

MAINE STATE LEGISLATURE

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Legislative Record

OF THE

Eighty-First Legislature

OF THE

STATE OF MAINE

1923

KENNEBEC JOURNAL COMPANY
AUGUSTA, MAINE

SENATE

Wednesday, March 7, 1923.

Senate called to order by the President.

Prayer by the Rev. D. H. Fenn of Augusta.

Journal of previous session read and approved.

Papers from the House disposed of in concurrence.

From the House: Report of the committee on towns, ought not to pass, on An Act to divide the town of Jonesport and incorporate the town of Beals.

In the House the report was accepted.

In the Senate, on motion by Mr. Emery of Washington, tabled pending acceptance of the report, and next Wednesday assigned for its consideration.

From the House: The divided report from the committee on public health, on An Act to accept the provisions of the Act of the Congress of the United States, approved November 23, 1921, entitled "An Act for the promotion of the welfare and hygiene of maternity and infancy and for other purposes," the majority reporting ought to pass in new draft (House Doc. No. 219), under same title, signed by

Messrs. BROWN
RAY
FICKETT
BRADBURY
Mrs. PINKHAM
Messrs. PIERCE
CROXFORD

and the minority reporting the same in a new draft, under title of "resolve appropriating \$30,000 for the promotion of the welfare and hygiene of maternity and infancy in the state of Maine," and that it ought to pass, signed by

Messrs. PHILLIPS
REED
ALLEN

which came from the House, that branch having accepted the majority report.

In the Senate, on motion by Mr. Allen of York, tabled pending the acceptance of either report.

**Communication from the Office of
Attorney General**

STATE OF MAINE

Department of the Attorney General
Augusta, March 6th, 1923.

To the Honorable Senate and House of
Representatives:

In accordance with the resolve directing me to forthwith examine into the question of profiteering by dealers in the necessities of life, and especially in the sale of coal, and wood, within this State, I have made investigation in all the principal cities and towns by talking with representative citizens and by writing letters. I also held two public hearings in the city of Portland which were attended by interested parties; many witnesses were examined and much testimony obtained. I also made a personal investigation into the methods of distributing coal in said city and into the cause of various complaints which were made in relation to the price and delivery of coal and wood.

Under the resolve, I decided that the only question for me to determine was whether or not the coal dealers in Maine were charging such unreasonable prices and demanding such unusual profits as would constitute a violation of Chapter 76, Public Laws of 1921.

Many details relating to the coal situation in Maine and to the work of Mr. A. P. Lane, Fuel Administrator, were presented to me at these hearings, and I have a record of the same but I do not consider it my duty to make any report to the Legislature in relation to such facts as they have only a remote bearing on the question of profiteering.

I obtained statements from various coal dealers of the cost of coal at the mines, the cost of transportation to Portland, transportation from Portland to the various communities, the cost of unloading, storage, demurrage, overhead and delivery. I also obtained the price of coal in the various sections of the State. I was thus able to determine approximately the net profits received by the different dealers in coal. I do not think it necessary to incorporate the facts and figures thus obtained into this report but they are a part of the records of my office which citizens of the State may examine at any time.

Mr. A. P. Lane, the Fuel Administrator, had obtained a vast amount of information relating to the coal situation which he kindly placed at my disposal and I received very valuable assistance from him in the collection of materials upon which this report is based. I am greatly indebted to him for his hearty co-operation with me in performing my work.

As the result of my investigation, I

wish to say that I found no evidence of the violation of any law which would justify me in making a charge against any coal dealer in Maine and I have, therefore, made none. I desire to state that there has been great inconvenience and some suffering on the part of the people of Maine, even in the city of Portland, by reason of the lack of coal. It is also a fact that there has been at all times coal ready for delivery at Portland Harbor. The principal cause of the inconvenience and suffering is the unusual and almost impassable condition of the roads and streets. I wish to report further that the newspapers of the State, especially of the city of Portland, rendered valuable assistance in advertising the meetings which I held and I found in all localities people ready and anxious to give me information.

The supplying of coal to the people of Maine is a large proposition, and there are so many elements which enter into its solution that it is well nigh impossible for the layman to understand it without careful study into its various details.

