

MAINE STATE LEGISLATURE

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Legislative Record

OF THE

Seventy-Sixth Legislature

OF THE

STATE OF MAINE

1913

HOUSE.

Wednesday, January 15, 1913.

The House met according to adjournment and was called to order by the Speaker.

Prayer by the Rev. Mr. Gibson of Augusta.

Journal of previous session read and approved.

Papers from the Senate disposed of in concurrence.

From the Senate: An act to relieve the town of Southport from the duty of building, repairing or maintaining roads, streets or ways on Capitol Island. (Tabled for printing pending its reference to the committee on Judiciary on motion by Mr. Sanborn of South Portland.)

The following order came from the Senate:

Ordered, the House concurring, that the members of the two branches of the Legislature convene in joint assembly in the Hall of the House of Representatives at twelve o'clock meridian of this 15th day of January, for the purpose of reading the journal of each House relating to the vote for a Senator in Congress for the term beginning on the fourth day of March next, and for such other proceedings in relation to the matter of election of such Senator in Congress as are required by the Constitution and Statutes of the United States. And if the comparison of the journals of the two branches in joint assembly shall disclose the fact that the same person has not received a majority of the votes in each house, and if no person receives a majority of all the votes of the joint assembly,

Ordered, further, that the members of the two branches of the Legislature convene in joint assembly in the Hall of the House of Representatives at twelve o'clock meridian on each succeeding day during the session of the Legislature, and shall take one vote in accordance with the provisions of the Constitution and Statutes of the United States until a Senator is elected.

In the Senate this order received a passage, and in the House the order received a passage in concurrence.

The following bills, petitions, etc.,

were presented and referred:

Judiciary.

By Mr. Durgin of Milo: An Act to extend the charter of the Sebec Power Company.

By Mr. Butler of Farmington: An Act to create the Temple Water District.

By Mr. Skillin of Hallowell: An Act relative to the Municipal Court of the city of Hallowell.

By Mr. Sanborn of South Portland: An Act to legalize the joings of the stockholders of the Aberthaw Construction Company.

By Mr. Durgin of Milo: An Act additional to Chapter 127 of the Revised Statutes in relation to the fraudulent drawing of checks.

By Mr. Dunbar of Jonesport: An Act entitled "An Act to change the burden of proof in certain negligence cases in which contributory negligence is a defense.

Legal Affairs.

By Mr. Cyr of Fort Kent: Remonstrance against granting further franchise to the Fort Kent Electric Company, signed by Henry W. Nadeau and 85 others of Fort Kent.

By Mr. Folsom of Sanford: An Act to amend the charter of the Springvale Aqueduct Company.

Appropriations and Financial Affairs.

By Mr. Hogan of Portland: Resolve in favor of the Maine General Hospital.

By Mr. Boland of Biddeford: Resolve in favor of the Webber Hospital Association of Biddeford. (Tabled for printing pending its reference to the committee on motion by Mr. Boland.)

By Mr. Davis of Oldtown: Resolve in favor of the Oldtown Hospital.

By Mr. Donovan of Lewiston: Resolve in favor of the Lewiston and Auburn Children's Home.

By Mr. Sanborn of South Portland: Resolve in favor of the Children's Protective Society of Portland.

By Mr. Kehoe of Portland: Resolve in favor of St. Elizabeth's Roman Catholic Orphan Asylum of Portland.

Education.

By Mr. Bowler of Bethel: An Act

to provide for the State certification of all teachers of public schools.

By Mr. Newbert of Augusta: An Act to increase the efficiency of the public schools of Maine by retiring teachers of long service with pensions. (Tabled for printing pending its reference to the committee on motion by Mr. Newbert.)

By Mr. Allen of Machias: An Act to amend Section 115 of Chapter 15 of the Revised Statutes relating to the appropriation for the support of the Normal and Training Schools.

By the same gentleman: Resolve in favor of the Washington State Normal School, to provide for the erection of a new dormitory.

By the same gentleman: Resolve in favor of the Washington State Normal School at Machias for permanent improvements, repairs and additional equipment.

By Mr. Folsom of Sanford: Resolve in favor of Nasson Institute for Young Women, with statement of facts,

By Mr. Bass of Wilton: Resolve in favor of Wilton Academy.

Railroads and Expresses.

By Mr. Violette of Van Buren: Petition of Fleurent Sanfacon and 41 others of Grand Isle, in favor of charter to build a railroad bridge between Van Buren and St. Leonard's, New Brunswick.

By Mr. Mitchell of Kittery: Resolve for the protection of trees and shrubs from the introduction and ravages of dangerous insects and diseases.

Interior Waters.

By Mr. O'Connell of Milford: An Act to incorporate the Pleasant River Gulf Improvement Company.

Ways and Bridges.

By Mr. Kehoe of Portland: An Act to authorize Frederick S. Vaill and Julia C. Vaill, their heirs and assigns, to locate, erect and maintain a bridge or roadway across the tidewaters of Casco Bay between Long Island and Marsh Island in the city of Portland.

By Mr. Eastman of Benton: Resolve in aid of repairing highway in the town of Benton, Maine.

By Mr. Thombs of Lincoln: Resolve to provide for repair of road

leading from Staceyville Station to the East Branch of the Penobscot River.

Inland Fisheries and Game.

By Mr. Clark of New Portland: Petition of J. E. Wilson and E. A. Henderson and 15 others, residents and property owners in Jackman and vicinity, asking that Big and Little Turner Ponds, so-called, situated in Forsythe Township, in the county of Somerset, be closed to all fishing except fly fishing, so-called, and that the daily limit to one person be reduced to five pounds.

Sea and Shore Fisheries.

By Mr. Maxwell of Boothbay Harbor: Remonstrance against any change in the present law relating to the lobster industry within two miles of the shore of Monhegan Island.

Towns.

