

MAINE STATE LEGISLATURE

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Legislative Record

OF THE

Seventy-Sixth Legislature

OF THE

STATE OF MAINE

1913

HOUSE.

Tuesday, February 25, 1913.

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

Prayer by the Rev. Mr. Miner of Gardiner.

Journal of previous session read and approved.

Papers from the Senate disposed of in concurrence.

From the Senate: An Act to amend section 44 of chapter 41 of the Revised Statutes, relating to the taking of smelts, accompanied by petition.

In the House this bill was passed to be engrossed, and came from the Senate recommitted to the committee on sea and shore fisheries.

On motion by Mr. Boman of Vinalhaven, under a suspension of the rules, the vote was reconsidered whereby this bill was passed to be engrossed, and on further motion by Mr. Boman the House voted to concur with the Senate in the recommitment of the bill to the committee on sea and shore fisheries.

From the Senate: Resolve in aid of navigation on Sebago Lake.

In the House this resolve was referred to the committee on interior waters, and came from the Senate re-committed to the committee on interior waters after the acceptance of the report.

On motion by Mr. Austin of Phillips, the House concurred with the Senate in the recommitment of this resolve to the committee on interior waters.

From the Senate: Resolve in favor of Peter J. Newell, representative of the Passamaquoddy tribe of Indians.

In the House this resolve was passed to be engrossed, and came from the Senate recommitted to the committee on Indian affairs.

On motion by Mr. Wheeler of Paris, the House under a suspension of the rules, reconsidered its vote whereby this resolve was passed to be engrossed, and on further motion by Mr. Wheeler the House concurred with

the Senate in recommitting the resolve to the committee on Indian affairs.

From the Senate: Resolve in favor of Peter W. Ranco, representative of the Penobscot tribe of Indians.

In the House this resolve was passed to be engrossed, and came from the Senate recommitted to the committee on Indian affairs.

On motion by Mr. Greenleaf of Otisfield, the House under a suspension of the rules, reconsidered its vote whereby this resolve was passed to be engrossed, and on further motion by Mr. Greenleaf the House concurred with the Senate in recommitting the resolve to the committee on Indian affairs.

Senate Bills on First Reading.

An Act to amend section eight of chapter 116 of the Revised Statutes, relating to transcripts in the superior court for Kennebec county.

An Act to prevent organization or existence of secret societies in public schools.

An Act to extend the charter and rights of the Penobscot Bay Railroad Company.

Resolve in favor of aid in repairing road from The Forks to Lake Moxie Station.

Resolve in favor of W. J. Maybury of Saco, secretary of the committee on insane hospitals.

Resolve providing for the purchase and distribution of book on early Maine history entitled "Makers of Maine," together with statement of facts.

From the Senate: Majority and minority reports of the committee on judiciary, on bill, An Act to repeal chapter 149 of the Resolves of 1911, to provide for a State paper, majority report "ought to pass" in new draft, signed by Messrs. Stearns, Hersey, Smith of Presque Isle, Smith of Patten, Smith of Auburn, Waterhouse, Durgin, Sanborn and Dutton; minority report "ought not to pass" signed by Mr. Dunton.

On motion by Mr. Newbert of Augusta both reports, pending the acceptance of either, were tabled and

specially assigned for consideration on Thursday of this week.

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

Education.

By Mr. Bowler of Bethel: An Act to amend section 102 of chapter 15 of the Revised Statutes, relating to the preparation of blank forms by the state superintendent of public schools.

By Mr. Chick of Monmouth: An Act to amend section 36 of chapter 15 of the Revised Statutes, in relation to the accurate keeping of school records and accounts.

Agriculture.

By Mr. Irving of Caribou: Petition of Caribou Grange in favor of Arrostook seed and experimental farm.

Inland Fisheries and Game.

By Mr. Harriman of Cherryfield: Remonstrances of C. H. Robinson and 24 others of Steuben, A. N. Tyler of Cherryfield and 12 others, Arno W. Willey of Cherryfield and 10 others, Winfield S. Davis of Cherryfield and seven others, J. E. Haycock of Cherryfield and four others, remonstrating against House Bill No. 152 entitled "An Act to provide for a resident hunter's license."

Orders.

Mr. Smith of Presque Isle presented the following order:

Ordered, that during the remainder of the session when the House convenes in the forenoon it shall be at nine o'clock, unless otherwise ordered.

Mr. Kehoe of Portland moved that the order be amended by substituting the words "half past nine o'clock" for "nine o'clock."

MR. SMITH: Mr. Speaker, personally I have no objection to the amendment, but we are getting down into the days of the session when it is taking a long time for the forenoon sessions, and I can see how the sessions are going to be long drawn out from this time on. It seems to me, if possible, we should begin work at nine o'clock in the morning, although as I say, I have no personal objection to the amendment.

MR. KEHOE: Mr. Speaker, I prefer

to withdraw my amendment rather than to have any difficulty about it.

The amendment having been withdrawn, and the question being on the passage of the order,

The order received a passage.

Mr. Boman of Vinalhaven presented the following order:

Ordered, the Senate concurring, that the State treasurer furnish to this Legislature as soon as convenient after the passage of this order information as to whether the provisions of chapter 39 of the Public Laws of 1911, relating to payment of wages weekly by the State, its officers, boards and commissions, to every mechanic, workman and laborer who is employed by it or them, has been or is being complied with, and if not, the reasons therefor.

MR. BOMAN: Mr. Speaker, my reason for presenting this order is that I believe the State should comply with its own laws, and for that reason I move that the order receive a passage.

The order received a passage.

Reports of Committees.

Mr. Sherman from the committee on ways and bridges, reported "ought not to pass" on resolve in favor of the town of Eagle Lake.

