supply." But this depends upon the absolute impossibility.

Now, was there any possibility here or is there any possibility here of the citizens of Lewiston not being supplied with ice? In all these decisions it does not take into account for a moment the price, but the necessity, because it recognizes that men in business must make money in order to live. It did not recognize the fact of price, but whether you can obtain it or not. If the situation in Lewiston was such that they could not obtain any ice anywhere and that suffering was occasioned by the want of ice, which the senator from Knox has stated, then there would be a necessity for it and the necessity and the impossibility of it—the absolute impossibility as they say—must combine in order for that to be a necessity.

They are not restrained. They can get ice. The fact is they can go about a mile above the dam and cut ice. They can go to Lake Auburn and cut ice, any-

where in the county, in the ponds, and there are a great many of them to cut ice. There is no impossibility about it. They can get ice as this company gets ice, anywhere up and down the river.

The Courts say further:

"There seems to be two legal propositions involved.

"1st. That the Legislature are to determine when an exigency exists, but it is apparent that that exigency means practically an impossibility to obtain the merchandise otherwise.

"2d. It is always a question for the court to decide whether the purpose is a public or a private one."

That there must be an impossibility to obtain this ice, and that such a condition should occur as required in the constitution, and it is always whether it is for a public or private purpose.

Now, they say it is for their own citizens to sell to the inhabitants of Lewiston.

"There is no difference in principle whether we take the property of the individual by eminent domain or by taxation." Whether you take the property of the citizens of Lewiston and build our ice houses and furnish them and buy all the paraphernalia, or whether you take the property of the individual, as it says here, by eminent domain or by taxation. Now we come down to the Maine Reports.

In 58th Maine, 591, upon the same question involving the proposition whether the town of Jay had a right to raise by taxation sums of money to loan to a private enterprise, for the purpose of establishing a grist and lumber mill, the court reasoned that precisely the same way, and held that such a power was unconstitutional. And they said, "To do this would be to impair or take away the inherent and unalienable right of acquiring, possessing and protecting property; to deprive men of their property neither by the judgment of their peers nor by the law of the land; to take private property, not for public but for private uses, without compensation; and to undermine the very foundations upon which all good government rests."

In Allen vs. Jay, 60th Maine, 124, the same question was presented squarely to the court and the opinion drawn by Chief Justice Appleton, quoting from the Iowa case said, "There can be no legitimate

taxation when money to be raised does not go into the public treasury, or is not destined for the use of the government."

Page 138, same case, "If towns can assess and collect money to be again loaned to such persons as a majority may select for such purposes as it may offer, with such security, or without security, as it may elect, property ceases to be protected in its acquisition or enjoyment. Whether the estates of citizens are to be placed in the public treasury for the purpose of dividing them or of loaning them to those who have accumulated them, matters not. In either case the owner is despoiled of his estate and his savings are confiscated."

Page 138. "The constitutional provision which provides for the taking of private property for public purposes, with just compensation and for a public exigency, by necessary implication prohibits the taking of private property for private purposes by legislative action."

Page 142. "The constitution of the State is its paramount and binding law. The acquisition, possession and protection of property are among the chief aims of government."

This is the exhaustive opinion on the proposition involved by Chief Justice Appleton, which discusses not only the provisions of eminent domain but taxation.

Practically the same proposition, that is to say, taking private property for a private purpose, is discussed by Justice Savage in the Supreme Court in the 100th Maine. This was a proposition to condemn by eminent domain the right to carry an electric pole line across private property, the power to be leased to a private individual or corporation.

Mr. President and gentlemen, I have read to you the law as it stands if you are taking the property, or taxing, or however you take it, confiscating the property for the purpose of establishing an ice plant. For what? They say it is to sell to the inhabitants of the city of Lewiston—to sell it and they are to sell it at cost. Now the inhabitants of the city of Lewiston—it is not for municipal purposes, but it is for the purposes of the inhabitants, and any inhabitant in that city could purchase this ice, no matter whether it is for his own use or

to sell again in Auburn, or somewhere else.

Now, let's read the first section of this law.

"The city of Lewiston is hereby authorized and empowered to cut and take ice from the Androscoggin river and from Lake Auburn, or any pond in Androscoggin county, and sell said ice to the inhabitants of said Lewiston at cost."

They say, "sell at cost." They shall trade ice. It is a matter of commerce here. That is what they ask for, to sell to the inhabitants.

Mr. STAPLES of Knox: Will the Senator allow me to ask him a question. You are quoting the 155th, Mass.?

Mr. HAMILTON: Yes.

Mr. STAPLES: That was the reference to coal and wood?

Mr. HAMILTON: Yes.

Mr. STAPLES: Will you read to this Senate the two dissenting opinions upon that proposition?

Mr. HAMILTON: I read the decision of the court.

Mr. STAPLES: There are two dissenting opinions on that matter.

Mr. HAMILTON: You will find time to read that when I get through.

Now, they ask the privilege of selling it without financial profit.

"Said city of Lewiston is hereby given and granted all shore rights, privileges and easements in, upon, and about said Androscoggin river, Lake Auburn, and other ponds in said Androscoggin county, necessary to cut said ice in said Androscoggin river, Lake Auburn and other ponds in Androscoggin county, and to take the same therefrom and store it in suitable ice houses at or near the shore of said Androscoggin river, Lake Auburn, and the other ponds of Androscoggin county aforesaid. Said city of Lewiston is hereby authorized and empowered to acquire by purchase any land at or near the shore of said Androscoggin river, Lake Auburn, and other ponds in said Androscoggin county from which it may decide to cut and take ice as aforesaid."

