

MAINE STATE LEGISLATURE

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Legislative Record

OF THE

Seventy-Sixth Legislature

OF THE

STATE OF MAINE

1913

HOUSE.

Tuesday, February 18, 1913.

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

Prayer by Rev. Mr. Clark of Gardiner.

Journal of previous session read and approved.

Papers from the Senate disposed of in concurrence.

From the Senate: An Act authorizing the city of Bangor to supply the town of Hampden with water.

In the House this bill was referred to the committee on legal affairs, and came from the Senate in that branch referred to the next legislature in non-concurrence.

On motion by Mr. Austin of Phillips, the bill was laid upon the table, pending action on the part of the House.

Senate Bills in First Reading.

An Act to enlarge the powers and jurisdiction of the Western Somerset Municipal Court.

An Act to regulate advertisements and solicitations for employes during strikes, lock-outs or other labor disputes.

Resolve in favor of an appropriation to provide for participation by the State of Maine in the 50th Anniversary Exercises on the battlefield of Gettysburg, Pennsylvania.

Resolve in favor of the Eastern Maine Insane Hospital, for maintenance and support.

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

By Mr. Sanborn of South Portland: Report of the county commissioners of Cumberland county on locations, etc., on Portland bridge, pursuant to chapter 209 of the Resolves of 1911. (Tabled for printing pending reference to a committee on motion by Mr. Sanborn.)

Judiciary.

By Mr. Smith of Auburn: An Act to repeal "An Act to provide for the use of uniform ballot boxes and for the preservation of ballots cast at elec-

tions," and to provide for returns from said elections. (Tabled for printing pending reference to the committee and 500 extra copies ordered printed on motion by Mr. Smith.)

By Mr. Smith of Presque Isle: Petition of Rev. J. Edward Allan and 49 others of Presque Isle in favor of the "Children's Bill," establishing a juvenile court as presented by the prison association of Portland.

Legal Affairs.

By Mr. Boman of Vinalhaven: An Act requiring safeguards for the protection of all persons employed or laboring in manufacturing establishments, and providing civil remedies for all persons so engaged, or their personal representatives, in cases where such person may be killed or injured while employed or laboring in any manufacturing establishment which is not properly provided with the safeguards required by this Act. (Tabled for printing pending reference to the committee and 250 extra copies ordered printed on motion by Mr. Boman.)

By Mr. Farman of Stonington: Petition of C. M. Thompson and 15 others of Hurricane Island, asking for a law to be enacted for licensing stationary engineers.

Education.

By Mr. Taylor of Topsfield: An Act to amend section 97 of chapter 15 of the Revised Statutes, as amended, relating to the appropriation for the schooling of children in unorganized townships.

Agriculture.

By Mr. Smith of Presque Isle: Resolution of Maysville Centre Grange, No. 153, Aroostook county, in favor of an experimental and seed farm in Aroostook county; also resolution of Eridgewater Grange of Aroostook county for same; also resolution of L. E. Tuttle and 75 others members of Aroostook Pomona Grange in favor of same; also resolution of E. L. Johnson and 56 others members of Aroostook Pomona Grange in favor of same.

State Lands and Forest Preservation.

By Mr. Marston of Skowhegan: Resolve for further public instruction in forestry.

Inland Fisheries and Game.

By Mr. Bowler of Bethel: An Act to amend section 17 of chapter 32, of the Revised Statutes as amended by section four of chapter 132 of the Public Laws of 1905, in relation to close time on deer. (Tabled for printing pending reference to the committee on motion by Mr. Bowler.)

By Mr. Smith of Presque Isle: Remonstrance of R. H. Sprague and 38 others of Presque Isle against the passage of any Act whereby residents of the State would be required to take out a license for the purpose of hunting game in the Maine woods, excluding elephants and jack-pots.

By Mr. Taylor of Topsfield: Remonstrance of John A. Story of Grand Lake Stream and 24 others against the repeal of an "Act to prohibit the use of gang hooks."

By Mr. Austin of Phillips: Petition of Charles H. Drummond and 16 others to repeal chapter 153 of the Public Laws of 1911 entitled "An Act to prohibit the use of gang hooks."

By Mr. Taylor of Topsfield: Remonstrance of Frank Averill of Princeton and 53 others against any change being made in the game law, so far as it relates to a close time on bull moose; also remonstrance of E. A. Holbrook of Vanceboro and 36 others against same.

Sea and Shore Fisheries.

By Mr. Boman of Vinalhaven: Petition of F. A. Flinton and 15 others of Cushing, relating to the catching of smelts between the Kennebec and Penobscot rivers; also petition of Rodney A. Simmons and 13 others of St. George for same.

By Mr. Harman of Stonington: Petition of E. G. Barter of Isle au Haut and 29 others asking that the present law governing the measurement of lobsters remain unchanged.

Reports of Committees.

Mr. Morrison from the committee on ways and bridges, reported "ought not to pass" on resolve in favor of the Alle-gash road, in the county of Aroostook, with statement of facts accompanying the same.

Same gentleman from same committee reported "ought not to pass" on resolve in aid of the town of St. Agatha.

Mr. Spencer from the same committee, reported "ought not to pass" on resolve in favor of building a bridge across Kenduskeag Stream, in the town of Corinth, Penobscot county.

The reports were accepted.