By Mr. Folsom of Sanford: An Act to divide the town of Sanford and incorporate the town of Springvale.

Claims.

By Mr. Connors of Bangor: Resolve in favor of owners of Township 8, Range 4, N. B. P. P.

By Mr. Bass of Wilton: Resolve in favor of the town of Carthage.

State Lands and Forest Preservation.

By Mr. Harman of Stonington: Resolve authorizing sale of Rabbitts Ear and Doliver's Islands.

Taxation.

By Mr. O'Connell of Milford: An Act to amend Chapter 140 of the Public Laws of 1911, relating to the taxation of logs and lumber.

By Mr. Farnham of Bath: An Act relating to certain exemptions for the purpose of giving local option in taxation. (Tabled for printing pending its reference to the committee on motion by Mr. Farnham.)

Orders.

Mr. Marston of Skowhegan presented the following order:

Ordered, that the Justices of the Supreme court are hereby requested to give to the House of Representatives their opinion on the following question, to wit:

Whereas, there is pending in this body a resolve declaring vacant the

seats of four members elected thereto, to wit, William H. Farrar of Ripley, Otis H. Taylor of Topsfield, Horace Mitchell of Kittery and James Mathieson of Rangleley, on the ground that said members are ineligible to hold a seat in this House under the provisions of Article 4, Section 11, of the Constitution of Maine. It appears and is unquestioned that at the time of the election of said members, and at the time of their taking their seats they held the offices of United States post-masters at West Ripley, Topsfield, Kittery Point and Indian Rock respectively. The alleged grounds of the resolve for the unseating of the above named members is that the words "post-officers excepted" in said section of the Constitution, making certain officers ineligible to have a seat in this House, does not include post-masters but refers to officers of military posts, or that it has some other meaning.

The House of Representatives believing and declaring that the question thus raised is an important question of law, and that the occasion is a solemn one, requests the Justices of the Supreme Court to give to the House their opinion upon the same, as provided by the Constitution of Maine.

Mr. MARSTON of Skowhegan: Mr. Speaker, I am not a lawyer, and I am like a lot of others in this House in that regard. I realize and know that I am not competent to understand what the Constitution really means on this very important question. I am a new member of this House, and for that reason I have no business to talk about this matter. I have not been a party to any caucus or convention or camp-meeting in regard to the program which we shall pursue; but as a layman and as a plain business man who has feelings that some people are being outraged, I want to ask for an interpretation of the Constitution of the State of Maine on this important question, from some person other than a minister of the Gospel. I do not think there is any person or any body of persons so competent to pass upon this question as the Justices of the Supreme Court of Maine; and, Mr. Speaker, while I am extremely ignor-

ant of the rules of procedure of this House—about the only rule I know is first to lock your locker in the coat room—and I want to ask that this order receive the most immediate attention possible.

The SPEAKER: The Chair will state that under the rules an order requiring or requesting an opinion of the Justices of the Supreme Court must lay over one day, and it would take a suspension of the rules to have it considered now.

Mr. MARSTON: Mr. Speaker, I would move that the rules be suspended and that this order be considered at once.

The SPEAKER: The gentleman from Skowhegan, Mr. Marston, moves that the rules be suspended and that this order have a passage. This motion requires a vote of two-thirds of the members of the House.

Mr. SCATES of Westbrook: Mr. Speaker, I am glad to see that this order has been introduced, because this is a very important question, and it is a question that we layman, although we think we can understand the English language fairly well, want to have decided, and we want it decided right. I apprehend that there is no member of this House but what wants to do the square, honest and fair thing; we all want to do that; but there is no man I believe who would want a seat in the Senate of the United States where there was some question in regard to his election.

Now, Mr. Speaker, I want to make this proposition, or rather this suggestion—and I do it personally without any conference with anyone, but it seems to me to be perfectly fair and just that the supreme court of Maine should decide this question; it is the only body that can really decide the question; but before the supreme court renders its decision you have elected a United States senator, no matter what the decision of the court is. Now I make this proposition personally to the gentlemen of this House to be fair, square and honest. We will agree—I say, we, although this is only a personal matter—supposing that there is an agreement between all par-

ties in this House and in this Legislature that we arrange to have every day a tie on the vote for United States senator, so that there will be no election until the supreme court renders its decision. Then everything will be fair, square and just and there will be no taint connected with the seat of the United States senator from Maine. I make that as a suggestion, and if it receives favor on the part of the Republican members of this House I would suggest that the House at this time take a recess of 10 minutes for conference.

The motion was agreed to, and the House took a recess for 10 minutes.

After Recess.

The SPEAKER: The pending question is on the adoption of the order introduced by the gentleman from Skowhegan which requires a two-thirds vote of the House. Is the House ready for the question?

Mr. KEHOE of Portland: Mr. Speaker, before the order presented by the gentleman from Skowhegan is passed I wish to say just a word. The gentleman in presenting the order states that he is not a lawyer, and that he wants some better authority than that of a clergyman on the matter. Now, I happen to be a lawyer, rather a poor lawyer, perhaps, but judge from the wording of his resolution that he has consulted a lawyer because he has a joker in his order which I can very easily show. Also, Mr. Speaker, I will state that the supreme court will never give an opinion on his order or on the resolution which has been passed in. He recites in his order that the men were at the time of their election and at the time of taking their oaths or taking their seats, holding the offices of postmasters; he says nothing about what they are at the present time. This question will become a moot question, because the only question that can arise is if they are postmasters at the present time. As he has worded his order it will leave out the very meat of the matter so that the supreme court will very probably not answer the question to the satisfaction of this House. The order as presented means nothing, and it would have to be amended to say

that at the present time they are postmasters; and to say simply they were postmasters at the time they were elected and at the time they took their seats would not create such a question that the supreme court would be called upon to give an opinion, and the question would not be important. I simply make this suggestion to show the real motive behind the order, which I claim is for no other purpose than for the purpose of delay.