They do not ask to take ice in Lewiston, but they ask for all the ponds in Androscoggin county. They ask for Lake Auburn. Anybody can take ice from Lake Auburn, but they ask to take it

from all the ponds in Androscoggin county and sell it to the citizens of Lewiston at cost—but to sell it. That is what they ask here in this bill; and they ask for a roving license, a roving bill that will take in every pond in Androscoggin county and that will take in the Androscoggin river.

Opposite Lewiston there are three ice houses and by this bill they can take all of the ice that is on the side where Auburn is—they can cut Auburn out from having ice from the river, if they obtain as they request here, the shore rights on the Auburn side, which this bill asks that they shall have the right and privilege to do. Is that right, gentlemen? Is that an equitable proposition, provided it was a legal proposition? I submit to you that, if that company should have the right to all of those ponds and the river opposite in Auburn, to cut them out from ice, if they can take this land which they say they can, or which they ask the right to take under this bill to sell to the inhabitants of Lewiston, that is not entering into a trade. They don't ask to enter in. They don't ask the right to sell as a city to the citizens of Lewiston; no matter whether they sell at cost or less than cost, it is to sell to the citizens of Lewiston. That is just what they ask. I ask you, gentlemen, if you think it is right and equitable and proper to grant to them such a request as they make here. I read from the bill. It is a matter of law, and everyone knows, that anyone who owns the shore rights, owns the ice to the middle of the stream as a matter of commerce. Now, if they can acquire the shore rights, and this bill asks that they shall have authority to take them, and I will read it to you, then they have the ice up and down the river on both sides to the middle of the stream. At Auburn Lake it does not make any odds whether they have that right or not. They have it now, as anybody has who goes on and stakes it out, the same as you do the river here, which is navigable, or any floating river—the ice belongs to the owner of the soil to the middle of the stream. I forgot to state, and I will state it now, that the Wilson Ice Company, one of the companies they bought out, leased to the Franklin Company that right, paying some eight hundred dollars per year for the right to take ice on the Andros-

coggin River. Probably it was the best place, no doubt, and they paid for it, and the Franklin Company had the right to let it and it was a vested right. They purchased it or had a lease of it, and when this company came in, they purchased the lease which the Wilson Company had.

Now, how are they going to take this land.

"The board of water commissioners of said city of Lewiston may enter upon any land along the shore of said Androscoggin river, Lake Auburn, or any other pond in Androscoggin county, from which it may cut and take ice under this chapter, for locating the necessary ice houses or other structures, doing no unnecessary damage, and said city of Lewiston may take and hold the quantity of land together with the shore rights, privileges and easements appurtenant thereto, necessary in the opinion of said water commissioners for the purpose of constructing ice houses and other structures necessary to carry out the purpose of this act; and within thirty days after determining the quantity of land and the boundaries thereof to be taken and held, said city of Lewiston shall file in the registry of deeds for the county of Androscoggin, notice of said taking, together with plans and descriptions of said land."

The water commissioners of said Lewiston are the sole judges of the taking of this land. They can take land anywhere if this bill prevails, up and down the Androscoggin or on the shores of any of these ponds. There is no limit to this bill; and they can file in the registry of deeds this land that is taken; and that is what this bill asks for. There is no appeal from the commissioners at all—no exceptions made—they can take any industry they please up and down the river and on the shores of these ponds—take any house they please—they can take all that with no appeal to anyone as to what they shall take or where they shall take it, or how they shall take it, but they do no unnecessary damage. It may be necessary in their minds to take down a mill or a house, in order that they might build.

Gentlemen of the Senate, are you willing—are you justified—in granting to this

company such enormous rights as they ask for here in this bill. Now they did say:

"For which it is taken, signed by the aforesaid water commissioners, and after filing said plans and descriptions and purposes, may enter upon, take and hold the land and rights appurtenant thereto included in said description for the purposes designated therein, and may use any portion of the land so taken and held in the erection of such ice houses or other structures as may be necessary for the purpose herein contemplated, the damages therefor to be assessed as hereinafter provided, and whenever said city of Lewiston shall, under the provisions of this act, cut and take ice from any of the sources herein named, it shall file in the registry of deeds of said county of Androscoggin, a notice of said taking, describing the bounds and location of said land and a general description of the ice houses or other structures to be built thereon."

That is, they can take this land, they can file the boundaries in the registry of deeds, and that carries the right to the center of the stream or the river to the ice—they can take any lands up and down the river and, when they get ready to use it, can build structures; and then comes in the question of damage.

"The city of Lewiston shall be liable for the damages sustained by any persons or corporations in their property by the taking of any land for the building of ice houses or other structures as aforesaid in carrying out the purpose of this act, and shall be liable for damages for any land taken under the provisions of this act.

Should said city of Lewiston be unable to agree upon the price of said land or the damages to be paid by reason of taking and holding land as aforesaid, with any person or corporation claiming damages by reason of taking of said land under the provisions of this act, any such person or corporation or said city of Lewiston may, within twelve months after the filing of said notices, plans and descriptions, apply to the commissioners of the county of Androscoggin, who shall cause such damages to be assessed in the same manner and under the same restrictions, con-

ditions, limitations and rights of appeal, as are by law prescribed in the case of damages for the laying out of highways, so far as such law is consistent with the provisions of this act."

MR. STAPLES: After you have read the bill, will you read the amendment.