Mr. Washburn from the committee on Indian affairs, reported "ought to pass" on resolve in favor of Peter J. Newell, representative of the Passamaquoddy tribe of Indians.

Same gentleman from same committee, reported "ought to pass" on resolve in favor of Peter W. Ranco, representative of the Penobscot tribe of Indians.

The reports were accepted and the resolves tabled for printing under the joint rules.

Mr. Washburn from the committee on Indian affairs, reported "ought to pass" on resolve in favor of E. B. Weeks and Isaac F. Tibbetts, both of Old Town.

This resolve having been already printed received its first reading and was assigned for tomorrow morning for its second reading.

Passed to Be Engrossed.

An Act to amend section 27 of chapter 135 of the Revised Statutes as amended by chapter 184 of the Public Laws of 1909, relating to new trials in criminal cases.

An Act to incorporate the Washburn Water Company.

An Act to extend the charter of the Monson Water Company.

An Act to set off the town of Isle-au-Haut from the county of Hancock and annex the same to the county of Knox.

An Act to amend section 1, chapter 145, Revised Statutes, relating to The State Pension Law.

An Act to prevent the obstruction of ditches and drains in and along public ways.

An Act to authorize Employment of County Prisoners on Highways.

An Act relating to taxation of telegraph companies. (Tabled pending third reading on motion by Mr. Plummer of Lisbon.)

Resolve in favor of the town of Howland.

Resolve in favor of the towns of Enfield and Howland.

Resolve in favor of Elizabeth D. Low of Buxton.

Resolve in favor of E. J. C. Owen.

Resolve in favor of Maria A. Sylvester of Augusta.

Resolve in favor of aiding the town of Kingman in repairing a bridge in said town across the Mattawamkeag River.

Resolve in favor of Gary M. Garland.

Passed to be Enacted.

An Act relating to the town of Caribou.

An Act for the better protection of shell fish in the town of Kittery, county of York.

An Act to save town officers the expense of jurats on certain returns.

An Act to ratify and confirm certain proceedings and by-laws of the Brazil Railway.

An Act to amend the charter of the Springvale Aqueduct Company.

An Act to change the name of the Lewiston Trust and Deposit Company.

An Act to create the Strong Water District.

An Act to amend section 14 of chapter 11 of the Revised Statutes, relating to recording officer drafting any document he is required to record.

Finally Passed.

Resolve in favor of the town of Oxford.

Resolve in favor of the town of Stoneham.

Resolve in favor of the town of St. George.

Resolve in favor of the Gardiner and Randolph Bridge.

Resolve in favor of the repair of bridges in the town of Dresden.

Resolve in favor of the city of Biddeford.

Resolve in favor of the town of Norway.

Resolve in favor of the city of Biddeford.

Resolve in favor of the commissioner of agriculture in his capacity as scaler of weights and measures.

Resolve in favor of the town of Dennyville.

Resolve in favor of the town of East Livermore.

Resolve in favor of the Eastport bridge.

Resolve in favor of the repair of bridges in the town of Addison.

Resolve in favor of the town of Sebecton.

Resolve in favor of the town of Columbia.

Resolve in favor of the town of Danforth.

Resolve in favor of Stockholm Plantation.

Resolve for the protection of trees and shrubs from the introduction and ravages of dangerous insects and diseases.

The SPEAKER: This resolve carries the emergency clause and upon its final passage requires a vote of two-thirds of the members elected to this House. Those in favor of the final passage of the resolve will rise and stand in their places until counted.

106 having voted in the affirmative, and none in the negative, the resolve received the necessary vote of two-thirds of the members elected to the House, and was finally passed.

Orders of the Day.

On motion by Mr. Kimball of Bridgton, resolve in favor of the trustees of Bridgton Academy, was taken from the table, and on further motion by Mr. Kimball, a statement of facts having been inserted, the resolve was referred to the committee on education.

On motion by Mr. Stuart of East Livermore, resolve in favor of the Androscoggin County Agricultural and Horticultural Society, was taken from the table, and on further motion by Mr. Stuart, a statement of facts having been inserted, the resolve was referred to the committee on agriculture.

On motion by Mr. Trimble of Calais, House Document No. 246, bill, An Act creating a State board of charities and corrections, was taken from the table, and on further motion by Mr. Trimble the bill was referred to the committee on judiciary.

On motion by Mr. Sanborn of South Portland, House Document No. 296, bill, An Act to give uniformity of jurisdiction and procedure in municipal

courts, was taken from the table, and on further motion by Mr. Sanborn, the bill was referred to the committee on judiciary.

On motion by Mr. Sanborn of South Portland, House Document No. 242, bill, An Act relating to liens on motor vehicles and trucks, was taken from the table, and on further motion by Mr. Sanborn the bill was referred to the committee on judiciary.

On motion by Mr. Sanborn of South Portland, House Document No. 240, bill, An Act additional to chapter 79 of the Revised Statutes, relating to transfer of actions and other matters to the law court in case of death of Presiding Justice, was taken from the table, and on further motion by Mr. Sanborn the bill was referred to the committee on judiciary.

On motion by Mr. Sanborn of South Portland, House Document No. 239, bill, An Act to amend section three of chapter 162 of the Public Laws of 1905 entitled "An Act enlarging the duties and fixing the compensation of the Attorney General," was taken from the table, and on further motion by Mr. Sanborn the bill was referred to the committee on judiciary.