Same gentleman from same committee, reported "ought not to pass" on resolve in favor of building a steel highway bridge across the Fish River in Wallagrass Plantation.

Same gentleman from same committee, reported "ought not to pass" on resolve in favor of Charles Dodge, of Hampden, Maine.

Same gentleman from same committee, reported "ought not to pass" on resolve in favor of repairing the road between Patten and Trout Brook Farm in Penobscot county.

Same gentleman from same committee, reported "ought not to pass" on resolve in favor of A. B. Bird of Rockland, Maine.

Mr. Umphrey from same committee, reported "ought not to pass" on resolve in favor of H. Laurier of Camden.

The reports were accepted.

Mr. Bowler from the committee on education, reported in a new draft and "ought to pass" bill, An Act to provide for the State certification of all teachers in public schools.

Mr. Chick from the same committee, reported in a new draft and "ought to pass" bill, An Act to amend chapter 188 of the Public Laws of 1911, providing for the encouragement of industrial education.

Mr. Sherman from the committee on ways and bridges, reported in a new draft and "ought to pass" bill, An Act to grant Bion M. Pike authority to maintain a ferry between Lubec, North Lubec, Eastport and Campobello.

Mr. Spencer from the committee on public health, reported "ought to pass" on bill, An Act to amend section 23 of chapter 18 of the Revised Statutes, relating to the State laboratory of hygiene.

Mr. Chick from the committee on education, reported "ought to pass" on resolve in favor of Wilton Academy.

Mr. Umphrey from the committee on ways and bridges, reported "ought to pass" on resolve in favor of reconstructing the bridge at Forest City, Washington county, Maine.

Mr. Sherman from the same committee, reported in a new draft and "ought to pass" resolve in aid of building bridge across the Mattawamkeag River in Moro Plantation.

Same gentleman from same committee, reported in a new draft and "ought to pass," resolve in favor of the town of Readfield.

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

Mr. Irving from the committee on banks and banking, reported "ought to pass" on bill, An Act to amend section 25 of chapter 38 of the Revised Statutes, relating to investment deposits in savings banks and institutions for savings.

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

First Reading of Printed Bills and Resolves.

An Act to authorize the town of St. George to restrict the taking of clams within the limits of said town to the inhabitants of said town.

An Act relating to the taking of smelts in the St. George's River and its tributaries.

Resolve in favor of the Eastern State Normal School at Castine.

Resolve in favor of the town of Talmage.

Resolve in favor of Kelly Maines, of Buxton.

Resolve in favor of Rosa Prentiss, of Lewiston.

Resolve in favor of Helen B. Hobart for state pension.

Resolve in favor of Henrietta S. Hodgdon, of Readfield.

Resolve in favor of Bridget Kelly, of Auburn.

Resolve in favor of James Lombard.

Resolve in favor of Susan J. Tarr, of Vinalhaven, Maine.

Resolve in favor of Vinnie E. Saunders.

Passed to Be Engrossed.

An Act to amend Chapter 39 of the Public Laws of 1911, providing for the weekly payment of wages.

An Act to amend section 5 of chapter 251 of the Private and Special Laws of 1907 as amended by Chapter 28 of the Private and Special Laws of 1909 relating to the protection of alewives, shad and sturgeon in various rivers in Maine.

An Act to amend Section 10 of Chapter 121 of the Revised Statutes of 1903, pertaining to Larceny.

An Act to authorize and empower the Norcross Transportation Company to extend its existing wharf further into North Twin Lake.

An Act authorizing George W. Junkins, his heirs and assigns, to erect and maintain a dam across Blackwater Stream so called, in said town of Marsardis.

An Act to extend the charter of the Rumford General Hospital.

An Act to revive and extend the power of the Litchfield Electrical Company.

An Act to increase the efficiency of

the public schools of Maine by retiring teachers of long service with pensions.

(Tabled pending its passage to be engrossed and specially assigned for Tuesday of next week on motion by Mr. Mathieson of Rangeley.)

An Act to change the name of Hayden Lake, so called, to Wesserrunnett Lake.

An Act to incorporate the Town of Wade.

An Act to incorporate the Lazy Tom Brook Dam Company.

Resolve in favor of the permanent improvement and repair of "The New Kenduskeag Road" in the Town of Glenburn.

Resolve for the improvement of the State Park on the easterly side of State Street.

Resolve in aid of repairing highways in the town of Trescott.

Resolve in favor of repairing highway in the town of Benton, Maine.

Resolve in favor of raising and repairing bridge over Garland's Brook in town of Mariaville.

Resolve in favor of the University of Maine.

Resolve in favor of the town of Nobleboro.

Resolve in aid of navigation on the Lower Lakes.

Resolve in favor of aiding in building road in New Canada Plantation.

Resolve in favor of the town of Whitneyville.

Resolve in favor of the town of Rockport.

Resolve in favor of a road in Elliottsville Plantation.

Passed to Be Enacted.

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

An Act to repeal Chapter 340 of the Private and Special Laws of 1907, relating to highway in Readfield closed to automobiles.

An Act to incorporate the Washburn Water Company.

An Act to amend Section 1 of Chapter 145 of the Revised Statutes, relating to the State pension law.

An Act to amend Section 27 of Chapter 135, as amended by Chapter 184 of the Laws of 1909, relating to new trials in criminal cases.

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

An Act to authorize the employment of county prisoners on county highways.

An Act to amend Section 5 of Chapter 88 of the Revised Statutes, relating to the jurisdiction of trustee actions.

An Act to appropriate moneys for payment of salaries fixed by law for the year 1913.

An Act to change the burden of proof in certain negligence cases in which contributory negligence is a defence.