I feel sure that the money which this investigation has cost will be wasted unless some constructive lessons are gleaned from it. I, therefore, ask that the suggestion made by Mr. Lane, Fuel Administrator, urging that all coal users begin at once to obtain a coal supply for next season, be made a subject of discussion in every country, town and family, and that the nation's coal situation be studied by all our people.

Respectfully submitted,

(Signed) RANSFORD W. SHAW,
Attorney General.

Read and ordered placed on file.

The following bills, petitions, etc., were presented and on recommendation by the committee on reference of bills were referred to the following committees:

Appropriations and Financial Affairs

By Mr. Buzzell of Waldo: Resolve in favor of an appropriation for airplane forest fire patrol.

By Mr. Wadsworth of Kennebec: Resolve, appropriating money for the purpose of filing and indexing papers and documents which former legislatures have placed on file.

By Mr. Cram of Cumberland: Resolve, appropriating money for the printing and binding of an index to the Private and Special Laws and to the Resolves of Maine.

Education

By Mr. Allen of York: An Act to declare the University of Maine a State institution.

By Mr. Spencer of York: An Act to provide for the reading of the Bible in the public schools.

Judiciary

By Mr. Buzzell of Waldo: An Act to regulate the use of aircraft.
(500 copies ordered printed)

By Mr. Hussey of Aroostook: An Act to amend Section 26 of Chapter 41 of the Revised Statutes relating to itinerant vendors.
(500 copies ordered printed)

By the same Senator: An Act authorizing the formation of non-profit, co-operative associations, with or without capital stock, for the purpose of encouraging the orderly marketing of fish products through co-operation.
(500 copies ordered printed)

By the same Senator: An Act to amend Section 80 of Chapter 82, Revised Statutes, relating to superior court for the county of Cumberland.
(500 copies ordered printed)

By Mr. Emery of Washington: An Act to amend Section 12 of Chapter 4 of the Revised Statutes, relating to the election of officers.
(500 copies ordered printed)

By the same Senator: An Act entitled, An Act to encourage co-operative marketing.
(500 copies ordered printed)

By Mr. Hinckley of Cumberland: An Act to amend Section 77 of Chapter 10 of the Revised Statutes relative to assessors making abatements and recording and reporting abatements.
(500 copies ordered printed)

Legal Affairs

By Mr. Cram of Cumberland: An Act to make uniform the law of sales of goods.

(500 copies ordered printed)
By Mr. Brewster of Cumberland, An Act to amend the trustee process.
(500 copies ordered printed)

Sea and Shore Fisheries

By Mr. Emery of Washington, An Act to amend Section 64 of Chapter 45 of the Revised Statutes, as amended relative to the cultivation and propagation of clams.

(500 copies ordered printed)
By the same Senator: An Act to amend Section 121 of Chapter 4 of the Revised Statutes as amended by

Chapter 135 of the Public Laws of 1921, relating to fish weirs.
(500 copies ordered printed)

Taxation

By Mr. Brewster of Cumberland: An Act to amend Paragraph IX of Section 6 of Chapter 10 of the Revised Statutes, as amended by Chapter 105 of the Public Laws of 1919, and as amended by Chapter 119 of the Laws of 1921, relating to exemption from taxation of the estates of war veterans.

(500 copies ordered printed)

Towns

By Mr. Spencer of York: An Act to change the name of No. 21 Plantation, in Hancock county, to Osborn Plantation.

Orders

On motion by Mr. Wadsworth of Kennebec, it was

Ordered, the House concurring, that the thanks of the members of this Legislature be extended to the City of Portland, the State Chamber of Commerce and Agricultural League, and the Portland Chamber of Commerce, for the cordial hospitality, courteous attentions, and varied entertainment accorded them as guests of such city and organizations on the occasion of their recent trip to Portland.

Ordered, further, that copies of this order be sent by the Secretary of the Senate to the Mayor of the City of Portland and the Presidents of the above named organizations.

Bills in First Reading

Senate 211: An Act to repeal an Act incorporating the town of Forest City.

Reports of Committees

Mr. Cram, from the committee on legal affairs, on An Act to create the Maine Real Estate Commission; to provide for licenses for real estate brokers and real estate salesmen, and to fix penalties for violations of provisions of this act (Senate Doc. No. 78) reported that the same ought not to pass.