On motion by Mr. Mooers of Ashland, Resolve in favor of repairing covered bridge in the town of Ashland, Aroostook county, was taken from the table, and on further motion by Mr. Mooers the resolve was indefinitely postponed.

On motion by Mr. Plummer of Lisbon, House Document No. 245, resolve for an amendment of the constitution providing for local option in taxation, was taken from the table, and on further motion by Mr. Plummer, the resolve was referred to the committee on taxation.

On motion by Mr. Plummer of Lisbon, House Document No. 227, joint resolution memorializing the Maine Congressional Delegation to favor legislation for the destruction of fish of the shark species, especially the dogfish, was taken from the table, and on motion by Mr. Harman of Stonington the joint resolution was committed to the committee on sea and shore fisheries.

On motion by Mr. Benn of Hodgdon, Resolve in favor if the town of Amity was taken from the table, and on further motion by Mr. Benn, a statement of facts having been inserted, the resolve was referred to the committee on ways and bridges.

On motion by Mr. Greenleaf of Otisfield, the report of the committee on legal affairs, reporting "ought to pass" on bill, An Act to incorporate the Harrison Water Company, was taken from the table, and on further motion by Mr. Greenleaf the report was recommitted to the committee on legal affairs.

On motion by Mr. Peacock of Readfield, Senate Document No. 19, bill, An Act to repeal chapter 340 of the Private and Special Laws of 1907, relating to highways in Readfield closed to automobiles, was taken from the table.

Mr. Peacock moved that this matter be again laid upon the table until February 25th, and specially assigned for that day.

Mr. SCATES of Westbrook: Mr. Speaker, it seems as though that bill has been before the House long enough, and there is no reason why it should not be disposed of in one way or another today.

Mr. PEACOCK: Mr. Speaker, I want to say to the gentlemen of the House that this is not an important bill to a large part of the body of this House, but it is a matter which is of deep concern to the town which I represent; and as I indicated the other day, there is another matter which is also of interest to my town and upon which I have been awaiting a report, and for that reason this bill has been laid by me or at my suggestion upon the table. I have not been able to ascertain in regard to that other matter as yet, and for that reason, as a matter of courtesy to myself—and if it were my brother Scates I should expect the same courtesy to be extended to him—I desire that this bill be again tabled until February 25th, and I feel sure that I can obtain the necessary information between now and that time which will enable this bill to be disposed of finally; and I

make that as a request of the members of this House, as a matter of courtesy.

Mr. AUSTIN of Phillips: Mr. Speaker, this is a matter which came before this Legislature two years ago, and at that time met with a peculiar and untimely death. The history of the bill in regard to the road in Readfield, as shown by the Legislative Record of 1911, is this: The committee on ways and bridges heard the matter and made a favorable report, "ought to pass," to this House; on February 21st the bill was passed to be engrossed carrying an amendment which the gentleman from Lisbon, Mr. Plummer, made "providing that the majority of the legal voters present and voting of the town of Mt. Vernon and Readfield, at a special meeting called within 90 days after the adjournment of this Legislature for that purpose shall vote to accept the provisions of this Act." That amendment was adopted, and as I say, on February 21st the bill was passed to be engrossed; on February 27th, upon motion of myself and at the suggestion of one of the members of the House, it was recommitted to the committee on ways and bridges. You understand, it came into this House with a favorable report, and upon request of another member of the House it was recommitted to the committee on ways and bridges after it had been passed to be engrossed on February 23d. On March 7th, without further hearing, it was reported back to this House "ought not to pass." That, gentlemen, in a few words is the history of this bill to open a road which is now closed to automobiles in the town of Readfield.

I do not propose to take up much of the time of this House today, but I want to say for the information of the members of this House, what you probably all know, that it is the policy of this administration to keep in the committee as long as possible pending the enactment of the general good roads bill, all matters and all resolves appropriating money to towns for the betterment of their roads. This is the reason, as I understand it.

why the gentleman from Readfield (Mr. Peacock) insists on further tabling this bill until he can get a report from the committee on ways and bridges, either favorably or otherwise, upon a resolve asking for an appropriation for the purpose of making this road passable for automobiles.

Now, gentlemen, if this matter is tabled until February 25th we shall gain no time whatever, because I think I can say for the committee—although I am not a member of the committee—that no further road bill^s or resolves carrying appropriations will be reported out of that committee until after the passage of some general road bill. If I am wrong in that statement, I think the chairman of the committee on ways and bridges will correct me.

This bill is of importance to a large section of the State of Maine, and also to a large number of people who travel our roads during the summer; it is the main thoroughfare from Augusta and all of the Kennebec district to Franklin and Northern Oxford county and the Rangeley Lake region. All automobiles to-day have to go up over Kent's Hill instead of taking, as we call it, the pond road around the hill which is the natural and old road from the valley of the Sandy River to the valley of the Kennebec. It is of importance that this road be opened to the public. It is the only road except one which is closed to the public, closed to the automobile in the interior of this State; and were it not for the varied existence this bill had two years ago I should feel more like consenting to its being tabled for another week, but as it is, I shall vote against further tabling.

Mr. PEACOCK: Mr. Speaker, I want to say for the information of this House that I am not waiting specifically for the report of this committee. I have another matter which bears upon that report, and which has a very important bearing upon it, and for that reason I have asked for this continuance.