MR. HAMILTON: This bill was not printed and I took a copy of it yesterday; and I thought I remembered it correctly.

"In the event of the city of Lewiston engaging in the harvesting of ice under the provisions of this act, it shall first purchase so much of the property of the Lake Auburn Crystal Ice Company as is in the city of Lewiston."

They own three houses in Auburn, and they shall divide that company, they shall divide its business. Is that right? They shall take one house in Lewiston, and, in the city of Auburn, where they have three houses, those they need not take provided that the same be sold by said company to said city at a reasonable price; "and if the city and the ice company cannot agree as to the price then the same shall be referred to three appraisers chosen as follows, to wit: one by the city of Lewiston, one by the Lake Auburn Crystal Ice Company and the third to be selected by these two appraisers so chosen, and in the event of their failure to agree then the third appraiser shall be appointed by the chief justice of the supreme judicial court on the petition of either the ice company or the city of Lewiston. The award of these appraisers shall be submitted to the voters of the city of Lewiston at a legally called election within two months after the same is made and in the event of its acceptance by a majority of the voters so voting at said election the city of Lewiston shall take possession of the property so awarded and make payment therefor.

This act shall take effect whenever the city of Lewiston shall, by a majority vote of the legal voters so voting in said city adopt it, at any special or general election."

You will notice they can take all the property of the Crystal Ice Company on the Lewiston side, but not on the Auburn side. They can take and hold it. And you will notice that the senator when he spoke about it said that they

didn't want to go into the ice business, that they only wanted to hold this as a club over the head of this company so that they could get cheap ice. That is all they wanted it for. They wanted to strangle its business, to control its business.

He says the company would not open their books to show what they had made. They didn't propose to open their books to the public, but they would have shown any gentleman their standing. They had put in \$50,000 or \$100,000 and it appeared that they owed 50,000 of bonds which are in the banks of Lewiston, and the notes were held there and they were trying as business men, as enterprising young men, as they had a right to do, to pay those notes and to own the companies and to accumulate property.

If they do take this, you understand they can tax this same property for the purposes of entering into competition with them or for the purposes of buying their own property. That is what they can do under this bill. They can use their own money to ruin them. I submit to the senators here whether or not they are willing to vote for such a monstrous proposition as that.

According to Section 5 they shall vote whether they shall pay this company a certain amount. If they vote no, then they can take it under a former clause in this bill; and, if they vote yes, then they can pay them that. So that it leaves them two opportunities.

This is not a printed bill, but I have read it over to you gentlemen, and I wish you would carefully consider the provisions of it and throw away all the law which prohibits this and, as business men, vote upon it. It is purely and simply a communistic principle put up before this Legislature. It is one of the most dangerous things that has come before this Senate and House since it first began its session—whether a city can step in and go into the ice business and can build an ice house and peddle it in the streets of the city of Lewiston and sell it there as a matter of commerce. Is it a wise policy? You are to say whether it is not in competition of business and of trade such as would ruin them. And I say that if such a policy as that obtains in this State, we

shall all be so poor that we can shave ourselves with our own shin-bones.

They are to sell ice at cost. How are they to determine it? They start out in selling ice. They have got to sell it in the street. They sell it at the house at so much per month. How can they tell until they have got through, as they pass through the streets from store to store, whether they are selling at cost or not. How can they tell what their losses are until the thing is all through. Then if they fail to get enough, the taxpayers must pay and make up for that loss. It comes right back to the taxpayers.

I have taken more time than I intended to. I was not feeling well, but I call your attention to the facts of the case.

I want to say one other thing: That eminent gentleman appeared here both for and against the bill. No man that appeared here for it, disputed the law—not a single man. The mayor and attorney who appeared for the people, as he says, did not dispute the law, but they said that there was a necessity for it. They did not dispute the law that they had no right to enter into commerce and to trade, but they said it was a necessity, and that they wanted this, not for the purposes of peddling ice, of cutting ice, but for restraint upon these men who were in the ice business.

When any of the citizens of Lewiston could go into the ice business and get up a competition in that enterprise—a competition is essential to trade—the enterprising and progressive city of Lewiston do not want anything that will interfere with trade or with the enterprise of its citizens. Trade is built up in that way. It is built up by men who are ambitious for gain.

If this measure obtains, another measure may come in here to sell groceries and you may have another petition to sell dry-goods, and to sell anything. Everybody wants to get everything at cost, and, if this principle prevails, your industries in the city of Lewiston will be blotted out, your mills will be shut down and human effort will be crushed; the grass will grow in your streets where now there is activity and enterprise; and the wheel that turns, that

drives the spindle and the cards and the shuttle, will be silent.

I submit to you, Mr. President and members of the Senate, will you vote for such a proposition as that. Thanking you for taking so long a time, I leave the matter with you.

The PRESIDENT: The matter under discussion is the bill to authorize the city of Lewiston to take ice from the Androscoggin river, Lake Auburn and other ponds in Androscoggin county, and sell the same at cost to its inhabitants. Upon this matter two reports are presented, the majority report "ought not to pass" and the minority report "ought to pass." The House has voted to substitute the minority report for the majority report, and the pending question is upon the motion of the senator from Knox, Mr. Staples, to substitute the minority for the majority report in concurrence.

Mr. LOONEY of Cumberland: Mr. President: This question has been so well and so ably discussed by the senator from Knox in favor of the bill and by the senator from York against the bill, that there is very little to be said.