Mr. SCATES of Westbrook: Mr. Speaker, I just wish to say a word in regard to our conference. Of course it was hurried and we could not do very much. The Democratic members and the Progressive members seemed to be favorably inclined; many of the others did not, although I want to say in all fairness that some of the Republican gentlemen thought favorably of it.

Mr. NEWBERT of Augusta: Mr. Speaker, the gentleman from Skowhegan, Mr. Marston, has moved a suspension of the rules that this matter may be considered now. I submit that Rule No. 45 of the House relating to this matter is a wise rule, and I will read it:

"A proposition to require the opinion of the judges of the supreme court, as provided by the Constitution, shall not be acted upon until the next day after such proposition is made."

Now, there is no great haste, gentlemen, and we shall be here to-morrow and we shall consider this matter to-morrow, and I oppose the motion of the gentleman from Skowhegan to suspend the rules; and I sincerely hope that the motion will be voted down.

The SPEAKER: The question is upon the adoption of the order offered by the gentleman from Skowhegan, Mr. Marston, which has been read. Is the House ready for the question?

Mr. NEWBERT: Mr. Speaker, is the question before the House on the motion to suspend the rules or on the passage of the order?

The SPEAKER: It is one question, whether the rules shall be suspended and the order have a passage.

Mr. NEWBERT: Can the House act intelligently upon that order in that

way, Mr. Speaker? Does not the passage of the order require a majority vote, and a motion to suspend the rules require a two-thirds vote? It seems to me it is a strange mixture.

The SPEAKER: The Chair rules that the order cannot have a passage at all without the consent of two-thirds of this body because the rule referred to by the gentleman from Augusta makes it mandatory, in the absence of a suspension of it, to postpone consideration one day. The Chair rules that a mere motion to suspend the rules without something upon which it can act has no effect, and is not in order, and the proper motion is as made, that the rules be suspended and that this order have a passage under suspension of the rules.

Mr. NEWBERT: I hope the motion will be voted down.

Mr. SCATES: Mr. Speaker, I would move to lay the matter upon the table until to-morrow.

The SPEAKER: The gentleman from Westbrook, Mr. Scates, moves that this order lie upon the table, which motion has precedence and is not debatable. All those in favor of the motion to lay upon the table will say yes; those opposed will say no.

The vote being doubted,

Mr. Scates moved that the yeas and nays be called.

The yeas and nays were ordered.

The SPEAKER: All those in favor of laying this order upon the table when their names are called will answer yes; those opposed will answer no. The clerk will call the roll.

YEA:—Boland, Boman, Brennan, Brown, Bucklin, Chadbourne, Churchill, Clark of Portland, Clark of New Portland, Cochran, Connors, Crowell, Currier, Cyr, Davis, Descoteaux, Doherty, Donovan, Dresser, Dunbar, Dunton, Eaton, Eldridge, Elliott, Estes, Farnham, Franck, Gallagher, Gamache, Gardner, Goodwin, Gordon, Hancock, Harman, Harriman, Haskell, Hodsdon, Hogan, Jennings, Kehoe, Kelleher of Portland, Kelleher of Waterville, Kimball, Lawry, Leader, Leary, LeBel, Leveille, Libby, Mason, Mathieson, Maxwell, Maybury, Mildon, Morgan, Moreau, Newbert, Packard, Pitcher, Plummer, Price, Putnam, Quinn, Reynolds, Richardson, Robinson, Rolfe, Sanderson, Sargent, Scates, Sherman, Snow, Sprague, Stanley, Stetson, Swett, Wheeler, Winchenbaugh, Yeaton—79.

NAY:—Allen, Austin, Bass, Benn, Benton, Bither, Bowler, Bragdon of Sullivan, Bragdon of York, Butler, Chick, Cook, Durgin, Eastman, Emerson, Folsom, Greenleaf of Auburn, Greenleaf of Otisfield, Haines, Harper, Higgins, Hutchins, Irving, Jenkins, Johnson, Jones, Marston, McBride, McFadden, Merrill, Metcalf, Mitchell of Kittery, Mitchell of Newport, Mooers, Morrison, Morse, Nute, O'Connell, Peacock, Peaks, Pendleton, Peterson, Ramsay, Ricker, Roberts, Rousseau, Sanborn, Skelton, Skillin, Smith of Auburn, Smith of Patten, Smith of Pittsfield, Smith of Presque Isle, Spencer, Stevens, Stuart, Sturgis, Swift, Taylor, Thombs, Thompson, Tobey, Trimble, Tryon, Twombly, Umphrey, Violette, Washburn, Waterhouse—69.

ABSENT:—Wise—1.

After the call of the roll, Mr. Boman of Vinalhaven, asked and was granted permission to change his vote from no to yes.

The SPEAKER: Seventy-nine having voted in the affirmative and sixty-nine having voted in the negative, the motion prevails and the order introduced by the gentleman from Skowhegan, Mr. Marston, lies upon the table.

Reports of Committees.

Mr. Spencer from the House committee on elections on the contested election in the class towns and plantations of Bingham, North New Portland, Moscow, Bigelow, Brighton Plantation, Carratunk Plantation, Dead River Plantation, Dennistown, Flagstaff Plantation, Highland Plantation, Jackman Plantation, Lexington Plantation, Mayfield Plantation, Moose River Plantation, Pleasant Ridge Plantation, The Forks Plantation and West Forks Plantation, reported that Warren B. Clark of New Portland, has a plurality of four votes.

The report was accepted.

Mr. Thombs from the committee on legal affairs, reported ought not to pass on Bill, An Act to amend Section 54 of Chapter 125 of the Revised Statutes of 1903, as to the appointment of agents for the prevention of cruelty to animals.

The report was accepted.