Now, gentlemen, I do not want to weary you with the history of this road, but I wish to give you a brief outline of the matter so that you may

all act intelligently. The town of Readfield was incorporated in the year 1791. In 1804 a body of men purchased a water privilege and erected a dam. In 1833 this road was laid out at the foot of Kent's Hill on petition of the selectmen of Wilton. Now, the old road from Wilton and Franklin county down through Readfield to Hallowell was over Kent's Hill. At that time Hallowell was a port of entry from where they hauled their supplies by ox team, and this road which was cut through, leading over Kent's Hill and going through at the foot of Kent's Hill shortened that road for hauling provisions by ox team, avoiding the hill.

Now, gentlemen, there isn't a house on that road in the town of Readfield, and as a matter of fact by actual measurement it is just 608 feet further to go over Kent's Hill with your automobile than it is to go over this road. Now, remember that, just 608 feet further. This water power company has the right of flowage, a right which they purchased away back in the year 1804; and when six or eight years ago they tightened the dam there, a little stream which was only a thread in the summer time became quite a river, so much so in fact that from the time the pond opened up in the spring of the year the water flowed over this road to a depth of from six to 15 inches, and that condition continued for about three months of the year. That power company has not utilized the dam to its full extent, and they can put on other boards in their raceway which will raise the water another foot, and in case that were done the water over this road would be raised another foot. This the town of Readfield cannot control because this power company has the right of flowage there.

On this road there is a bridge 325 feet long, between the rails it is from 12 to 13 feet in width, and at the remote end the widest distance in one place is 15 feet and four inches. This bridge is made up of old stones that were hauled in there and dumped away back when this road was laid out; it is not a bridge like the modern steel bridge or one with stringers or anything like that, and the travelled part of the road on this bridge is not

over eight or nine feet wide, because these rocks have tumbled down from each side so that the travelled part of the road that remains is very narrow. There are 18 culverts on this road, and in the springtime the water backs through these culverts and comes down on the opposite side, so that the wrought or traveled part of the road there is very narrow, and if any automobile were passing through and should attempt to turn out it would get stranded, and two heavy teams in many places on this road would be stranded. Now, owing to the fact that the water flows across there, it is extremely hard to keep the road in proper condition. It has been said that the town of Readfield wanted to close that road to prevent the repairing of it. That is absolutely wrong, because in the last few years on that 1 3-5 miles of road from \$150 to \$300 has been expended each year to try and keep it in repair on account of this water over which we have no control whatever.

This matter does not accommodate the town of Readfield at all. As I said, this road was laid out at the request of these people in Franklin county, and the road is used largely by people from that section of the State; and so we felt that we were willing to have this road opened for travel if the State which it benefits would pay a part of the cost. We had the highway commissioner, Mr. Hardison, out there and they made a very careful survey of this road; they also tried to lay out another road to get rid of this long bridge, but the highway department said it would cost at least \$5000 to put that road in good shape, and it would be more expensive to make a road out around and avoid the bridge. For that reason we have put in a resolve asking for \$2500, which is one-half of the estimated cost—and usually in those cases the estimate calls for considerably less than the actual cost—and the town of Readfield will bear the other half of the expense.

Mr. Speaker and gentlemen, I have asked for this matter to be tabled, hoping that the matter would be disposed of without trespassing upon the time and the good nature of the members of this House. The report of the

committee has not been received, but that was a secondary matter to that which I had in mind. We simply ask to have a fair and square deal in this matter, and if an extension of another week is granted I will see that the matter is finally disposed of at that time; but it seems to us out in Readfield that if this road were to be thrown open so that automobiles could travel over it—and they certainly would not take a great deal of time to cover that extra 608 feet—it seems to us that the town of Readfield will have to pay all the expense. That does not seem quite right to us, and it does not seem quite fair, and as I have already indicated, we are hoping this matter will be disposed of through other channels; it is not because we want to get rid of repairing this road, but we do wish to have some assistance in the matter; and more than that, if the road is opened up so that these joy-riders in automobiles should go down through there before we can expend this \$5000 on it and put it in proper repair, and if a woman should be driving on that road and be upon that bridge in a team, we should not want to share the responsibility for what might happen, for just as sure as the world if an automobile should meet a team upon that bridge and the horse become frightened, it will go over into the pond in spite of all the rails you can put there, because there is the pond on each side which goes down for a depth of six or eight feet, and the bottom of the mud hasn't been reached yet with an 18 foot pole. Now, with this explanation I trust that this House will extend to me the courtesy which I have asked, of letting this matter lay upon the table for one more week.

Mr. SCATES of Westbrook: Mr. Speaker, just one word. I simply want to state the position of the committee towards this matter. This was the most extensive hearing of a private nature that has been before the committee on ways and bridges at this session, and when the committee considered the question in executive session it was disposed of very quickly. I know nothing about the conditions existing in respect to this measure except as

the evidence showed at the time the matter was presented before the committee. I never have been over the road. I have an impression that the town of Readfield would open up this road, providing the state would bear a part of the expense, and there is a resolve before the committee in regard to that matter now.

There are two roads, as I remember it, running up into Mt. Vernon and Rome, one going over the great Kent's Hill and the other following the shore. The town of Mt. Vernon has built down towards this road, and they want the town of Readfield to put so much of the road as is in the town of Readfield in passable condition; and I have the impression that the town of Readfield, judging from the evidence presented to the committee, has not done so. To be sure, it came out in the committee hearing that during the past two years \$300 or \$400 had been expended upon that road, but only when the people of Mt. Vernon intimated that if the town of Readfield did not do something they would call upon the county commissioners to do it. Then the town of Readfield went to work and expended several hundred dollars upon the road. It came out during the hearing before the committee that the town of Readfield was perfectly able to do it; the town of Readfield has no debt, and it has a tax rate of only 21 mills.