As I understand the situation, it is practically this. The bill came into the House on a divided report from the committee on legal affairs; eight of the committee reported ought not to pass, and two of the committee reported ought to pass. The House substituted the minority report for the majority by a vote of 76 to 55. The question is now before the Senate as to whether the Senate will concur with the action of the House.

The facts of the case, as I understand them and as they were brought out before the committee on legal affairs and in the discussion in the House and in the Senate, are substantially these. There were two of the companies furnishing ice to the citizens of Lewiston. One received its ice from Lake Auburn and the other from the Androscoggin river. I believe it is admitted by all parties that the company owns and controls the sections—that is, the section of Lake Auburn and the section of the Androscoggin river—from which ice was obtained by these two companies, as a monopoly of the ice furnished to the people of Lewiston. One of these companies, the Auburn company, bought out

the Lewiston company, and that company, the consolidated company, has been furnishing ice to the people of Lewiston for a year. I understand also that it shows that, while the property of the Androscoggin company was assessed at \$19,000, the consolidated company paid for that property some \$87,500. Of course, they expect that the people of Lewiston will pay dividends on this enormously watered stock.

Now, I understand also that, since the consolidated company has been furnishing ice to the city of Lewiston, the price of ice has gone up nearly one hundred per cent. beyond what it was before the consolidation took place, and that a further rise in the price of ice was about to be made when the people, irrespective of party, irrespective of race and irrespective of religion, practically unanimously appealed to this Legislature for relief. That prayer for relief is in the form of the bill before us.

Now this bill substantially provides for this: That, if this Legislature enacts this bill, it shall go before the people of Lewiston and, if a majority vote decides in favor of the bill, then the appraisal shall be made and the appraisers shall consist of three persons, one selected by the Consolidated Ice Company, one selected by the people of Lewiston, and the other by the supreme court. These three appraisers are to appraise the property.

Now to listen to the diatribe of my friend from York, one would believe that the people of Lewiston were a set of freebooters, thieves and robbers, and that they were trying to confiscate this property here. The contrary is the fact. The provisions of this bill are exactly the same as the provisions of all the water districts which have been formed in this State, and I cannot conceive of a fairer or more just, more equitable and more honorable tribunal, or a more equitable and more fairly assessed value of this property than the tribunal provided for in this act will give. So that, instead of this being a movement to confiscate this property, it is one of the fairest and most equitable propositions ever made. It is a proposition which I cannot see how any fair minded and honorable man can object to; and the fact, that this consolidated monopoly ob-

jects to a tribunal like this, speaks volumes for the means and methods which they employed for the purpose of securing this monopoly.

From these facts, as I have stated them to you and as I understand them, I have concluded that it is my conscientious duty to favor the substitution of this minority report for the majority report; and I am satisfied from the evidence before me, as I have studied it, that this consolidated company has a heartless and merciless monopoly; and that evidently is the opinion of the people of Lewiston, as I said, irrespective of race or party. And, the fact that such conservative, careful and learned scholars, as almost the entire faculty of Bates College and the clergymen of Lewiston, irrespective of religion, have signed this petition and have joined in this appeal, is proof positive to me that there is much more merit in this proposition than my friend from York would have you understand.

As I understand it, broadly considered, there was but one argument worthy of the name that was brought, or that was adduced, before the committee on legal affairs. That argument was that this bill is unconstitutional. Now, in all matters of this kind, my position is this: When I am told that a bill is unconstitutional, of course I vote against it, but when I am satisfied after investigation that a bill is constitutional or that there are serious doubts as to whether it is unconstitutional, then, if the bill appears to me right and equitable, and squares with my sense of justice, I vote for it, as I shall vote for this bill. I am one of those who believe that the constitution, especially where the rights and the welfare of the people are concerned, should be liberally, and not strictly, construed. I believe that the Constitution was made for the people, and not the people for the Constitution. And I know, as a student of history, that every great measure for the benefit and alleviation of mankind, every measure to put an end to special privilege and monopoly, every measure to more equitably distribute the blessings of mankind, has urged against it the specious argument of unconstitutionality. Every student of history knows that this same argument was brought against

the federal government when, with mailed hand, it put down the Rebellion calculated to put an end to the nation's life—that it was brought against the legal tender act, which was absolutely essential to bring the war to a successful end—that it was brought against the recent act of the federal government to regulate the rates of the railroad—that it has been brought against every measure which has been proposed by the late great President, and which has made his late administration immortal, for the purpose of regulating the actions of those great public service corporations and teaching them that they are the servants and not the masters of the people.

I have read with a great deal of carefulness the opinion of the judges which was read by the Senator from Knox, taken from the 150th Massachusetts Report, Page 592, and, having recently been connected with the great case of the Portland Water District and having given what I hope was a conscientious, and perhaps not unintelligent, study to the constitutional features of all those kindred questions—of course, my opinion is not worth much—it is my deliberate opinion that this measure is constitutional, and certainly I am not afraid to submit this question to the supreme court of Maine.

So, Gentlemen of the Senate, because I believe that we should listen to the appeal from the second city of this State, from some 30,000 people, from one of the great municipalities of this State, and because I am opposed to monopoly, and because I am opposed to special privileges, and because I believe in the rights of the people, therefore, I shall vote for this bill.

Mr. WARREN of Cumberland: Mr. President: It takes some presumption on my part to take a hand in this question which has thus far been discussed by legal gentlemen and mostly from a legal standpoint. But, I would like to say a word in regard to it from another standpoint.