Mr. Wheeler from the committee on legal affairs, reported ought not to pass on Bill, An Act to increase the efficiency of trustees of state institutions and commissioners appointed by the Governor so that the same may be non-partisan.

The report was accepted.

Mr. Kehoe from the committee on legal affairs, reported ought not to pass on Bill, An Act for the investigation of small business loans.

The report was accepted.

Finally Passed.

Resolve, a memorial to Congress in favor of the bill pending in Congress entitled "A Bill for the establishment of a national park and acquiring national forests in the Mount Katahdin region of the State of Maine."

Resolve declaratory of certain amendments to the Constitution of Maine.

Orders of the Day.

The SPEAKER: The Chair will announce that unfinished business comes up first under orders of the day, and that the unfinished business is the pending motion to reconsider the vote of the House whereby an order introduced by the gentleman from Augusta, Mr. Newbert, so far as it related to the case of Mr. Farrar of Ripley, had a passage; and the gentleman from Patten, Mr. Smith, has the floor.

Mr. SMITH of Patten: Mr. Speaker, I will yield the floor for a moment in order that my Brother Scates of Westbrook may take from the table a bill for reference to a committee.

On motion by Mr. Scates of Westbrook, Bill, An Act for the improvement and maintenance of public roads, was taken from the table, and on further motion by the same gentleman the bill was referred to the committee on ways and bridges.

On motion by Mr. Butler of Farmington, Bill, An Act to establish a State Highway Commission and to provide for an issue of State highway bonds, was taken from the table, and on further motion by the same gentleman the bill was referred to the committee on ways and bridges.

Mr. SMITH of Patten: Mr. Speaker, and gentlemen of the House, we have under consideration the matter of Representative Farrar of Ripley. In continuing my remarks I will say that I feel the utmost responsibility. There is a momentous question here involved, and I shall have no desire in the dis-

ussion of this matter except to make it a legitimate discussion upon the merits of this case. I shall have no purpose to delay the proceedings of this House or delay action upon this matter; and I hope the members of this House, whatever may be their political affiliations, will come to the consideration of this vital question determined to exercise a calm, fair and deliberate judgment.

When I came here I assumed, as I believe every member of the House assumed, that we could get together as the representatives of the people of the State of Maine, and that it was our duty to do that, and to act according to the best interests of the State, to perform our duties as legislators to the best of our ability, to perform them in a constitutional and a legal way under our oaths of office. I felt that there was no reason why a man sitting here belonging to the Democratic party, the party that prides itself in being the party of Andrew Jackson, could not sit upon the floor of this House and decide these matters fairly. I supposed that there was no reason why these so-called Progressives could not in all good faith continue to sing "Onward, Christian Soldiers" and act with us for the best interests of the State; I felt that even we who have been stigmatized as belonging to another party might still by penitence be properly included within the scheme of universal salvation, and be permitted to be treated as honest members of this body. I still believe so.

There was introduced, yesterday, into this House an order which called for the expulsion of certain members of this House. I suppose the information which led to the drafting of that order was well known to the gentlemen who were responsible for it, two weeks ago, as much as it was known to them, yesterday morning. It occurred to some of us that fairness demanded that these gentlemen having that information and belief that these men were not legally entitled to their seats, that they should early in the session of this Legislature have made it known in order that proper proceedings might have been taken thereon so that if necessary the opin-

ion of the supreme court might have been asked upon this question, and that, at least, before this vital question involving the election of a United States senator was reached, these gentlemen who were charged with sitting illegally in this House might have had notice and an opportunity to be heard.

I believe it is the first time in the history of this State or in the history of any other state when such an order was drawn and presented here suddenly on the eve of the election of a United States senator. I believe that this was the first time that such a drastic proposition as that of unseating three members of this House was ever presented in this way in any legislative tribunal in this world. And by whom was it presented? And upon what basis of law or fact was it presented? It was presented by the gentleman from Augusta (Mr. Newbert) and I have no disposition to throw any personal bricks in this discussion. I want to treat the gentleman fairly; and upon a statement that he made, that it involved the construction of the Constitution of this State which would unseat four members of this House, upon that statement alone you were asked here to perform that act.

Mr. Speaker and gentlemen, I was somewhat amused at what I considered the effontery of my Brother from Augusta in his remarks that he made here that this measure, strong as it was, had no political significance. My Brother for years, as I understand it, was clothed in the holy mantle of a minister of the Gospel, and he has not lost his sanctimonious air yet; and he comes in here and informs the members of this House that there was no politics involved in this matter, except to do his duty by the people of the State. Is there a member of this House so unsophisticated that he gives that a moments credence? I do not believe that my Brother thoughtfully would say that; it was simply a matter of habit with him. (Laughter.) And then he comes in here and asks you to unseat four members of this House on his construction of the constitutional law of this State. I suspect that my friend from Augusta, Mr.

Newbert, thought that you had better have his construction if you want to act favorably to his proposition than to have the construction of the Supreme Court of this State, or else two weeks ago he would have raised this question so that before this important matter came up we could have had the opinion of the Supreme Court of Maine. And as a part of the program I am not surprised that these gentlemen seek to have passed an order this morning to refer this matter to the Supreme Court of this State which, as everyone of us knows, would not involve a single vote today but is simply a part of the tactics of these gentlemen to delay the consideration of that report so that by some chance they may still by the exclusion of members from the floor of this House affect the vote for United States Senator in the Congress of the United States. That is all there is to it, gentlemen; and I believe there are honest men enough here on the floor of this House who have heard the facts in relation to this matter at the time that we were prevented from introducing them on the floor of this House by dilatory tactics, because we were charged with using dilatory proceedings; but they put up the gag rule immediately and insisted upon it and demanded the previous question, shutting off debate, and I do not blame them: they ought to be ashamed to have this thing debated; and when, for the first time, at a quarter of twelve o'clock yesterday we succeeded in getting this floor to discuss this question upon its merits, I was interrupted twice by the suggestions of these gentlemen who have been shutting off debate here, with the suggestion that my tactics were dilatory, and when I was asking for the privilege of having fifteen minutes in which to address the members of this House on this grave and serious question, involving a member of this House who represents a large constituency.