An Act to extend and amend the charter of the Jonesport Central Railroad Company.

An Act to extend the charter of the Rumford Falls and Bethel Street Railway.

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

Finally Passed.

Resolve appropriating money for expenses of electoral college.

Resolve in favor of the town of Castine.

Resolve in favor of the Maine Industrial School for Girls at Hallowell to provide for payment of unused interest on trust funds.

Resolve in favor of the Maine Industrial School for Girls at Hallowell to provide for interest on trust funds deposited in the state treasury.

Resolve in favor of the Eastern Maine Insane Hospital for storage house and cold storage plant, repairs on all buildings, washing machines, laundry, fire mains and hydrants and high pressure pump.

Resolve in favor of the State School for Boys at South Portland for permanent improvement and insurance.

Resolve in favor of the State School for Boys at South Portland for general maintenance.

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

Resolve in favor of an appropriation to provide for participation by the State of Maine in the 50th Anni-

versary Exercises on the Battlefield of Gettysburg, Pennsylvania.

Resolve for repair of bridge across the Penobscot River between the towns of Enfield and Howland.

Resolve in favor of Gerry M. Garland.

Resolve in favor of Elizabeth D. Low.

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

Resolve in favor of Maria A. Sylvester, of Augusta.

Resolve in favor of the Maine Insane Hospital for maintenance and support for the year 1914.

Resolve in favor of the Maine Insane Hospital for maintenance and support for the year 1913.

Resolve in favor of E. B. Weeks and Isaac F. Tibbetts, both of Old Town.

On motion by Mr. Merrill of Buxton, under a suspension of the rules, the vote was reconsidered whereby resolve in favor of E. J. C. Owen was passed to be engrossed.

Mr. Merrill offered House Amendment A, to House Document No. 232, to amend by striking out the whole of line two of the resolve and inserting therein the words "five dollars per month"; and by striking out in the third line the words "which he now receives."

The amendment was adopted, and on further motion by Mr. Merrill the resolve as amended was passed to be engrossed.

Orders of the Day.

On motion by Mr. Kehoe of Portland, House Document No. 266, bill, an Act to amend Section 30 of Chapter 93 of the Revised Statutes, relating to liens on buildings and lots, was taken from the table, and on further motion by Mr. Kehoe the bill was referred to the committee on legal affairs.

On motion by Mr. Kehoe, House Document No. 267, bill, an Act to require loan brokers to obtain licenses from the municipal officers of cities, was taken from the table, and on further motion by Mr. Kehoe the bill

was referred to the committee on legal affairs.

On motion by Mr. Kehoe, House Document No. 268, bill, an Act to amend Section 2 of Chapter 46 of the Revised Statutes, in regard to loans, was taken from the table, and on further motion by Mr. Kehoe the bill was referred to the committee on legal affairs.

On motion by Mr. Sanborn of South Portland, House Document No. 310, report of the county commissioners of Cumberland county on location, etc., of Portland bridge pursuant to Chapter 209 of the Resolves of 1911, was taken from the table, and on further motion by Mr. Sanborn the re-Yarmouth, House Document No. 307, County Delegation.

On motion by Mr. Sanborn, House Document No. 234, bill, an Act relating to agents acting for residents of other states, 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. Plummer of Lisbon, House Document No. 251, bill, an Act to extend the time in which the Maine Title Guaranty Company is authorized to commence business, was taken from the table, and on further motion by Mr. Plummer the bill received its third reading and was passed to be engrossed.

On motion by Mr. Hutchins of Penobscot, report of Committee on Sea and Shore Fisheries to which was referred bill, an Act to amend Section 1, Chapter 84 of the Private and Special Laws of 1905 to prevent the destruction of smelts in Union river and Morgan Bays, their harbors, coves and tributaries, reporting "ought not to pass," was taken from the table, and on further motion by Mr. Hutchins the bill was recommitted to the committee on sea and shore fisheries with instructions as to advertising a further hearing and advertising the same in the Ellsworth American.

On motion by Mr. Swett of Bath, House Document No. 54, bill, an Act to incorporate the Maine Security Company, was taken from the table,

and on further motion by Mr. Swett the bill was passed to be enacted.

On motion by Mr. Hodsdon of North port was referred to the Cumberland bill, an Act to limit the hours of employment of conductors and motormen on electric railroads, was taken from the table, and on further motion by Mr. Hodsdon the bill was referred to the committee on legal affairs.

On motion by Mr. Wheeler of South Paris, House Document No. 13, bill, an Act to grant additional rights to married women, was taken from the table, and on further motions by Mr. Wheeler the bill received its first and second readings and was assigned for tomorrow morning for its third reading.

On motion by Mr. Mooers of Ashland, Resolve in favor of the Allagash Road in Aroostook county was recommended to the committee on ways and bridges.

Special Assignment.

The SPEAKER: By special assignment comes up for consideration, today, the majority and minority reports of the committee on towns to which was referred bill, an Act to divide the town of Bristol and incorporate the town of South Bristol, majority reporting "ought not to pass," minority reporting "ought to pass."

Mr. Violette of Van Buren moved that the majority report, "ought not to pass," be accepted.

Mr. IRVING of Caribou: Mr. Speaker and gentlemen.

The matter before us calls to mind a letter written by a gentleman well-known in Augusta and in this Capitol, to an agent who was underwriting insurance for him, upon his report that a certain man upon whom they held a risk had just had a third fire. He wrote him after this manner: "The first fire was an accident, the second a coincident, the third a habit. Cut this habit out." Now this coming to the Legislature by parties who have imaginary grievances and injuries against their fellow townsmen, and using the time of ten men during the sessions to adjust these differences has got beyond the coincident and got to be a

habit, and it is time it should be cut out.