I myself believe in municipal ownership. I like to see a municipality do anything that it can do better or as well as individuals or companies can do. I have no prejudice against htis. If I thought that Lewiston had a legal

right to go into this matter and thought it was for their interest to do it, I should vote for the minority report. I do not believe, however, that this company, which has been organized and has been supplying them with ice, is a grasping monopoly to the extent of making it necessary to get rid of them. You may call it a monopoly. It is a combination, and a combination makes for economy, as we all know. A monopoly seems to be rather a bad word, and we are apt to think that a monopoly must be grasping while the party who has a right and is without competition in any city can sell cheaper if they will, than one that has competition. I have seen no evidence as yet to show that this company has taken advantage of the situation, or that they are charging unreasonable prices. I do not think that ice is a necessity to an extent that would warrant the municipality in going into the business if they can get ice in any other way. And yet, if I believed that this was a monopoly and that they were extortionate, that they were wronging the people to the extent that our friend, the Senator from Knox, would try to make us think they are, I would go into it and take the risk of what would come of it. But, that does not seem to me to be the case.

I only wish to speak to you of how I think it will work for the city of Lewiston. I believe the city of Lewiston is amply able to take care of itself in most matters as well as any of the people in any of the cities and towns that we have, and that they are neither better nor worse than the average people of the State of Maine, and that it is perfectly right and fair to trust them ordinarily, but sometimes you know there will be a certain interest in a matter and the enthusiasm or furor of the people will carry them away for the time against their better judgment.

We know how easy it is to get signers to a petition and with how little thought people sign a petition; and it is very easy to see that that petition may not represent fully the best public sentiment of the city of Lewiston deliberately expressed. But I only want to say a word as to how it seems to me that it will work.

In the first place, the bill provides that the ice shall be sold at cost. Now, what is its cost. The people will expect to get ice very cheap. It is said that they are to take it near the cost and the town is to put it into the ice house. We all know there is a vast difference between the apparent cost and the real cost in any of the things that we have to do. Now, the people will expect to get this ice at the apparent cost—that is, what it costs to get it—and some will think they ought not to add any cost for the plant and for depreciation or repairs. Then, granting they will do this, they say that they want this ice at what it costs, packed and distributed, and they will demand it pretty sharply, too, and the chances are they will undertake to sell it at that price. In this State the delivery of this ice will employ quite a large number of men and that for only part of a year. Now the men that you can get for that part of the year are not so good men usually and not so much to be trusted as the men who have work steadily the year around. A good man gets an all-the-year-round job and you have to take men of a somewhat different class. I do not think that the case with all of them, but yet, you have to take your chances of getting these men, and there will be a chance of favoritism and of political preference in getting these men and you cannot very well organize a commission to look after three policemen as in Westbrook perhaps. It will have to be done in an offhand way and it would be very difficult for whoever has charge of this to avoid the charge of favoritism.

Again a good deal of the ice is paid for on the spot, men of Lewiston are no better or worse than other men, and there would be a loss by the money not getting into the treasury that was paid to these men and they would have to avoid that as much as possible. And there is something beyond that. It would be the first thing, that everybody would buy under the circumstances or as soon as the city goes into it. And for the sake of furnishing all of them ice as cheap as they can, they would all take ice in larger amounts than before. It is the first thing they will buy, and it will be the last they will pay for. You

will find it would be a great loss. It is a debt due the city and they can wait. The consumer says I will pay for it when I can, and a man who will pay a bill when he can, never can do it, because there are other bills to pay first. We know how hard it is to pay a poll tax. You may say this does not differ from a water bill, but it does. A water bill is constant, it is the same all the year round and if you shut it off, you shut off a necessity, but if you shut off the ice, you do not shut off a necessity. They will squeeze along without it and get along the rest of the season without it. You cannot get along without water and you must pay your bill to have it turned on again. It is ordinarily true, and in fact I do not know but it is universally true, that a bill for water rests against the property, and it is as easy to collect it as a real estate tax.

Now, all I have to say is this: That, if the citizens of Lewiston asked me about this matter candidly, my advice would be not to go into it, but to wait a while, and so long as I am a member of the Senate and the matter comes to us for a decision, I have a right to embody that advice in my vote, and I shall vote for the majority report of the committee. I say again that the large majority which this report had confirmed the presumption in its favor. A vote the other way, of course, forms a presumption the other way, but I do not believe the House was in a condition to weigh the thing as carefully as were the committee before whom it went and had a full hearing and who have given us their report.

Mr. HAMILTON of York: Mr. President: I want to say one word. There is no consolidation of these two companies. I stated that six young business men bought the two companies and those six men run it. They bought the ice houses on the Auburn side and ice houses on the Lewiston side, and the assumption comes in that the price paid was for the Auburn houses, for the Lewiston houses, and for the tools, horses, carriages and wagons—the privileges outside of both of the towns. It was not a consolidation. They floated a debt and are trying to pay it and there is no monopoly about it.

Mr. LOONEY of Cumberland: Mr. President: I would like to ask the Senator from York through the Chair a question. I ask simply for information whether it is true that the company refused to allow the committee on legal affairs an opportunity to examine its books in order that the committee might ascertain what profits were made by the company.

Mr. HAMILTON: I am going to state, Mr. President, for the Senator from Cumberland that we never asked for an examination of the books, neither was it before the committee how much they paid for ice when the two companies were running or what they are paying now.