Gentlemen, what does this question involve if you unseat these members? Let me show you. I will take the case of Mr. Farrar, and he represents the towns of Hartland, St. Albans, Ripley, Cambridge, Harmony, Canaan

and Cornville, a population of 4515, a voting poll of 1311. They ask you on this construction of my friend, the exparson, to expel this man from the House, expel him from his seat here and leave these 4513 people of the State of Maine unrepresented upon this floor. They ask you in the case of Mr. Mitchell of Kittery to leave 5063 people without representation upon the floor of this House, representing a voting population of 1306. I will say that in the case of the gentleman from Topsfield they ask you to leave unrepresented by the expulsion of Mr. Taylor a population of 4572 people, a voting population of 1457. In the case of Mr. Mathieson, they didn't ask anything about Mr. Mathieson. Didn't they know that Mr. Mathieson was, as he stated on the floor of this House, yesterday, a postmaster; that on the floor of this House he voted to unseat his colleagues and at the same time holding a commission as postmaster from the United States Government, exercising the right to vote for United States Senator. They hadn't found him; they had been hunting for postmasters, Republican postmasters, as a dog hunts for fleas. (Laughter.) Do you think they made any mistake about who was sitting on this floor as a postmaster? Not much. Mr. Mathieson was not going to vote for the candidate, the choice of the people for United States Senator, and therefore Mr. Mathieson may retain his seat; he is an honest gentleman; we do not want him omitted. We do not think that is fair; we do not care whether he votes for Edwin C. Burleigh or for E. M. Thompson or Obadiah Gardner; we want his to retain his seat upon the floor of this House because it honestly belongs to him, and because he represents a citizenship of 3935 people and a voting population of 1367 people.

Now, I have stated in that brief way what some of the results involved are. There are more vital results perhaps involved than to leave these people unrepresented. They are entitled to representation in this House. There are great measures here involved, and it is only fair that we should

have the advice and the co-operation of these men whose constituents have sent them here for that purpose.

Another thing is important, when you come to vote upon this question: it is important as to whether any gentleman upon the floor of this House wants to go home and explain to his people why he was a party to this steal. That is important in the interest of good citizenship.

What I have said to you, gentlemen, is preliminary. What is this constitutional provision which they invoke? I will read it to you again:

"No member of Congress, nor person holding any office under the United States (post officers excepted), nor office of profit under this State, justices of the peace, notaries public, coroners and officers of the militia excepted, shall have a seat in either House during his being such member of Congress, or his continuing in such office."

This is a constitutional provision. No member can sit in this House if he holds a position under the United States Government, whether for profit or otherwise, except post-officers. Now, my brother says that "post-officers" does not mean what the people of this State said it meant or that it meant for 92 years. For 92 years since this Constitution has been adopted the people of this State and its law-makers have said it meant "postmasters," and perhaps, in a more comprehensive sense, men engaged in the postal service.

Now, what construction does he ask you to place upon that? He says in his argument, if you can style it as such, he says it does not mean postmasters at all, but it means some men, connected with government posts. The most diligent search in dictionaries, in legislative proceedings, in digests, in works on words and phrases, in encyclopaedias fails to disclose any such military officer known in the history of this country, not one. Why should the constitutional convention of Maine talk about excluding post-officers from representation in the Legislature, if there were any such officers; we haven't any military posts; if we had any military posts here, United States

military posts, to which it could be applied, those men, the officers of those posts were not citizens of Maine. It is an utter absurdity, because Maine did not have any army; Maine had nothing but the militia, and you will observe later as a cause of exclusion "and officers of the militia excepted." That clause took care of every officer, every military officer we had in the State of Maine, every one of them.

Now, gentlemen, I do not ask you to take my statement, as my Brother Newbert has asked you to take his statement in this important matter. I want to go with you back to the bed-rock of this thing. We had a constitutional convention here to form a Constitution in 1819, and in the formation of that Constitution this provision was inserted, and while there was no debate upon it there was something in the debates referring to it in a slight way which throws some light upon what the members of that constitutional convention meant. There was a motion made to strike out in that provisional constitution as it was finally inserted, a motion to strike out that term, but in making the motion Mr. Vance moved to amend by striking out in the second line "post-offices," not "post-officers"; so that it seems that they had in mind men who occupied positions in connection with the post, and the man moving that amendment used this word. I offer that to you for what it is worth, but I want you to go along a little further with me. The Constitution of the state of Massachusetts was adopted prior to the Constitution of the United States. When the United States adopted its Constitution there was in existence the Constitution of Massachusetts, and of course it had no provision because there were no postmasters or officials of that sort. There was no provision in the Constitution of Massachusetts regulating that incompatibility of office, but they inserted into their Constitution a provision almost absolutely in effect like our own, evidently having before them the Constitution of Maine and the Constitutions of many other states, which contained the same provision:

and they inserted a clause similar to this in our Constitution.

Now, what did they say? They used there the word "postmaster" not having provision in regard to the militia and other officials, "postmaster" instead of "post-officers" as we did in Maine. It shows what construction, contemporaneous construction was placed upon that term "post-officers" by the members of the several constitutional conventions.