I hold no brief for the town of Bristol, nor do I own one dollar of taxable property in that town. I stand here at the bidding or suggestion of no man, but I hold a commission from the voters of this State to whom was referred the act of the Legislature dividing a town and who, by their vote of two to one declared against the policy of division of townships and emphatically commanded future Legislatures "to cut this habit out."

My second reason for appearing against this bill is because I am most familiar with the conditions existing in the town of Bristol. I personally know that town from Muscongus to Christmas Cove, from Pemaquid to New Harbor, and the Damariscotta River. I have travelled its roads, probably all of them several times, by automobile, team and on foot, and upon this particular feature, I know of what I shall speak. The old town has been my resting place, my play-ground, if you please, for the past fifteen summers.

I attended the hearing before your committee and was amused in some instances and extremely surprised in others at what came before that committee, and I wish to here unqualifiedly state that there was not one point produced, or reason given for the division of the town which was not entirely swept away by the opponents.

Now, what does division mean? While I have before me an exhaustive tabulation of figures from the books of the town, I do not propose to burden you with them. I will use round numbers, fractions and proportions which may be verified by the tabulation to which I referred, and I find on my desk an extract of this tabulation accompanied by a map of that town, and I notice on the desks about me a similar paper and assume that each member has one. You will find that the map of Bristol resembles in some degree the human hand, with the forefinger partially closed and the second, third and fourth fingers compressed together, and the whole hand representing the town of Bristol, the thumb that of South Bristol desiring to be set

off, the three fingers, Pemaquid Point, and the forefinger knuckle old Pemaquid and Pemaquid Beach.

Now the part of the town that is to be set off represents 27 per cent. of the valuation and there goes with the town but 12 per cent. of the roads, schools and bridges, and not one pauper. The remainder of the town representing 73 per cent. of the value has 88 per cent. of the roads, schools and bridges and all the paupers. You will note by this, without going further into detail, how unevenly the burdens of municipal support is divided. The first reason advanced by the proponents is that they have no representation on the board of officers.

It appeared in evidence before the committee that they had been repeatedly offered positions on the Board of Selectmen and upon the School Board, that they had held these positions in the past but that in recent years it appeared that they of South Bristol were unable to agree upon the men that they wanted for that place and that the voters were obliged to select men from other places for that position. It did appear that they had a member on the School Board, in 1912, who, through ill health, was obliged to resign.

A second reason advanced was that the road money was not equally distributed. It appeared in evidence that South Bristol in 1911 and 1912 had expended upon the roads \$60 per mile. The average amount expended upon the rest of the town was under \$50 per mile. The amount expended upon the Pemaquid Point and New Harbor branch was \$29 per mile, showing that South Bristol had received from 20 per cent. to 50 per cent. more money per mile than that expended upon the rest of the town. Owing to the small amount expended on New Harbor and Pemaquid Point division I am not surprised to find men in New Harbor complaining, but what they failed to get, South Bristol secured. Now they submitted in evidence the testimony of a man in an adjoining town who made an examination of the roads, testifying that the Neck road, so-called, which goes along the peninsular approaching South Bristol and

Christmas Cove was practically impassable, that there was a sheer drop of two feet from a bridge into a mud hole, which made passage, even on foot, dangerous, that the hill from the post office toward the Summit House was so wave-washed, rutted and sidling that it was dangerous for horses and carriages to pass and no automobile would be driven over it a second time. Now, as a matter of fact, an automobile containing six passengers was driven, late in August, over that bridge, made that two-foot leap, negotiated that hill on second gear at not less than 15 to 20 miles an hour. As no car will make that hill on second gear at less rate of speed and no inconvenience was suffered, in fact, it was not noted that the road was unusually bad. I do not mean to be understood by this that the road was good, in fact, I would be understood to state that the roads were generally not good anywhere in Bristol, or Damariscotta, or in Piscataquis county, or in Lincoln county or Knox county, over which cars were driven, last summer. But I do want it understood that the road in South Bristol was not worse than the road elsewhere in town. Special emphasis was put upon this gentleman's testimony on one road which he was pleased to call The Neck, upon which he found second growth bushes growing, when as a matter of fact, he was describing a private way leading to a farmhouse and cow pasture.

Now, gentlemen, in view of the evidence as cited, do you find a good and sufficient reason upon which to grant a division of the town?

A further reason was that relating to schools. As the common schools or grade schools are under the direct supervision and supported by the State there appeared to be no controversy, but the question of High schools appeared as the chief bone of contention. By referring to your map, you find that the point at the head of John's bay, or John's river, the town of Pemaquid Falls, where the High school building is located. From Christmas Cove by the way of land around the head waters of this point it is 10 miles but as there are few ex-

cept summer cottagers living there, it is only fair to use the distance from South Bristol, which is nine miles. The distance from Pemaquid Point to the school is four miles, New Harbor, two and a half miles, Old Pemaquid two and a half miles, Round Pond three and one-half to four and a half miles. It was urged that no girl from 14 to 18 years of age could, with any degree to safety to health and person, walk these nine miles to school. I submit that neither could a girl of that age walk four miles from Pemaquid Point or the four and a half miles from Round Pond, but as a matter of fact, while we may have common schools very near us, it is a matter of history that High schools are located in a center and must, of necessity, be in some instances, far removed from some of the children. This is true of every large town. They claim that because of this great distance they are obliged to send their pupils by boat to Damariscotta an hour and a half ride, at an expense of a dollar and a half a week, and I call attention to the fact that these scholars have a walk of a mile from the landing to the High school in Damariscotta. I also call your attention to the fact that a boat runs a large portion of the year (it could be arranged to run nearly the whole year, if necessary) from South Bristol to Old Pemaquid, regular fare 10 cents, and from Old Pemaquid, scholars of South Bristol would be as near the school as those living at Old Pemaquid or New Harbor and nearer than scholars from any other part of the town.