Mr. LOONEY: One reason why I asked this question was this: That two years ago when the Portland Water District bill was before the Committee on Judiciary, the Portland Water Company refused to open its books to the Committee and the Committee peremptorily ordered the Company to produce its books and adjourned for ten days in order that the Company might produce the books. So it seems strange to me from the statements of the Senator from Knox that this Company refused. If what he says is true, they refused to allow this Committee to examine their books. That to me speaks volumes and seems to me to be an insult, not only to the Committee, but to the Legislature.

Mr. STAPLES of Knox: The statement of the Senator from Cumberland, Mr. Looney, is correct. In this very chamber, that committee which controls the ice company in the city of Lewiston, sat in these seats, and the question before the Committee, of which my friend, the Senator from York, was chairman, was asked these gentlemen, how much profit they made last year upon their ice, and their attorney told them not to answer. That is known to every member of the committee.

I do not expect, Mr. Chairman, any capitalist to vote for this bill; a wealthy man cannot appreciate the wants of a common man for this great commodity. I care not to discuss this thing any further. I have done my duty to the citizens of Lewiston and the 30,000 people of that city who are looking to us to—

night to see how we shall vote upon this matter.

I want to say that there have been on this floor and in the lobbies, for this company, the most gigantic lobby that has been here this winter, working against the people of Lewiston.

As I apprehend the discussion is nearly over, I ask that when the vote is taken, it be by a yea and nay vote.

Mr. HAMILTON of York: Mr. President: In reference to this matter, I said that we examined this very carefully, and I say now that the gentleman from Knox agreed with me on every proposition, and he has so stated in his speech tonight, until this amendment was put in.

I was asked by someone how much they made last year, and that was all there was said about it. Afterwards they offered to show their books, and they said it did not matter anything whether they made one dollar or two dollars, that that was not the question, and that is the way the matter stands.

I certainly have no interest in this matter but to do right to the people of the State; and, I repeat, it is establishing a bad precedent. It is simply a communism, and it is nothing more or less. We are running up against that too often. There has got to be a limit somewhere, for vested rights are in danger.

The question being put upon the motion to substitute the minority report "ought to pass" for the majority report "ought not to pass," in concurrence, the yeas and nays were called for and ordered, and the vote being had resulted as follows: Those voting yea were Messrs. Boynton, Donigan, Hill, Looney, Lowe, Mullen, Shaw, Staples (8). Those voting nay were Messrs. Baxter, Colcord, Emery, Gowell, Hamilton, Hastings, Milliken, Minott, Reynolds, Smith, Theriault, Walker, Warren, Wyman (14).

Mr. Macomber of Kennebec stated that he was paired with Senator Wheeler of Cumberland and that had Senator Wheeler been present he would have voted "no" and that he, Mr. Macomber, would have voted "yes."

So the motion was lost.

Thereupon, on motion by Mr. Hamilton of York, the majority report was accepted.

The President announced as a conference committee on the part of the Senate upon House Document No. 384, "An Act to extend the open season on deer in the towns of Unity and Burnham, in the county of Waldo," Senators Knowlton of Piscataquis, Colcord of Waldo and Reynolds of Kennebec.

On motion by Mr. Smith of York, House Document No. 645, "Resolve in favor of DeForrest Keyes," was taken from the table.

The resolve took its first reading.

Pending the second reading of the Resolve, Mr. Milliken of Aroostook presented Senate Amendment A and moved its adoption.

Mr. HASTINGS of Oxford: Mr. President: I certainly trust that the Senate will not adopt the amendment. It is perfectly evident from reading the amendment what the purpose of the amendment is. I think I am entitled to say, with all fairness, that it is an indirect attempt to kill this resolve. The judiciary committee, having this matter in charge, of which I am a member, were a unit upon this proposition, that it was not advisable to refer this to the court. They took this matter up and discussed it carefully. There was not a man on that committee who thought it should be done. It was a cruel, unjust subterfuge. It subjects this man to great additional expense for the purpose of getting this claim before the court.

Now this, gentlemen, is not a legal question. I am willing to admit fairly and squarely that this is a moral question. It is a greater question than a legal question. It is founded upon a more enduring foundation. The State of Maine simply has \$18,000 of this young man's money in the treasury, for which it has not given one cent in return. Now, gentlemen, if we are going to kill this resolve, let's kill it fairly and squarely. I ask the Legislature to stand by this committee in refusing to adopt this amendment. Let's either pass this resolve or refuse it a passage. Let's not pass this amendment and let's not force this man from a distant state who came

here in good faith upon the invitation of the treasurer of this State and invested his whole fortune, into court—a young man who had, barely at the age of 23, invested every cent of property which had come to him when he had reached his majority, and had done it in good faith. Now it strikes me that this is an unfair way of disposing of this proposition. I ask the judgment of the Senate upon it.

Mr. MILLIKEN of Aroostook: Mr. President: The farthest thing from my intention in offering this amendment was to attempt anything unfair to Mr. Keyes. The evidence is this, as I understand it. In the first instance Mr. Keyes' grievance and his reason for coming before this general court and asking for the passage of a resolve for his relief, is the fact, and the fact alone, that he is without standing in the courts as against the State. If Mr. Keyes had been defrauded or had had a gold brick sold to him, or anything of that sort, by an individual, his remedy is through the courts, which are open to him. From the fact that in this instance the party was the State, he has no standing in the courts and that is the first reason for the presence of Mr. Keyes before this Legislature.

Now, one reason I say for this amendment is, that the adoption of the amendment will settle this case. It goes to the court sitting as a court in equity, and the court examines fully into the facts and decides whether in equity Mr. Keyes is entitled to anything from this State, and if he is entitled to anything, there is no question but what he is entitled to the money that he paid, with interest and counsel fees; he is entitled to more than this resolve gives him. The question, if it gets there, will be settled, and, if we vote upon it either way, it will not be settled.