I took occasion the other day to go down to the State treasurer's office and see how the town of Readfield stood in relation to the state financially, and here is the report that the state treasurer gave me in regard to the transactions of the state with the town of Readfield: The total state tax of the town of Readfield is \$2058.98; that is the amount of state tax that the town of Readfield pays. What does the town receive back from the state? It receives back from the state \$2592.42. The town of Readfield pays no state tax, and the state gives to the town of Readfield the sum of \$1500. Now, under those conditions, it seemed to the committee that the town of Readfield ought to open up that road. I think the mail carrier up there wants to put an automobile on the road to carry

the mails, and he testified before the committee that he did. At the present time he cannot do it. Now, it seems to me that this is one of the few relics of the dark ages here in the state of Maine, and one which we want to abolish.

Mr. PEACOCK: Mr. Speaker, I would like to inquire of the gentleman from Westbrook (Mr. Scates) in regard to those figures on the matter of the State tax. I did not quite catch them.

Mr. SCATES: This is what the treasurer gave me, the State tax for the year 1912 was \$2058.98, and the amount returned by the State to the town for all purposes, schools, roads and everything was \$3592.42.

Mr. PEACOCK: Mr. Speaker, there seems to be a discrepancy between the figures of the State and our town report, as I recall it, although I cannot state positively that I am correct. I think our State tax was something like \$3000.

I just want to add one more word, Mr. Speaker, in regard to the suggestions of the gentleman from Westbrook, that it came out in the hearing before the committee that in the last year or two that the town of Readfield had begun to put out some money on that road. I desire to remind that gentleman from Westbrook (Mr. Scates) that if he had remained at that committee hearing until the hearing was finished he would have found out that six years ago we commenced to put out money on that road, and that nearly \$200 was expended that year. But that is not the question before the House. I simply ask for a matter of extension of one week.

Mr. BUTLER of Farmington: Mr. Speaker, this road question has been before the House before, and it seems to me that the time has arrived when roads of this nature should be opened to all kinds of travel. At the present time the amount of travel by automobile is equal to that of other conveyances in the State of Maine; and whether the State makes an appropriation for the repair of this road or not, it seems to me that at this time

it should be made passable for automobiles. In my own town which comes on this same line of travel from Franklin county through to Kennebec we have a section of road the last half mile in our town which for four weeks in every year was practically impassable to automobiles and all other teams, and while it was but little used by our own people we felt that there was a duty which we owed to the public, and in 1910 and 1911 we expended on that section of road \$2500; and it seems to me that whether the State makes this appropriation or not, this section of road should be opened up to the public, and that a town owes something to the general travel as it goes through. While it was all right six years ago to close the road, I think the time has arrived when we should proceed along different lines.

The SPEAKER: The question is on the motion of the gentleman from Readfield, Mr. Peacock, that this report and bill lay upon the table. So far this debate has proceeded out of order by unanimous consent. Is the House ready for the question? Those in favor of the motion will say aye, those opposed will say no.

A viva voce vote being taken,

The motion was lost.

The bill then received its third reading and was passed to be engrossed.

On motion by Mr. Jones of China, House Document No. 206, resolve in favor of Benjamin F. Towne of Waterville, in the county of Kennebec and State of Maine, was taken from the table.

Mr. JONES: Mr. Speaker and gentlemen of the House, this resolve is probably unlike any other resolve which will come before us for our consideration at this session of the Legislature, and it is accompanied by a short statement of facts. I do not intend to go into the details of this case, and neither is it necessary to go into the details as I look at it, for us to come to a decision in this matter.

It seems by this resolve that one Benjamin F. Towne, of the city of Waterville, was a Sturgis deputy, and

acting in what he claims to be his just right and duty as an enforcement deputy of the Sturgis law in the city of Bangor, for the purpose of making a raid upon some liquor joints, and in the performance of his duty, as near as I can learn, a little rough house ensued. Just what took place I am not able to say, but I think from the verdict that was rendered we can determine about what took place. I have been informed that he did, as an officer, use his club beyond what he had any right to do in the performance of his duty. The law gives to every officer a considerable leeway in the performance of his duties, especially in criminal cases. He may be obliged at times to use his club; he may be obliged under certain conditions, to protect his own life, to go so far as to use his revolver and take life. But under the conditions existing in this case he did not go that far. Afterwards, we find that this man, whoever he might have been—and I don't know who he was—brought suit against this officer, Benjamin F. Towne, in the supreme court of Penobscot county for the sum of \$2000. That case was tried before twelve men good and true, presided over by one of the justices of the supreme court of Maine, and after hearing all the evidence upon one side and the other the jury retired and returned to that court a verdict for the sum of \$25. The verdict, although small, did show that he was guilty of an assault.

Now, had Mr. Towne rested his case right there, and have come to this Legislature and asked to be reimbursed for the sum which he calls for here, \$173.57, this Legislature might in their wisdom have said that that jury did err in their verdict; but as I have been informed, he did not rest his case there, but he carried it to the law court where all the evidence was submitted to the justices of the supreme court, and they in executive session confirmed the action of the lower court, and said that he was guilty of an assault.