But there is another point which the proponents did not bring up, which appeared in evidence, notwithstanding the fact that there are less than 10 towns and cities in the State of Maine that maintain two High schools, the voters of the northern part of the town of Bristol, which had been so abusing those of South Bristol, which has driven them to this Legislature asking for a divorce, appropriated at its last March meeting \$1300 to erect an addition to their school building and to establish and maintain a B. grade of High school for the special personal benefit of the inhabitants of South

Bristol. They charge that this building had not been erected and that the officers were remiss in their duties, when as a matter of fact, the educational department in this building only O. K'd. the specifications and authorized its construction, late in December, so that it was physically impossible to have the building erected ready for use at this time. In the light of these facts, gentlemen, do you find any reason for granting the separation or division of this town?

Now, we are down to the question as to who is asking for a separation.. Bristol's population is 2400, and right here, gentlemen, I want to let this sink in, 141, or but six per cent. of the population of the town of Bristol, asks for this division, and do not let the following escape your notice, 54, or over one-third of these petitioners pay only a poll tax. And remember this, that one-half of the real estate owned and represented on that petition is non-resident owners. Now there is but one logical conclusion to be reached. Any member present is aware of the fact that a coterie of wealthy men from the great metropolises of the East have their eyes fixed upon Maine's fairest summer resorts and these parties, with their stupendous wealth and mighty influence, like a great octopus are reaching out their tentacles and laying hold upon our most valuable assets in this line. And one of these tentacles, gentlemen, has been wound around this little island mentioned. One man, owning one-third of Rutherford's Island has had it fenced in and not one foot of it can be purchased by any except those of his class. And I have it from reliable authority that he and his friends own mortgages on a large percentage of the rest of that island.

Now, we do not want to exclude these men. We want them to come, but we do want to be excluded by them and crowded off the earth, as it were. They come to this Legislature by this bill asking you to give them this island that they may fence it about that they may establish here a miniature Eden, and by that I do not mean Paradise in Heaven or upon earth, but a little

Bar Harbor, where they can congregate and hibernate, as it were, several months in the year, excluding all others, where they will not be molested by the sordid pursuits of life and ordinary pleasures, and where they will be exempt from the tax necessary to maintain the municipality of which they are a part, for support of its schools, construction and up-keep of its highways, over which they must pass to get to their little personal paradise. We freely admit that they are improving the island, that they are creating property, increasing its values, but do they create the island and nature? Rutherford Island, with its little bluffs, beautiful wood-covered knolls, charming little bays and eddies, enchanting cozy spots and the peninsular of South Bristol so happily situated was the work of the Great Architect. It was, and is, and should forever remain a part of the town of Bristol, which rocked the cradle of its infancy, and bore it in its arms when it could not stand alone, and if the influx of summer visitors to this summer place bring values to it, and if there be any benefits to accrue to anyone, to whom should it so fitly go as to the old town of Bristol to reimburse it in part for the loss of its great ship building industries, through the failure of a government to foster and protect it. This Legislature owes a duty to its municipalities and you will not deliberately or carelessly, in defiance of the command of the people of this State to refrain from the division of townships, divide. No, it is not a division but a robbery of the town of Bristol of one of its best assets, its fairest child, to feed the insatiable greed of a non-resident, plutocracy. I wish to second the motion of the gentleman from Van Buren in the adoption of the majority report. (Applause).

Mr. ROLFE of Portland: Mr. Speaker, in tabling this bill, as I remember it, I made a motion that it should be assigned for Wednesday of this week instead of Tuesday, and I supposed that it was assigned for tomorrow. For that reason, I move that the bill lay upon the table and be assigned for Thursday next.

Mr. SCATES of Westbrook: Mr. Speaker, I understand that the gentleman from Boothbay Harbor, Mr. Maxwell, who represents the town of Bristol is not here, today, and that he will not be here. For that reason I think it is only fair towards the gentleman who represents that town, that the motion of the gentleman from Portland (Mr. Rolfe) should prevail, and that the matter should be assigned for Thursday.

Mr. IRVING: Mr. Speaker, I see no reason why there should be any further postponement of this matter. I submit that it is an almost unprecedented thing, after a day has been specially assigned and ample time given all parties to present their positions, that such a thing as this should happen. I noticed that until within a few moments before this matter was opened up there was no suggestion of a postponement; but I apprehend—and I offer it only as a suggestion—that someone would rather prefer that the facts were not known to this legislature, and for that reason the suggestion has been made that the matter be postponed.

Mr. BOMAN of Vinalhaven: Mr. Speaker, while I have no authority to speak for the gentleman from Boothbay Harbor, Mr. Maxwell, yet I wish to say that from my conversation with that gentleman I understood him to state that he was not to appear either for or against this bill.

Mr. AUSTIN of Phillips: Mr. Speaker, for the information of members of the House I would like to read from the Legislative Record of February 20, page 465: "Majority and minority reports of the committee on towns, on bill, an Act to divide the town of Bristol and incorporate the town of South Bristol, majority report "ought not to pass" signed by Messrs. Patten, Bailey, Bragdon of York, Gardiner, Violette, Bragdon of Sullivan and Twombley; minority report "ought to pass" signed by Messrs. Jillson, Rolfe and Paekard. On motion by Mr. Rolfe of Portland, both reports were tabled, pending the acceptance of either, and

Tuesday of next week assigned for their consideration."