I want to read to you a little something about that from the records of the constitutional convention of Massachusetts. In a resolve reported by Mr. Webster, Daniel Webster:

"Resolved, that it is proper and expedient further to amend the Constitution, so as to provide that no judge of any court in this Commonwealth and no person holding an office under the authority of the United States, (postmasters excepted) shall at the same time hold the office of Governor, Lieutenant Governor or Counsellor, or have a seat in the Senate or House of Representatives of this Commonwealth, and that no judge of any court in this Commonwealth, the Attorney General, Solicitor General, Clerk of any court, sheriff, treasurer or receiver general, register of probate, register of deeds, shall continue to hold his said office after being elected a member of the Congress of the United States and accepting that trust; but the acceptance of that trust by any officer aforesaid shall be deemed and taken to be a resignation of his said office; and that judges of the courts of common please shall hold no other office under the government of this Commonwealth, the office of justice of the peace and militia offices excepted."

Now there was a reason for that. There would be no reason in putting in a term as applied to people that did not exist. There was a reason for excepting postmasters just as the farmers of the Constitution of Maine had a reason in excepting them under the term "post-officers" in our constitution. Mr. Webster said "that as the Constitution was framed before that of the United States, there was necessarily a deficiency in that part of it which relates to incompatibility of

offices." He also said: "the present resolution first provides that no person holding any office under the authority of the United States, postmasters excepted, shall at the same time hold the office of governor, lieutenant governor or counsellor, or have a seat in the Senate or House of Representatives of this Commonwealth. It next provides that no judge of any court in this Commonwealth and several other officers, shall continue to hold their offices after accepting the trust of a member of Congress; and that judges of the courts of common pleas shall hold no other office except of that of justice of peace and militia officers. He proceeded first to inquire whether it was proper to provide that no judges of any court should sit in the Legislature. The prohibition is now confined to justices of the supreme judicial court. The committee thought that there was no object to extending it to judges of the courts of common pleas and other courts. They went on the presumption that when an office was established, it would be one which demanded as much attention as the incumbent could conveniently give to it. There was besides an impropriety in mixing the Legislative and judicial departments. In all the courts there was business of importance. Since the establishment of the Constitution, the courts of common pleas had much increased in importance and dignity, and they were likely to continue to increase, and it was therefore more expedient that the judges should confine their attention to the duties of their offices. There was also an objection to their holding a seat in the Legislature, from the manner in which they are elected. It seemed improper that the judges of the land should become candidates for popular favor at the annual elections. In proposing to exclude officers of the United States from the higher offices in the Commonwealth and from a seat in the Legislature they had followed the example of almost all the State Constitutions recently formed. The general principal would exclude postmasters, but this office is, in a large proposition of class, one of no emolument, but

of some trust, and it appeared not advisable to exclude from the scope of the postmaster-general, in making these appointments, so many persons as would be excluded, if the acceptance of the office were to shut them out from all offices under the State Government."

The same reason existed in Massachusetts that existed in Maine, and they intended and did do just exactly the same thing; they excepted postmasters for that reason, and they had nobody else in mind as it is very apparent from the record of that convention.

Now you have to consider this word "post-officers" in our Constitution with the construction given upon it by men who were acting at that time, men who knew and could give a reason why postmasters should be excepted. That was the construction placed upon this term by the framers of the Constitution of Massachusetts having before them our Constitution. I have in my hand here a copy of a list of 15 men who were in that Constitutional convention, men who were postmasters, members of the Constitutional convention, but I will not take the time to read from it. They knew their rights and the matter was all fresh in their minds; there was no chance to put on such a fanciful construction as that of the gentleman from Augusta. In the year 1821, following the adoption of this Constitution, there were 15 postmasters elected and served on the floor of this House. Is there any doubt about what the construction of that question was? In 1822 there were seven postmasters elected and served in the House of Representatives. In 1823 there were three men elected and served in this House here, who were postmasters. In 1824, there were 11 men sent to this House who were postmasters. In 1825, there were four men sent to the House of Representatives who were postmasters.

Now, I ask you in all fairness, gentlemen, whether the construction of those men who sat in this Constitutional convention, and the construction placed upon it by 55 men from 1820 to 1825, men who served in this

House as postmasters—I ask whether the construction placed upon that by these people living when it was formed and when it was before them and fresh in their minds—I ask you whether it will override the construction of the constitutional lawyer from Augusta?

Mr. NEWBERT: Unconstitutional.

Mr. SMITH: I know that my friend from Augusta is a constitutional lawyer. I had the pleasure of being in the House of Representatives with him in 1907 and during that entire session—and think the record will bear me out—should say that every day of that session, or on 90 per cent. of the days the Legislature was in session, my friend from Augusta made a constitutional argument on the prohibitory law and resubmission. (Laughter)

Now, gentlemen, I wish to digress for just a moment. My time is about finished — (laughter and applause).

Mr. NEWBERT: I wish to say the gentleman has seven minutes more. (Laughter)

Mr. SMITH: I made that remark and I am glad it pleases my friends here in the House. I believe, though, that as a result there is not a member of this House but what thinks I have been discussing the merits of this case, and I don't believe that there is a member of this House who won't believe that the gentlemen in this little corner are trying to expel from the House men who are entitled to representation. What I had reference to in saying that my time was almost finished —

At this point the Senate came in and a joint convention was formed.

In Convention.

The President of the Senate in the chair.

At 11.55 o'clock the Senate came into the Hall of the House of Representatives.

At 12 o'clock, the convention was called to order by the President of the Senate.

The PRESIDENT: This convention is assembled in accordance with the provisions of the Constitution of the United States and of the United States Statutes, to compare the journals of the two Branches of the Leg-

islature, of yesterday, with reference to the election of a United States Senator. If the comparison of the two journals should disclose that the same person has not received a majority of the votes cast in both Branches of this Legislature for United States Senator, it then becomes the duty of this convention to vote by viva voce vote for United States Senator.

In the absence of any objection, and in the absence of any special order, it is the judgment of the presiding officer of this convention, that this roll call should be by an alphabetical list of the names of all members of the convention. If there is no objection, when the time comes, if it does come, for that roll call, the roll call will be in that order.