Now, gentlemen, why should we establish a precedent for future times to

pay the bills of an officer who has been found guilty of an assault; it has not been the policy, as I understand it, of this State to pay such bills, and I believe it would be wrong for us to establish such a policy at this time, and therefore, Mr. Speaker, I move that this resolve be indefinitely postponed.

Mr. AUSTIN of Phillips: Mr. Speaker, as a member of the committee on claims I simply want to state the information which your committee had in acting upon this matter. I do not propose to make any argument either for or against the claim.

The matter as it was presented to the committee was this: It was presented by ex-Attorney General Philbrook, and the committee gave it a hearing of an hour or more, during which time Attorney General Philbrook had an opportunity to state the case minutely, and he was followed by ex-Sturgis Commissioner Oakes of Auburn. The case seemed to be this, that this man Towne was engaged in enforcing the always-unpopular Sturgis law; that he went into a hotel in the town of Brewer, and that he and other officers made a liquor raid, arrested the proprietor of the place, and after the crowd in the bar-room had endeavored to rescue the proprietor—during which time the officers had to use their clubs more or less freely—they finally got their prisoner and hand-cuffed him and started with him for Bangor. He asked permission of the officers to retire for a few minutes, which permission was granted and his hand-cuffs were removed, and just then there came a crash of glass and the officer got around just in time to see his prisoner going out the back window through an out-house into a livery stable yard. An attempt was made to shield the prisoner and keep him from the custody of the officers, during which time stones and boots and clubs were more or less freely used, and as a matter of fact it did appear that in order to detain the prisoner, the officer used his club. Now the result was, as I understand it, and as your committee understood it, the prisoner sued Mr. Towne for the sum

of \$2000 for personal damages by reason of an assault, and the matter was tried through the courts by Attorney General Philbrook, who at that time, of course, was not attorney general; and the court finally held, I believe, that he did make a technical assault. In trying to keep his prisoner and being in the mix-up with dozen or fifteen rivermen he perhaps lost his head and used his club, and as I say, the court held that he was guilty of a technical assault, and damages were awarded in the sum of \$25.

It appeared to your committee that while he was in the act of enforcing a very unpopular law, still he was doing his duty as he saw it; and the committee believed that the State of Maine should establish a policy of defending its officers who are trying to protect its laws; and as I say, after a full hearing on this matter the committee on claims, with the exception of one member—and I believe that was the gentleman from Westbrook (Mr. Scates) if I remember right—unanimously voted "ought to pass." Those are the circumstances as they were shown to your committee, and I will leave it to the good judgment of this House as to what the policy of this Legislature shall be in matters of that kind.

Mr. HUTCHINS of Penobscot: Mr. Speaker, I will say that I voted against this resolve, and I think I was the only one that did so, on the ground that the officer had exceeded his duty, and that it had been determined so by the court, by the highest authority.

Mr. AUSTIN: Mr. Speaker, I wish to beg the pardon of the gentleman from Penobscot. As I remembered it, it was a unanimous report, although it was evidently with one exception. The gentleman did say, I believe, that he did not care to put in a minority report, but he did not vote in favor of the resolve.

The SPEAKER: The question before the House is on the motion of the gentleman from China, Mr. Jones, that this resolve be indefinitely postponed. Those in favor of the motion will say aye; those opposed will say no.

A viva voce vote being taken.

The motion was agreed to, and the resolve was indefinitely postponed.

On motion by Mr. Rolfe of Portland, House Document No. 212, resolve to appropriate \$5000 for enforcement of the brown-tail moth law and investigating the same, was taken from the table, and on further motion by Mr. Rolfe the resolve was referred to the committee on agriculture.

Special Assignment.

The SPEAKER: Specially assigned for today is the motion of the gentleman from Lisbon, Mr. Plummer, that the House reconsider its vote whereby it accepted the report of the committee on judiciary, reporting "ought not to pass" on bill, an Act relating to the use of seals.

Mr. DURGIN of Milo: Mr. Speaker, I rise to a point of order. On the motion of the gentleman from Lisbon, Mr. Plummer, last week, that the bill relating to the use of seals be substituted for the report of the committee, "ought not pass," the vote was taken and the motion was lost. I desire to inquire through the Chair if the gentleman from Lisbon voted with the majority.

The SPEAKER: The Chair understands that the gentleman from Milo, Mr. Durgin, has the right to interrogate the gentleman from Lisbon, Mr. Plummer, through the Chair as to whether or not he voted in the majority on the question which is now moved to be re-considered.

Mr. PLUMMER of Lisbon: Mr. Speaker, the motion, if the Chair and the House will take notice, was to reconsider the vote whereby the House accepted the report of the committee on judiciary, reporting "ought not to pass." If I remember the situation correctly, it was this: That the motion was made by myself to substitute the bill for the report of the committee; on the vote being taken that motion was lost, and I think then the gentleman from Patten (Mr. Smith) moved that the House accept the report of the committee, and the motion was declared carried by the Speaker, as a routine procedure, no vote being taken on that question; it

is therefore to be presumed, no objection having been raised by anybody, that the motion to accept the report was passed by unanimous vote; and that being the case, I assume that I have the right to move to reconsider.

The SPEAKER: Does the gentleman from Lisbon, Mr. Plummer, state that he voted in the affirmative on the question of the acceptance of the report?