I will submit that this record bears out the correctness of the printed calendar; and wish to say further that business seems to be rolling up very fast upon our calendar, and if it is possible for the proponents and opponents of this measure to agree, I think it would be well to get these matters off of the calendar as fast as possible, rather than to re-table them for further assignment as we are now doing.

Mr. IRVING: Mr. Speaker, it has been suggested by the gentleman from Westbrook (Mr. Scates) that it was unfair towards the gentleman from Boothbay Harbor (Mr. Maxwell). I wish to call the attention of the House to that fact—is it anywhere near as unfair to the gentleman from Boothbay Harbor or to any other member as it is to the opponents of this measure, to permit their side of the case to be heard and then to have the matter postponed?

Mr. ROLFE: Mr. Speaker, it seems to me that it was my privilege to take this bill from the table and make a motion before anything had been said upon the question; but it seems to have been taken from the table by some one else, and discussion upon the measure commenced before I noticed the manner in which it was proceeding.

The SPEAKER: The question is upon the motion of the gentleman from Portland, Mr. Rolfe, that this matter lay upon the table and be specially assigned for next Thursday.

A viva voce vote being taken,

The motion was lost.

The SPEAKER: The question now recurs upon the motion of the gentleman from Van Buren, Mr. Violette, that the majority report of the committee, reporting "ought not to pass," be accepted. Is the House ready for the question.

Mr. Irving of Caribou called for the yeas and nays.

A sufficient number not having arisen to demand the yeas and nays,

The yeas and nays were not ordered

Mr. SARGENT of Portland: Mr. Speaker and gentlemen, I would like to say a word upon this question. I am a little bit interested myself down in the town of Bristol. The portion of the town that they propose to set off is very small, and as I understand it, there are only about 600 or 700 inhabitants, and is mostly a village. The town of Bristol, as I understand, is some 12 or 15 miles long, and there are two spurs that run out into the ocean at the southern portion of the town, and they propose to take off the western part of it. I don't know how many acres or how many square miles they propose to cut off, but it is very small. The people who are obliged to travel by land cannot get down to South Bristol without passing over some five or 10 miles of road through the farming community in the northern part of the town. If they had a good road there they could haul more over it every day than they do now, and they claim they want to get the road down there for automobiles, and one thing and another, and that is the position they are in, and they are kicking about it because it is not in as good shape as it ought to be, and the northern part of the town if they are set off won't try to make any better improvements than they are making now because they won't be particularly interested in the southern part of the town after they are set off, and they are going to shut themselves out. That is the way it looks to me, and it is impossible for them to get down with teams without going through the northern part of the town. Automobiles go down there in the summer time in large numbers, and I don't see, so far as the roads are concerned, why they are making any trouble about it. It seems to me it will be a great deal worse for them if they are set off than it is now.

The SPEAKER: The question is upon the motion of the gentleman from Van Buren, Mr. Violette, that the majority report "ought not to pass" be accepted. Those in favor of that motion will rise and stand in their places until counted.

A division being had, 90 voted in

the affirmative and three in the negative.

So the motion was agreed to, and the majority report was accepted.

Special Assignment.

The SPEAKER: Coming up by special assignment, today, is the matter of majority and minority reports of the committee on claims to which was referred resolve in favor of Michael Burns, majority reporting "ought to pass," minority reporting, "ought not to pass."

Mr. Scates of Westbrook moved that the majority report be accepted.

Mr. HUTCHINS of Penobscot: Mr. Speaker, as one who signed the minority report, I wish to make clear my position.

This is a unique and somewhat remarkable case spanning a quarter of a century, and stands alone in the history of the State.

It involves the famous Michael Burns suit, and is know far beyond the borders of the State. I desire to set forth the status of the claim arising from this suit, the attitude of the committee on claims to ward it and some of the reasons on which I founded my opposition to the report of that committee.

I want this House to clearly understand this claim and decide it according to their sense of duty to the claimant their constituency and the highest interests of the State of Maine.

It appears that one Michael Burns, a citizen of Augusta, some twenty-five years ago, imported and sold spirituous liquors in the original packages, under United States law.

Governor Bodwell, a sturdy and patriotic man, saw at once that either Michael Burns or the prohibitory law must go to the wall and contrary to the advise of the attorney general, Gov. Bodwell directed a suit against the said Burns—but the courts sustained Michael Burns, and ordered the return of the liquors seized—but it appears that the liquors were not returned nor Burns re-imbursed by the State.

The claim has been presented to several Legislatures that have denied payment thereof and it further appears

that this claim was revived in the last Legislature with hopeful vitality, but even that Legislature with all its dislike for the prohibitory law, failed in courage to reimburse the irrepressible Burns and tenderly consigned it to the care of this Legislature.

His claim before this Legislature appears in the form of a resolve for the sum of \$3288.95 to defray him for alleged damage and costs of defence.

The items are as follows: Three hundred dollars for liquors seized and destroyed, \$1299.94 for counsel and other expenses, interest for 25 years and 6 months, \$1988.95. Total, \$3288.95.

This claim has been considered by the committee, who voted unanimously "Ought not to pass."

But his counsel apparently conceiving the improbability of the committee's allowing the claim with the usual shrewdness requested the committee, in case his claim was not allowed, to permit said Burns to carry his case into the courts of this State to recover damages.

A majority of the committee voted to grant the permit and to report the resolve in a new draft. Differing from the committee on this point I have submitted a minority report "Ought not to pass" on the resolve as reported by the committee.

There are two distinct propositions contained in the report. One is, "Shall the resolve to reimburse Michael Burns for damages and costs incurred in defending the suit against him have a passage?"