The time fixed by the statutes of the United States having arrived, the secretary of the Senate read so much of the record of the Senate at the session of yesterday, as related to the vote for United States Senator, showing as follows:

Total number of votes cast,	31
Necessary for a choice,	16
Edwin C. Burleigh had,	21
Obadiah Gardner had,	10

The clerk of the House then read so much of the record of the House at the session of yesterday, as related to the vote for United States Senator, showing as follows:

Total number of votes cast,	148
Necessary for a choice,	75
Edwin C. Burleigh had,	72
Obadiah Gardner had,	72
E. M. Thompson had,	4

The PRESIDENT: It appears from the comparison of the journals of the two Branches of the Legislature, and the Chair declares, that the same person did not receive a majority of the votes in each Branch of the Legislature, on yesterday, and it now becomes the duty of this convention to proceed, under the provisions of the Constitution and Statutes of the United States, to vote by viva voce vote for a Senator in Congress for a full term, beginning on the fourth day of March, next. The secretary will call the roll.

BURLEIGH:—Sen. Allen of Kennebec,

Allen of Machias, Austin, Sen. Bailey, Bass, Benn, Benton, Bither, Bowler, Bragdon of Sullivan, Bragdon of York, Sen. Burleigh, Butler, Sen. Chase, Chick, Sen. Clark of York, Sen. Colby, Sen. Cole, Sen. Conant, Cook, Durgin, Sen. Dutton, Eastman, Emerson, Sen. Emery, Folsom, Greenleaf of Auburn, Greenleaf of Otisfield, Sen. Hagerthy, Haines, Harper, Sen. Hersey, Higgins, Hutchins, Irving, Jenkins, Johnson, Jones, Kimball, Mars-ton, Sen. Maxwell of Sagadahoc, Mc-Bride, McFadden, Merrill, Metcalf, Sen. Milliken, Mitchell of Kittery, Mitchell of Newport, Mooers, Morrison, Morse, Nute, O'Connell, Sen. Patten of Hancock, Pea-cock, Peaks, Pendleton, Peters, Peterson, Ramsay, Sen. Reynolds of Kennebec, Sen. Richardson of Penobscot, Ricker, Roberts, Rousseau, Sanborn, Skelton, Skillin, Sen. Smith of Penobscot, Smith of Auburn, Smith of Patten, Smith of Pittsfield, Smith of Presque Isle, Spencer, Sen. Stearns, Stevens, Sturgis, Swift, Taylor, Thombs, Thompson, Tobey, Trimble, Tryon, Twomoly, Umphrey, Violette, Sen. Walker, Washburn, Water-house, Sen. Wing.

GARDNER:—Sen. Allan of Washing-ton, Boland, Boman, Sen. Boynton, Bren-nan, Brown, Bucklin, Chadbourne, Churchhill, Clark of Portland, Clark of New Portland, Connors, Crowell, Currier, Cyr, Davis, Descoteaux, Doherty, Dono-van, Dresser, Dunbar, Dunton, Eaton, Eldridge, Elliott, Estes, Farnham, Sen. Flaherty, Franck, Gallagher, Gamache, Gardner, Goodwin, Gordon, Hancock, Harman, Harriman, Haskell, Sen. Hast-ings, Hodsdon, Hogan, Jennings, Sen. Jilison, Kehoe, Kelleher of Portland, Kelleher of Waterville, Lawry, Leader, Leary, Lebel, Leveille, Libby, Sen. Mans-field, Mason, Maxwell of Boothbay Har-bor, Maybury, Mildon, Sen. Morey, Mor-gan, Morneau, Sen. Moulton, Sen. Mur-phy, Newbert, Sen. Packard of Knox, Packard of Newburg, Pitcher, Plummer, Price, Putnam, Quinn, Reynolds of Lew-iston, Robinson, Rolfe, Sargent, Seates, Sherman, Snow, Sprague, Stetson, Swett, Winchenbaugh, Yeaton.

E. M. THOMPSON:—Cochran, Mathie-son, Richardson of Canton, Sanderson, Stanley, Stuart, Wheeler.

ABSENTE:—Wise.

During the call of the roll when the name of Mr. Stanley was reached,

Mr. STANLEY of Cumberland: Mr. President, I would like to explain my vote. Whether it was right or wrong, I have paired with Mr. Wise; and at the time I was not looking for any-thing more than one ballot, and it was not stated whether it was to continue, but it was understood to be on the Senatorial vote. I have been trying to communicate with Mr. Wise, to either get him here or to get him to release me if he saw fit from the bond or obli-gation; I have a telegram from him

which I have passed to the clerk of the House. It does not release me, but it states that he cannot be here, and for that reason I do not know whether I have a right to vote or not.

The PRESIDENT: The Chair will state to the gentleman that the matter is a question for him to decide; if he desires to be paired with the gentle-man from Guilford, Mr. Wise, he will do so at this time; and if he desires to vote he will do that at this time.

Mr. STANLEY: Mr. President, I think that is throwing the burden upon me, and I am hardly competent to tell which to do; but if I was to vote I should vote for E. M. Thompson. (Applause.)

The PRESIDENT: The Chair un-derstands the gentleman desires his vote to be entered for E. M. Thompson, and the secretary will so enter. The secretary of the convention will now read the list of members of the con-vention together with a record of their vote.

The secretary then read the list of members of the convention together with their votes.

The PRESIDENT: The whole num-ber of votes cast in the joint assembly is 180.

E. M. Thompson has	7
Obadiah Gardner has	82
Edwin C. Burleigh has	91

and the Chair declares that Edwin C. Burleigh of Augusta, having received a majority of all the votes cast in this joint assembly is duly elected Senator in Congress for the full term beginning March 4th, next.