Mr. PLUMMER: I will state, Mr. Speaker, that either I voted in the affirmative or else nobody did.

The SPEAKER: The Chair understands the gentleman from Lisbon has a right to state his position as to his vote, and if he voted in the affirmative the Chair will rule that he has a right to move to reconsider; and as the Chair understands the remarks of the gentleman from Lisbon, Mr. Plummer, he did so vote in the affirmative; and that being the case, the Chair rules the point of order is not well taken.

Mr. PLUMMER: Mr. Speaker, I do not propose to recapitulate the argument that I made the other day, if it may be so termed. I merely wish to state my reason for making the motion to reconsider. I found, after the House adjourned on Thursday, there was some misunderstanding on the part of some of the members as to the meaning of the term "seal" as mentioned in the bill. It was apprehended or mis-apprehended by some that the term "seal" even included an impression seal, such as is used by corporations or by officers of organizations to attest their signatures.

The bill, as I understand it, and as it is intended, merely applies to the little wafer seal that is usually attached, or is supposed to be attached and in fact is attached to certain legal documents without which such document, for instance a deed of land, is not valid, and it cannot be recorded, as I understand it, in the registries of deeds in the several counties unless such document has this little sticker on it. There were also certain gentlemen who have told me since that time of certain transactions in which they were engaged where the fact that the

seal had to be used was a considerable disadvantage. Whether any of these gentlemen, today, care to make any explanation of the subject, I do not know. If they do not, I am ready to have the question put to a vote.

Mr. SMITH of Presque Isle: Mr. Speaker, I have no desire to detain the House in a discussion of this matter, but it is a matter of some considerable importance. I have listened and listened attentively for the gentleman from Lisbon (Mr. Plummer) to give one single, solitary reason why this ancient custom of attaching seals to certain documents should be dispensed with. So far, I have heard no reason that he has given, not a single, solitary one. He has given no more information or reason as to why seals should be dispensed with than there is information found on the back side of a grave stone concerning the virtues of the deceased whose resting place it marks.

Now, we have in this State two classes of written contracts, one under seal and the other not sealed; and sealed contracts include deeds and bonds. I want to discuss with you for a few moments the matter of contracts. A contract, under the definition given by Bouvier, one of the great law writers, and one who probably had as much knowledge of the law as the gentleman from Lisbon (Mr. Plummer)—a contract, as defined by Bouvier, is an agreement upon a sufficient consideration to do or not to do a particular thing. In other words, a contract must have to support it a consideration, before it can be enforced; it must have a consideration back of it; that is one of the essential elements of contract, that it must have a consideration.

As I have stated, contracts are simple and special, that is, contracts under seal. Now, I want to discuss with you the matter of a deed, which is one of the most important instruments that we have in this State, an instrument which is the evidence of title to your real estate. The law assumes that contracts are not entered into lightly, that is, that great care, thought and deliberation enter into the formation of every contract. What are the ele-

ments that enter into the making of a deed, one of the most important contracts we have in this State? First, the law says that after the parties have agreed upon the terms, a meeting of their minds as it is termed, that the contract shall be reduced to writing. That is the first step, the reducing of the contract, of the deed to writing; the second step, which implies still more deliberation, is the signing of the deed; and then comes the third step, which implies still more deliberation, theoretically at least, the affixing of the seal, that little red wafer that the gentleman from Lisbon, Mr. Plummer, talks about; after that is done, then comes the fourth step, the delivery of the deed. When those four steps have been taken the law presumes that the grantor has acted with all due deliberation, and that he knew what he was doing, and his deed shall be binding upon him.

Now, then, what is the seal? The seal which you find on deeds and bonds has a well defined meaning in law; a body of law has grown up around it. As I stated to you a few moments ago, every contract must have a consideration. A seal placed on a deed or on a bond implies that there is a consideration back of that contract. The consideration is presumed—by the placing of that little red wafer upon your instrument of conveyance, the law presumes that there is a consideration for it, and it is unquestioned. Now, if the use of the seal is dispensed with, you have weakened your evidence of title if you receive a deed without a seal on it, because the courts are going to do what they have done ever since Maine has been a State, what they do in all common law states, the courts are going to consider a deed without a seal as a simple contract. In other words, that presumption that goes with the seal, that there is consideration for that deed or for that contract, is removed. It does not make any difference to lawyers whether you have seals or not; it does not cost one cent more to make a sealed instrument than it does to make an unsealed instrument; but it may be that if the use of seals is dispensed with that somebody is going to be hurt; somebody is

going to get involved in litigation over some deed, and with this presumption of consideration removed, somebody will be getting into trouble. You can't tell how far-reaching these State-wide acts are.

I have in mind a case bearing upon this matter. Sixteen years ago, I was a member of the House, and the druggists of the State came to us and said that they wanted some sort of law whereby poisons should be sold by druggists and by druggists alone. It seemed fair on its face, and we passed an act of that kind. When I got home I was met by farmers and hardware dealers and store-keepers, and they said, "You fellows went down to Augusta and passed an act which prohibits hardware men and the country store-keeper from selling Paris Green." That is just what we had done, we had put the entire sale of Paris Green, which is sold by the ton in Aroostook county, in the hands of the druggists absolutely and entirely. In other words, we had not thought, we had not figured in advance what effect the act was going to have upon the State at large.