The other proposition is: "Shall we grant Michael Burns permission to recover damages and costs resulting from this suit in the courts of this State?"

Now, I raise the point that the committee has no right to embrace in their investigation and report any matter foreign to the subject matter referred to them for their consideration.

It is not within their province to initiate and report on new legislation.

They are but the servants of the Legislature and limited to the specific work assigned them.

A resolve to allow damages to a certain person resulting from an action by the State was the original and only

matter referred to that committee by this House, and the only matter upon which they could properly report in this instance, and it was within the scope of their authority to report "Ought to pass" on the full amount called for by the resolve or a part of it under a new draft, or to report "Ought not to pass" on the original resolve.

The report virtually covers two resolves, one for damage, the other for granting of a legal right or power involving nice questions of law never referred to this committee by this House but lugged into that report at the suggestion of an adroit attorney.

My second objection is that it is wholly unnecessary, if proper, and that said Mr. Burns has never yet been denied his constitutional right to a trial by jury by the officials or Legislature of this State. If you think that Burns has a just and deserving claim why not so report? If you think he has not a just and deserving claim why not so report and remain quiet?. Why say to Burns you have forfeited all right to damages; we do not want to allow them; it would not be popular, you know, but we will endorse them in a way and give you special permit--an unnecessary recommendation which perhaps we have no right to report--to recover them in the courts of this State. And upon the passage of such a report a quasi endorsement of that claim, said Burns will walk into the courts of this State and recover the \$32,000 which you have denied him.

Now let us examine this claim for a moment.

We find here charged \$300 for liquors seized and destroyed, which cost Burns according to his own figures \$180. If this were \$180 worth of bread to feed hungry children, if this were \$180 worth of shoes to cover bare and freezing feet, if it were \$180 worth of clothes to shroud naked bodies, then it would be a loss to the individual and a loss to the world. But instead what does it represent--\$180 worth of poverty, crime and misery; \$180 worth of poison and damnation; \$180 worth of the most damaging, home-blighting, heart-breaking, soul-destroying product that ever darkened this fair land or shad-

owed the portals of heaven. Ah, gentlemen, if every drop of this liquid hell-fire could be forever destroyed no mathematician can compute the increased value of human life and the millions it would add to the accumulations of the poor.

Now, there is charged about \$1200 for lawyers' fees and other costs, chiefly attorneys' fees. A man tried for a criminal offence under the constitution is entitled to counsel. If he is too poor the court appoints one. Michael Burns waived this right and employed four attorneys, and he alone is responsible financially for their services.

Now it appeared before this committee on the testimony of said Burns that, prior to his alleged legal sale of liquors, he had repeatedly sold liquors in violation of the prohibitory law--in fact, had been a common rumseller--and it is fair to assume that he would sell the stuff in violation of any law under any veiled pretext or seeming excuse that an ingenious mind could invent. Now I believe that a state has the right of self-defence--the right to protect itself against vicious laws and bad citizens, and whenever an enemy seeks to break down domestic peace, social order, and good government, under whatever law or pretext, the State has a right to use every legal power within its grasp to save itself and its institutions.

I stand by Gov. Bodwell. He saw our emergency and he met it as any Governor would who had sand in him.

He saw a vicious and unconstitutional law passed by Congress, prompted and supported no doubt by the rum trust, thrust upon us directing how intoxicating liquors should be sold in this State, which for more than a quarter of a century had forbidden its sale, as a beverage by prohibitory law, and for other purposes under restrictions. As laid down by the courts of this State in the incipient stage of temperance legislation, the State has the sole right to regulate the sale of intoxicating liquors, to restrict or prohibit its traffic within its jurisdiction. The Constitution of the United States neither reserves this right to the federal government nor prohibits the exercise of it to the states.

And Congress had no right to interfere with this prerogative or modify our

policy under the guise of interstate law. And Gov. Bodwell by his decisive action, held the law in abeyance until it was repealed and the State saved from the evil and obnoxious effects of it.

And the action of the committee in not allowing his claim, but allowing him to recover it in the courts of the State, reminds me of a woman. She was a tender-hearted mother, as mothers generally are, but a mighty poor disciplinarian.

She had an unruly boy by the name of Johnny. One day Johnny committed a grave offense and got the family into trouble. She said to him: "Johnny, you have been bad today, and I must punish you, but if you wont cry about it I will give you a box of candy."

So Johnny took his punishment with grace and cheerfulness and when his mother got through her job he looked up into her face, and smiling, said: "Mother, I guess I'll be bad, tomorrow, again, for this is the first time I've had any candy for six months." (Applause)

Mr. Scates of Westbrook: Mr. Speaker, I am not going to make a temperance speech, and neither am I going to say what it is right for the national government to do or not to do, because in regard to that I don't know. I simply want to call the attention of the House to some of the reasons why the majority of the committee reported as they did on this resolve. I wish that every member of the House would read House Document No. 311 and see what it states.

This case of Michael Burns has been a veritable "Banquo's Ghost"; it has come up before every Legislature within my remembrance, and the majority of the committee thought it was about time that it should stop, and that if Michael Burns had any rights in the matter the proper way for him was to present them in the courts of this State. He should have the same right that everyone else has to present his case in court. My friend from Penobscot (Mr. Hutchins) and I may get into difficulties over financial matters; he can bring me into court and we can there have a

trial, and the case is decided upon the law and the evidence; but if we have any controversy with the State we cannot bring a suit against the State; you cannot sue the State. My friend from Penobscot (Mr. Hutchins) may have a contract with the State involving a large sum of money, and he may fulfil his contract to the letter, and the State may refuse to pay and fulfil its part of the contract, and still he has no recourse; he cannot sue the State unless the Legislature authorizes that suit.