If we vote to give him this money, it will not be finally settled in my judgment, because, although the resolve bars him against any legal claim against the State, there is nothing to prevent him from coming again before the State and asking for his expenses. If we do not vote to give him the money and if we turn down the resolve, it does not settle the question. It simply means that he

will come here again at some other session and ask for it again.

The next reason for offering this amendment is that, as I see it, the members of this Senate and the members of the House, neither of them, are competent to say just what the rights of this DeForest Keyes are on this matter. When we vote upon it, most of us, we shall vote, as I undertake to say most of the members of the House did, with the notion that we should be fair to the State, that if the State has any of his money we should give it back, and possibly, also, with the notion that some friend of ours here in the lobby is going to get a contingent fee if the resolve goes through. I want to say that to my mind, the way in which this resolve has been urged precludes the Legislature from giving absolutely fair judgment even if we understood the merits fully. There are lawyers who have been here in this lobby from nearly every county in the State who are interested in this matter. I keep finding new lawyers interested in it that I did not know before were interested, and of course, members of the House from their sections, knowing they are likely to get a contingent fee if the resolve goes through, have an interest in voting which they would not otherwise have.

In the first instance then, we are not fully competent to say what the rights of Mr. Keyes are, and in the second place, we are likely to be prejudiced by the fact that friends of ours have a direct interest in the passage of the resolve.

What does this mean if it is left to the court. It means simply this, that in the cold, clear and calm light of the jury chamber, this question of Mr. Keyes' equitable rights shall be determined and, if he has rights against the State, and, if the State has defrauded or taken any of his money without giving him an equivalent, if the State has sold him a gold brick or anything of that kind, we may safely trust the court to give him back his money.

There is another very urgent reason, it seems to me, for the adoption of this amendment—

Mr. STAPLES of Knox: Can you tell this Senate of any earthly way in which

this man can go to the court and sue the State of Maine?

MR. MILLIKEN: Under the act proposed.

The next reason for the adoption of the amendment is the question of precedent. We all know just how these legislative precedents come about. They are different from precedents in court, and I undertake to say that if this resolve is passed giving to Mr. Keyes his money for the purchase of titles which he purchased, that these other cases, however many there may be—and I understand there are over two hundred with varying degrees of merit—men who have bought titles and who have realized and some who have not—all of these cases will come here undoubtedly and this will be a precedent for giving them what they ask irrespective of the merits of the particular cases. Now if we pass the amendment and allow Mr. Keyes to argue the case before the court sitting in equity, instead of establishing that dangerous legislative precedent, and instead of laying ourselves open to the passage of similar resolves, whether meritorious or not, we have established the precedent of giving them the same right that we give Mr. Keyes. I admit, and all admit, that if the State has defrauded anybody, we ought to refund. One man has said that if the men of Maine are unclean, we should wash them. But there is a vast difference between opening a way, as I submit this amendment would open it for Mr. Keyes to his money refunded if he was defrauded, and a simple act of sympathy in voting to give him this money, and thereby saying to everybody who has bought tax titles, whether knowingly or not, whether understandingly or not—no matter whether he has realized that he is gambling or not—that we will refund him also. I can see nothing unfair to Mr. Keyes in this amendment unless we are going to say that we cannot trust the court to say what the equities of this matter are.

MR. HASTINGS of Oxford: Mr. President: I will say that the sub-committee on the committee on judiciary went carefully into this matter of precedent. Since 1854, the total amount of tax title sales that can possibly come before the

Legislature does not exceed \$32,000; in the last 20 years the total amount does not exceed \$12,000; and it is fair to say that not more than 50 per cent. of this would ever appear before the Legislature, or \$6,000. This matter has been carefully gone over with the State treasurer by the sub-committee and there is no question about that. If the State has taken the money of two hundred other individuals and given nothing in return, the State ought to take it back and let the case stand upon its own footing and merits.

The committee and I deprecate the statement of the senator from Aroostook, Mr. Milliken, of the presence of a lobby in the capital, but we cannot help it. It has not anything whatever to do with the merits of this case. It does not clear the honor of the State of Maine and it is only the State of Maine that is here involved. And I say it has had this money too long already and should wash its hands of it now. This is the general court and we can decide great moral matters as well as a court in equity.

MR. WYMAN of Washington: Mr. President: This resolve calls for \$18,166.03. It does not seem to me, Mr. President, that we should decide this case wholly upon the report of the present judiciary committee. This DeForest Keyes came before the judiciary committee in 1905. Mr. Allen of York, Mr. Clark of Hancock and Mr. Potter of Cumberland were on that committee. They heard the case thoroughly, as it was the first time it came before the Legislature, and they decided, the whole committee unanimously, that it had no merit and ought to be turned down. In 1907, it came again before the committee on judiciary. From the Senate there were on the committee, Messrs. Putnam of Aroostook, Deasy of Hancock, our President, and Hastings of Oxford. What did they say to it? They did not consider that there was enough merit in this case to pass it, or even to vote upon it, and they submitted it to this Legislature, which is the present Legislature.

Now we have heard the present senators who have heard this case. It had been threshed out in two committees before, and no one who was opposed to

the bill thought it possible that this committee could report favorably on this case, and they have not unanimously, as I understand. Two of the committee hesitated and did not send in a report.