Senator Stearns of Oxford, presented the following order and moved its pas-sage:

Ordered, That the Honorable Edwin C. Burleigh of Augusta, be and hereby is declared duly elected senator in Congress for the term of six years be-ginning on the 4th day of March A. D., 1913, and be it further

Ordered, That the secretary of the convention forthwith notify the Gov-ernor of the election and declaration thereof by the Legislature of Hon. Ed-win C. Burleigh of Augusta, as sena-ter in the Congress of the United

States for the term of six years beginning on the 4th day of March A. D., 1913.

The order received a passage.

Subsequently the secretary of the convention reported that he had performed the duty with which he was charged.

Mr. SMITH of Patten: Mr. President, I move a suspension of the rules, and that Hon. Edwin C. Burleigh, senator-elect, be invited to appear before this joint convention.

The motion was agreed to and the gentleman from Patten, Mr. Smith, was charged with the duty of conveying the message. (Applause)

Senator-elect Burleigh then entered the hall amid long continued applause, being escorted by Mr. Smith of Patten, and addressed the convention as follows:

Mr. President and Gentlemen of the Convention:

Acting in behalf of the people of Maine, you have conferred upon me a great honor, freighted with a solemn responsibility. It is a satisfaction to reflect that, unembarrassed by personal pledges of any description, I may freely attempt to express in service, rather than in words, my profound appreciation of that honor and that responsibility. Sincere and honest effort for the right, as I shall see it, is the measure of my obligation, and to that effort I here stand pledged.

I trust that I may be deemed guilty of no impropriety, or lack of courtesy to my friends of the minority party, in referring briefly to my general attitude in matters of federal legislation. With much that I have to say in this regard, I believe them to be in entire accord.

The demand of the day and hour is for progress. Political parties must respond to that demand or perish. They cannot rest on their past, however glorious. They must go forward. We should neither mistake the current for a passing wave, nor a passing wave for the current. Progress does not mean the rejection of what is good merely because it is old, nor the adoption of what is bad merely because it is new. Progress does not bend before every

passing breeze. The progress which the people demand, and which will prevail, is tempered by calm judgment and good sense, and looks well to the future. To these propositions I apprehend we shall all yield a ready assent.

To the young men of Maine let me add this word: Though past the meridian of life in years, I have not yet reached it in spirit. I shall stand with them and for them in all those policies which are safely and sanely progressive. I welcome their friendship and co-operation, so generously accorded me in the past. Let us stand shoulder to shoulder for all that is best in the future. (Applause.)

May I be permitted to add, without offence, that while I am a Republican, and believe in the principles of my party, I am convinced that within the periphery of those principles there is ample opportunity for Progressive legislation.

Our new primary election law is a people's measure, and has come to stay. It is the first step toward the popular election of United States Senators. In my judgment the time has come when we should take the remaining step. (Applause.) When that has been done, and when the elective franchise has been conferred upon the women of Maine and of the nation, we can more justly claim that ours is in fact, as well as in name, a government of the people. (Applause.)

The excellent message of our Governor sounds a clear note of progress. A workmen's compensation act, the regulation of public utilities, the conservation of our natural resources, the preservation of the public health, and the honest and vigorous enforcement of the prohibitory law, are things not merely to be applauded and then forgotten. They merit and demand our support.

The people are calling. We shall do well to listen. The field of action is ample. View it with me for a moment.

The adjustment of excessive tariff rates with fairness to American industry; the establishment of a permanent expert tariff commission; the investigation and reduction of the high cost of living; the abolition of

special privilege and monopoly without injury to legitimate business; Presidential primaries; sound currency and safe banking methods; ample recognition and protection of the rights and interests of labor and of agriculture; the extension and perfection of parcel post and rural delivery; a just and liberal pension policy; the revival of our merchant marine and the development of our shipping interests; the extension of foreign interests; the promotion of international peace—these are some of the things for which I stand, because I believe them to be reasonable, sane, and just. Their political designation is a matter of minor consequence. I shall support those measures which I believe to be right and oppose those which appear to me to be wrong. With sanity and reason, but with faces always to the front, let us welcome and participate in all true progress.

It will be both my duty and pleasure to co-operate in all possible ways in the service of our common constituency, with my distinguished friend and colleague, Hon. Charles F. Johnson. (Applause.) For that sincere and high-minded gentleman I have the greatest respect and admiration. I feel confident that he would endorse my assertion that in all matters not involving difference of conviction, we shall be found "working together," with all that cordiality and unity of effort which the phrase implies.

To my individual constituents, let me say that no citizen of Maine, honest of mission and pure of motive, whatever his political preference, wealth, poverty, or social status, need hesitate to invoke my aid or counsel in matters within my province. At all times I shall give careful and respectful consideration to suggestions from my constituents with reference

to matters of Federal legislation. Let us consult together for the common good.

I thank you, gentlemen, and through you the people of the State of Maine, for this great honor, and further thank you for the opportunity of addressing you, and for your courteous and respectful attention. (Prolonged applause.)

The purposes for which the convention was formed having been accomplished, the convention was dissolved and the Senate retired.

In the House.

The Speaker resumed the Chair.

Mr. KEHOE of Portland: Mr. Speaker, as the gentleman from Patten, Mr. Smith had remaining 15 minutes of his allotted time, and as there are other gentlemen who wish to be heard on the same proposition, I move that when this House adjourns it be to meet at three o'clock this afternoon.

Mr. SMITH of Patten: Mr. Speaker, I am sorry to raise any objection to that motion, but I suggest that it would seriously interfere with our committee work. We have important matters pending before the different committees, and it seems to me we have had trouble enough here for one day. I would move to amend the motion proposed by the gentleman from Portland by substituting "to-morrow at 10 o'clock" for "this afternoon at three o'clock."

The question being on the adoption of the amendment to the effect that the House adjourn until tomorrow morning at 10 o'clock,

A division was had and the amendment was adopted by a vote of 72 to 68.

The question being upon the motion as amended, to adjourn until tomorrow morning at 10 o'clock,

The motion was agreed to.