The State in times past has issued bonds, it has issued notes, and they have been sold, and the State has received the money, but when those bonds become due the State might refuse to pay them, and there was no way by which the people could collect unless the Legislature should authorize the individuals or parties who have the bonds to sue.

Now, as the gentleman has said, the committee almost unanimously voted not to pay this claim. They did not know whether it was right or just; but we do say this, if Mr. Burns has any right he should have an opportunity to present it to the courts of this State and let the courts of this State decide whether he has been wronged or not. Are you, gentlemen, afraid to trust the courts of this State? Will they not protect the interest of the State? It seems to me it is only fair that this matter should be referred to the courts and settled by the courts once for all, in order that this case may never come up again to bother future Legislatures of this State. I hope this report of the majority of the committee will prevail.

Mr. AUSTIN of Phillips: Mr. Speaker, will the clerk kindly read the majority report, the resolve accompanying it, and the minority report.

(The clerk then read the majority report, the resolve accompanying it and the minority report.)

The AUSTIN: Mr. Speaker, as a signer of the majority report I will try and make clear, as far as possible, the position and point of view of those members of the committee signing the majority report, although

I think the gentleman from Westbrook (Mr. Scates) has covered the matter very clearly and fully.

I will say that the committee on claims does not have the advantage of having within its membership in either branch a lawyer. Many questions come up to us during the course of the session which need in their solution the training of a legal mind, even to do justice. As you all know, and as you have been told, the first action which was taken in the Michael Burns case was taken in 1887, at which time Hon. Leroy T. Carlton of Winthrop was the county attorney for Kennebec county and the Hon. Orville D. Baker of Augusta was attorney general. The circumstances, according to Mr. Carlton's testimony, were exactly as has been stated to you by both the gentleman from Penobscot (Mr. Hutchins) and the gentleman from Westbrook (Mr. Scates).

It is not disputed that this man Michael Burns was selling liquor in original packages, smaller packages than were the other people in the State, who were interested in the same kind of business. I will not state what the size of his package was, but I think it was said to be six to the gallon. According to the testimony of the county attorney at that time, Mr. Carlton, Governor Bodwell being informed of the matter of the sale going on in Augusta of liquors in original packages, called the attorney general and the county attorney into conference, and he says, "I want this business stopped," but the county attorney said that this man was wholly within his rights according to the United States law, selling liquors only in original packages. But they did agree to search his place, and they put a system of spies upon the building, so Mr. Carlton testified before the committee, and kept them for 10 days or more; but they couldn't find in any single instance that this man Burns was selling liquor other than in legal packages.

Notwithstanding that, Mr. Carlton testifies that Governor Bodwell says, "Here, this man is abrogating the whole of the prohibitory law, and the sale of liquors this way must be stopped," and Mr. Carl-

ton testified that both he and the attorney general again told the Governor that this man was within his rights. Nevertheless, they did, as they testified, upon instructions from Governor Bodwell, make a search and seizure and confiscated his liquors.

The rest of the matter is history with which you are all acquainted. This man fought the case clear up to and through the United States court, and the matter was in the courts for three years. Meanwhile the late Senator Frye had the national bill passed through the National Congress which prohibits the sale of intoxicating liquors even in original packages in prohibitory states, therefore making this very transaction illegal; at the time they claimed it was legal. As I say, this man fought his case through the United States courts, and there finally received a favorable verdict and his liquors were returned to him; and he then came before the State for recompense, such as he would have had against a private citizen, as I understand it, if the suit had been instigated by a private citizen, with no prospect of winning.

This thing has been threshed out here for over 20 years in the Legislatures of this State; it has come up again and has been referred to the committee on claims, and after thinking the thing all over and giving it our very best attention and consideration from different points of view, six members of this committee, whose names you have heard read by the clerk, expressed themselves in doubt as to whether the claims of this man Burns are legal and equitable against the State of Maine or not, providing he is able to enforce them; and therefore we have submitted the proposition which you see in this resolve, giving this man Michael Burns the same opportunity to sue the State of Maine for damages that he would have against a private individual who had begun this same prosecution against him. Now, gentlemen, we cannot say what the supreme court of the State of Maine will say in regard to this matter, but we simply say this to you as we said to each other, that we believe that the interests of the State of Maine are safe in the hands of the supreme court; we further believe that we have several prec-

edents in this State by resolves that have been enacted in years past giving different men the same power and privilege that we propose to give to Michael Burns; and over and above all that we feel that this is a solution of the case whereby it will be forever wiped out of consideration by future Legislatures.

This was our idea and our whole idea—not that any member of the committee was acquainted with or had any fear or favor for Michael Burns—but simply to be a just and equitable solution of a long-mooted question. For these reasons, gentlemen, we voted that this resolve should pass, in order that this man Michael Burns might have an opportunity to go before the supreme court and put his case up before them, and thus forever get it out of the hands of this or coming Legislatures. I think that explains our position.

The SPEAKER: Is the House ready for the question. The question is upon the adoption of the majority report of the

committee which substantially submits the question to the courts of our State, permitting Michael Burns to bring an action against the State; the minority report being "ought not to pass" in any form.

Mr. Hutchins of Penobscot moved that the yeas and nays be called.

A division being had and a sufficient number not having arisen,

The yeas and nays were not ordered.

The SPEAKER: The question being on the motion of Mr. Scates of Westbrook that the majority report be adopted,

A viva voce vote being taken,

The motion was agreed to, and the majority report was adopted.

The resolve in favor of Michael Burns then received its first reading and was assigned for tomorrow morning for its second reading.

On motion by Mr. Churehill of Madison,

Adjourned until tomorrow morning at 9 o'clock.