Now, what were the facts in evidence before this committee in the way of new evidence. There was not one thing as far as I can learn. It did come before the committee that this DeForest Keyes came from New York down here and invested some money. He went to the treasurer of the State, Mr. Smith, and he talked with the secretary, Mr. Wiswell, and they both told him that the titles were doubtful, that he might get something out of it and that he might not, but they would advise him not to invest. He said that his father had been in this business for ten years before and he was determined to buy in these tax deeds, which he did. At this present hearing, the question was put to him if he was not advised by these gentlemen not to buy these tax deeds, and he said he could not remember whether he was or not, that he had forgotten.

The senator said that he was invited here, but his coming here was through reading an advertisement in the paper. I myself was tempted to buy some of these tracts, and I hold in my own name a deed for 1034 acres. What is the duty of a man who is buying real estate, or who is purchasing anything? His first duty is to learn whether or not he has a title. It is just as much his duty to do that as to pay his money. I had a little experience myself, that if you have a homestead and are paying insurance for a number of years and it happens to burn, and the title of that homestead has been carelessly placed, although the risk has not been increased, the insurance company will not pay the insurance on the building. If you change your co-partners and do not notify the insurance company, although the risk has not been changed, they will ask you a once if you have read your policy and will say that they are not a charitable institution. The same thing applies to this matter. Mr. Keyes read his policy, it was his duty to read it. Did he read it immediately? No, he did not; he waited three years to see whether his invest-

ments would pan out 500 per cent. on the dollar, and when he found out it possibly would not pan out, he comes to the State and asks it to reimburse him.

As far as the moral question is concerned here. We appropriate money for the people, and the people expect us to appropriate it in a business way. We are not to let charity enter into this appropriation of money. We are not a charitable institution, as the insurance companies say. He bought 166,000 acres of land and the whole of it cost about 11 cents on the average per acre. Now he could not have thought that 166,000 acres of land at 11 cents per acre was going to give him an absolutely clear title. He knew that there was doubt about the title. And further than this, in what few deeds I bought I expected to invest more money in it, but found the title was not clear. I did invest more, it is true, but I am not coming to the State and crying for it. I received back 50 per cent. for what I bought. Is there any way to tell how much Mr. Keyes received back. He says he received back so much, but I do not understand that this committee know or that we know how much he did receive back. So you can only come to this conclusion, that he gambled to win. He comes back twice and gets no encouragement, and finally, he says to the gentlemen who have been fighting the case, take this and get what you can out of it; and judging from the appearance of these things about this Legislature, I will say that they are likely to take \$18,166 and give Mr. Keyes the 66 cents.

Mr. HASTINGS of Oxford: Mr. President: I want to say for the information of the Senate that the other members of the judiciary committee signed this report. Mr. Davis was absent, although favorable to the report from the beginning. Wing did not take part in the discussion, his father being of counsel. Mr. Montgomery simply did not sign the report, but simply took a neutral attitude.

The senator from Washington has lectured on gambling here on the part of Mr. Keyes. It takes two to gamble. One man cannot get very poor in gambling. There certainly was not any gambling

on the part of the State of Maine. The State of Maine had a sure thing; it was simply putting out these gold bricks, and the officials of this State were absolutely certain that not one parcel of the land in those 313 deeds could be found on the face of this green earth. It is an absolute fact that this young man had every reason to think that these descriptions described land which he could find on the face of the earth, and he, of course, supposed the land was in existence, and the supreme court of this State has said for the last 50 years that these tax title deeds were not worth the paper upon which they were written; that they were absolutely void and of no value. The State was not speculating; it was a sure thing for the State. Every dollar was paid into the State treasury and it was so much velvet. Do not understand me as reflecting upon the treasurer of this State. I believe implicitly in what he says. It is true that he did warn Mr. Keyes, told him that the State did not stand behind tax titles, and I believe he did his whole duty and nothing but his duty. But this Mr. Keyes had great confidence in this great State of Maine and it never dawned upon his intelligence that we were selling him 313 parcels of land, not one of which could be found upon the face of the earth, which is the fact.

Mr. WYMAN of Washington: Mr. President: I rather question whether Mr. Keyes did not have a title to act. I know what the supreme court has said, but a township of land contains six square miles or about twenty-three thousand

acres, and it became customary among wild land owners to say, where they were paying a considerable tax, "We do not propose to pay a tax on what swamp there is in this township." Now, instead of paying on twenty-three thousand acres, they say here is about two thousand acres of swamp and we won't pay on that two thousand acres, and so it became shortage in every part of the State as the assessors will tell you. This was what produced the land that Keyes bought.

The question being put upon the motion that Senate Amendment A be adopted, the yeas and nays were called for and ordered, and the vote being had resulted as follows: Those voting yea were Messrs. Boynton, Colcord, Hill, Low, Milliken, Mullen, Shaw, Smith, Walker, Wyman (10). Those voting nay were Messrs. Baxter, Donigan, Emery, Howell, Hamilton, Hastings, Macomber, Minott, Osgood, Reynolds, Staples, Theriault Warren (13).

Senator Knowlton of Piscataquis voting "no" was paired with Senator Howes of Somerset voting "yes;" and Senator Looney of Cumberland voting "no" was paired with Senator Kellogg of Penobscott voting "yes."

So the motion to adopt the amendment was lost.

On motion by Mr. Macomber of Kennebec the resolve thereupon took its two several readings, under suspension of the rules and was passed to be engrossed.

On motion by Mr. Osgood of Androscoggin, the Senate adjourned.