The report was accepted and sent down for concurrence.

Mr. Brewster, from the committee on legal affairs, on An Act to amend the purpose of the Maine Institution for the Blind, and to ratify the acts of the board of directors thereof, reported same in a new draft, under the title of "An Act to amend the purpose of the Maine Institution for the Blind," and that it ought to pass.

Mr. Phillips, from the committee on public health, on An Act to repeal Section 43 of Chapter 19 of the Revised Statutes relating to local health officers, reported that the same ought to pass.

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

The same Senator, from the same committee, on An Act to amend Section 10 of Chapter 172 of the Public Laws of 1919, relating to local health officers (Senate Doc. No. 53) reported that the same ought to pass.

The report was accepted, and on motion by Mr. Cram of Cumberland, under suspension of the rules the bill was given its first reading.

Passed to Be Engrossed

House 202: An Act to amend Section 35 of Chapter 44 of the Revised Statutes as amended by Chapter 67 of the Public Laws of 1921, relating to licenses for lightning rod agents.

House 206: An Act to amend Chapter 449 of the Private and Special Laws of 1865, relating to the Irish American Relief Association of Portland.

House 207: An Act authorizing and empowering the inhabitants of the town of Kennebunk to create a sinking fund and raise money therefor by taxation for the retirement of its high and grade school house bonds.

House 209: An Act to amend Section 18 of Chapter 35 of the Revised Statutes as amended by Chapter 235 of the Public Laws of 1917 relating to the entrance of cattle into the State.

House 241: An Act to extend an Act entitled "An Act to incorporate the Odd Fellows Home of Maine."

Senate 161: An Act to amend Section 7 of Chapter 117 of the Revised Statutes, as amended, relating to compensation of judges upon retirement.

Senate 193: Resolve, in favor of the National Conference of Commissioners on Uniform State Laws and of the commissioners from Maine for the promotion of uniformity of legislation in the United States.

Senate 194: Resolve, for the laying of county taxes for the year 1923.

Senate 195: Resolve, for the laying of county taxes for the year 1924.

Senate 196: Resolve, authorizing and directing the Governor and Council to convey certain land in

Monmouth to the town of Monmouth.

Senate 198: An Act to provide for an issue of State highway and bridge bonds.

Passed to Be Enacted

An Act to amend Section 11 of Chapter 211 of the Private and Special Laws of 1895 as amended by Chapter 101 of the Private and Special Laws of 1909 as amended by Chapter 146 of the Private and Special Laws of 1915 as amended by Chapter 33 of the Private and Special Laws of 1919, relating to the salary of the recorder of the Bangor municipal court.

An Act to amend Chapter 145 of the Private and Special Laws of 1887, as amended by Chapter 142 of the Private and Special Laws of 1903, and by Chapter 107 of the Private and Special Laws of 1907, relating to sewerage in the town of Houlton.

An Act to amend Chapter 31 of the Private and Special Laws of 1905, as amended by Chapter 348 of the Private and Special Laws of 1909, relating to the Houlton Water Company.

An Act to amend Section 26 of Chapter 219 of the Public Laws of 1917, as amended by Chapter 244 of the Public Laws of 1917 and Chapter 196 of the Public Laws of 1919, and Chapter 218 of the Public Laws of 1921, relating to the taking of smelts in the tributaries to Sebago lake.

An Act to amend Section 56 of Chapter 96 of the Revised Statutes, relating to lien on vehicles.

(On motion by Mr. Brewster of Cumberland, tabled.)

An Act to amend Sections 38 and 39 of Chapter 8 of the Revised Statutes, relating to the suspension by the Governor of open season for hunting.

An Act to create a board of road commissioners in the town of Mt. Desert.

An Act to amend Section 11 of Chapter 127 of the Revised Statutes, relating to search warrants for implements of gambling.

An Act to extend the charter of the Eastern Maine railroad.

An Act to amend Section 50 of Chapter 55 of the Revised Statutes, as amended by Chapter 131 of the Public Laws of 1917, authorizing complaint by a utility against itself, and empowering the Public Utilities Commission to order refund.