It may be so in this matter. If the use of seals is dispensed with, unexpected results may flow from it in the future. As I have said, there is absolutely no harm in the use of seals and absolutely no inconvenience; but if you dispense with the use of seals you don't know what results will follow. I remember a few years ago a couple of men came into my office, and for convenience I will refer to them as Jim Jones and Sam Brown, and they said, "Squire, we want a contract made." Jim says, "I have agreed to build a barn for Sam Jones, and we want you to reduce that to writing, and put it in writing. We don't want one of those great long, verbose written contracts such as you lawyers are in the habit of getting up; we want something short and plain and simple," and I concluded that for once I would do what my client wanted me to do, and put it in writing, and as I recall it, this is what I wrote: "I, Jim Jones, agree to build a barn for Sam Brown for \$500; and I, Sam Brown,

agree to pay Jim Jones \$500 for building the barn." Well, they looked it over and said it was all right, and they were glad they had found one lawyer that could make a plain and simple contract that they could understand, and they signed it, and they said they guessed they would leave it with me and put it in my safe. About two or three days after that the two gentlemen came back, and they looked troubled, and both of them looked perplexed, and one of them says, "Squire, we are a little bothered about that writing we executed the other day; we kind of want you to tell us who is to furnish the lumber for building that barn," (Laughter) "how long is that barn to be, how long and how wide?" Well, I said, "Gentlemen, that is a very interesting question, but I cannot tell you how long the barn is to be, or how big, or how wide, or how high the posts are to be, or anything about the dimensions of the barn, or what sort of shingles are to go on the roof, or when work is to begin on it, or when the money is to be paid." I told them that they had a valid contract, and I would be willing to submit it to any lawyer in this House, that that contract was valid, because it contained three essential elements, parties, subject matter and consideration. I said, "Gentlemen, those are all questions for the court; you have got just the kind of a contract you wanted, and now unless you can otherwise agree you will have to go to the court for settlement of all those questions." Well, the result was that I put in the rest of the day writing a contract with specifications in it, and I am free to say that they paid me for my services.

The point is that those two gentlemen had not thought about any of those things, and they simply wanted a very plain and simple statement. They hadn't thought anything about the size of the barn or anything like that. That is just the way it sometimes works when an act goes through the Legislature; unless it is carefully thought out in advance what the effect and result will be, somebody is going to be hurt.

In the absence of any reason that has been given by the gentleman from Lisbon (Mr. Plummer) for the abolition of seals, I hope that this House will not take the responsibility of abolishing a custom which has obtained in this State ever since we have been a state, and which obtains in every common law jurisdiction, but will continue to let the law be just as it is now, that deeds should be sealed instruments.

Mr. PLUMMER: Mr. Speaker, I thought I would not say anything more upon this matter, but there are one or two points raised by the gentleman from Presque Isle (Mr. Smith) which I think may be worthy of attention. I would say, first, that in my judgment if this Legislature should kill this seal proposition or step its further continuance, that the stone which would be erected to its memory describing its virtues would be blank on all sides.

The gentleman has stated that a contract must have a consideration, and that the seal implied that such consideration existed. That is the very point to which I object. I object to that little red piece of paper stuck after my name, or stuck after the name of anybody, attesting anything which is not attested by the signature. So far as I understand this bill—and I suppose that no *ex post facto* law is to be passed—Section 1 provides as follows: "All writings obligatory and instruments of conveyance shall be equally valid in any court of this State whether with or without attached or scroll (as distinguished from impressed) seal." That is all it asks; that if a man signs his name to a document it would be just as valid without that piece of red paper on it, or whether there is one. What objection can there be to anything like that? If there is any objection, it is certainly beyond my ken. These old customs that have come down to us we do not need to continue just because they don't do any harm. What we want now is only such things as do good. This is one of the things, as I tried to show the other day, which I think has outlived its usefulness; there was a time

when it was useful, and there was a time when it was a signature, but the signature now has taken the place of the seal.

There is only one other point I wish to bring out. I presume in case there had been a red seal affixed to that document which was referred to by the gentleman from Presque Isle (Mr. Smith) as being made between Jim Jones and Sam Smith, that by that mere fact they would have been able to determine the size of the barn. (Laughter) Mr. Speaker, when the vote is taken on this question, I move that it be taken by the yeas and nays.

Mr. SMITH of Presque Isle: Mr. Speaker, the gentleman from Lisbon has missed the point which I endeavored to make. No question was raised about the validity of the deed but the question is as to evidential effect, as an evidence of title; the deed may be perfectly valid, but without a seal if occasion requires he has got to prove consideration by extrinsic evidence; the seal on the deed implies that a consideration was given, and

the grantor is estopped to deny it. Now, that is the distinction between validity and the use of the seal.

The SPEAKER: The question is upon the motion of the gentleman from Lisbon, Mr. Plummer, that the House reconsider its action whereby it accepted the report of the committee on judiciary, reporting "ought not to pass" on this bill dispensing with the use of seals. The gentleman from Lisbon on this question has demanded the yeas and nays. All those in favor of demanding the yeas and nays will rise and stand in their places.

A sufficient number not having arisen,

The yeas and nays were not ordered.

The question being on the motion to reconsider the vote whereby the House accepted the report of the committee, reporting "ought not to pass" on the bill,

A viva voce vote being taken,

The motion was lost.

On motion by Mr. Plummer of Lisbon,

Adjourned.