An Act to incorporate the Grand Temple Pythian Sisters of Maine.

An Act to amend Section 3 of Chapter 325 of the Private and Special Laws of 1897, as amended by Chapter 17 of the Private and Special Laws of 1909, as amended by Chapter 101 of the Private and Special Laws of 1919, relating to clerk hire by the judge of the municipal court of Waterville.

An Act to amend the 18th Paragraph of Section 43 of Chapter 117 of the Revised Statutes, relating to the time of payments by registers of deeds to county treasurers.

An Act to legalize and make valid the doings of the inhabitants of the town of Brooklin, at the annual town meeting held on the 6th day of March, 1922.

An Act to amend Sections 34 and 75 of Chapter 211 of the Public Laws of 1921, relating to motor vehicles.

An Act to establish a game sanctuary in the City of Bangor and county of Penobscot.

An Act to prohibit the use of beam trawls in the waters of Sedgwick Harbor, known as Benjamin's river.

An Act to extend the charter of the Penobscot Valley Gas Company.

An Act additional to Chapter 144 of the Revised Statutes, relating to juvenile institutions.

Finally Passed

Resolve, providing a State pension for Maria N. Varrell.

Resolve to increase the pension of Lester Patten of Hermon.

Resolve, to increase the State pension of Charles D. Preble of Kittery.

Resolve, providing for the purchase of reports of the commemoration of a century of peace between the United States and Canada of the Maine State Bar Association.

Resolve, in favor of the board of registration of medicine.

Resolve, in favor of Mary E. Ames of Stockton Springs, for State pension.

Resolve, in favor of Mary S. Hillman for State pension.

Resolve, in favor of State pension for Levi Holden.

Resolve, to place the flags of Maine in the World War in the Hall of Flags.

Orders of the Day

The PRESIDENT: Under the order that was passed yesterday the bills which were on the calendar come off automatically without motion, and

the Chair will take them up in their order.

Mr. BUZZELL of Waldo: Mr. President, may I inquire if that order is operative this week?

The PRESIDENT: The Chair so understands it.

Mr. BUZZELL: I was not aware of it, and I would like to have the order read.

The order was read by the Chair: "Ordered, that on Wednesday of each week under orders of the day all matters placed on the table in the week preceding and unassigned shall be taken up without motion and disposed of in the order in which they are placed on the table."

The PRESIDENT: Inasmuch as that was passed on Tuesday it would seem as though bills would come off the table automatically today, except yesterday's matters.

Mr. BREWSTER of Cumberland: Mr. President, the first matter on the calendar is Senate 1246. An Act to create the Kennebec Reservoir Company and define the powers thereof. The senator from Somerset, Mr. Smith, who introduced this bill, is not present today and under these circumstances I should not ask it to be considered were it not that the legislative agent of the companies interested in the consideration of this matter, Mr. Merrill, has asked that it should be disposed of today. Whatever advantage might accrue from Mr. Smith's presence, under these circumstances I should not feel like going forward if other members desire to hold it in abeyance.

Mr. BEMIS of Somerset: Mr. President, I have heard from Senator Smith this morning. He is unavoidably delayed at home and may not be here for several days, and he wishes this matter to go along without his presence here.

Mr. BREWSTER: Mr. President, do I understand that Senator Smith wishes it to go along?

The PRESIDENT: That is the way the Chair understands it.

Mr. BREWSTER: Mr. President, I wish to move the indefinite postponement of this bill and I want to speak as briefly as I may in relation to it, as it seems to me a matter of great public importance at this time. This bill has been upon the table here printed since one week ago Monday. I think there has been some suggestion of considerable delay in the consideration of this mat-

ter, but that did not seem to me too long a time, for any one who wished to study the provisions of the bill and see some of the consequences which might flow from it, to give it the consideration which it deserves. The printed bill, I believe, was laid on our desks last Tuesday morning when we got back, a week ago yesterday.

In discussing this, I wish first to say that in spite of all the controversy that has raged upon the water power question in this State, I at least have never had any occasion to question the motive of any member of this Legislature in any position which he took in regard to pending legislation. It seems to me that it is always very unfortunate when we begin to attribute improper motives to those who advocate or oppose such measures. Whatever may be the powerful interests operating for or against these measures, certainly there is no evidence in this Legislature but what every man in it is approaching the question with an eye single to the interests of the State; and the same respect and the same regard which I have for every individual member of this body, irrespective of his views upon these questions here, whether or not he shall agree with me, I would simply ask that he view my motives with equal charity. While it is often charged that any one who favors water power companies is inspired by selfish motives, I know that is absolutely false; in the same way it is often said that any one who opposes such measures is inspired simply by political motives or by some personal prejudices or interests.

I would ask that we approach this with regard simply to the considerations involved.

Now what is the question? The question is today whether or not we shall give to these private individuals who are named in this charter the rights specified in S. 146. The question is not today whether or not we believe in public or private ownership and development of our storage basins. That is not the question before this Senate today. The sole question today on the pending motion is whether or not the act here granting these rights is designed to conserve the interests of the people of this State; whether or not it has protected as well as it may the development by private in-

terests of these rights? whether or not the very important public interests at stake are going to be conserved by granting this charter to these private individuals? So much for the question.

I realize that this measure comes here with the endorsement of two committees in this Legislature, and I realize that that means that the presumption is in its favor, and that any one who suggests that it may be wise for the Senate to oppose the adoption of this measure must advance some very important considerations of public welfare for such a course.

Now why is it that we may not at once proceed, and properly proceed, to adopt this charter, to grant it to the private individuals in question? The distinguished attorney who appeared in this Hall yesterday representing the companies interested in this measure laid down a very clear rule governing the action of the Legislature in this case. He made it very clear and very plain that the test which we should apply to the consideration of any measure of this sort is not what the companies may or may not intend, but what it is possible may be done under the provisions of the act in question. He insisted very forcibly that that test should be applied to any act which was submitted for your consideration. I submit that no other test need be applied to this act which they are asking us to pass today.

What is it possible to accomplish under this measure? There is first one minor particular in which I think the bill is unfortunately drawn, and in this objection I think many of the members will agree, even my colleague from Cumberland, who has very different ideas from mine regarding the proper policy in these matters. I think he and all others will agree in regard to the importance of the preservation of the natural scenery of this State which is one of the greatest assets that we have. I know that one of the most able counsel, and one in very high office in the largest public utility in the State, regards the preservation of the natural scenery as of paramount importance, and will not permit his corporation ever to commit the atrocities which exist in some sections of this State where the storage development has not removed the natural growth before creating a reservoir. I have

understood that this consideration was advanced in the committee and that it had been properly taken care of. I am not able from my reading of the act to satisfy myself that this is so, or that this charter will obligate the people operating under it to remove growth upon this great area which is to be flowed unless it shall seem to them desirable to do so. I believe that certainly the State should require in any charter of this kind that the difficulties which have arisen on the Chesuncook, on the Ripogenus, which have arisen in the Moosehead region, and in almost every other place where storage development has taken place, should be obviated, these great graveyards, of standing trees dead upon the banks, through which every one who travels over these waters for pleasure must pass.

Now what is the provision as to this? On page 7 of Senate No. 146 you will find, at the top of the page in the first paragraph: "This corporation shall remove all growth on the area flowed by it seasonably to prevent it from falling and being carried away by the water." I am not an expert upon storage matters, but from the layman's point of view, I should not consider that that was adequate to guarantee that this growth would be removed prior to the flowage, as I have personally seen trees standing ten years after the flowage took place, and if I read that correctly there would be no obligation for them to remove them at least within that period. So much for what is comparatively a minor objection, as I see it, to the act.

Now as to what are the major reasons regarding this question. I suppose that one of the most persuasive considerations in its adoption is that we are going to secure development forthwith. That is what we are all interested in. I submit that under this charter here before you, it is possible that the storage development there contemplated for the benefit of those powers may never take place; that there is no guarantee whatever that that development will ever be carried out, or that it will be carried out at any time until the persons to whom you have granted it shall see fit and proper to do so. I am aware that the Legislature may seem to have provided for this situation. Certainly it was urged in the committees that they were anxious and ready to go

forward with this. I believe that this Legislature should have something more than assurances. It should have the knowledge that either that franchise will be exercised within a very short period or that it will lapse—not that they may take that franchise and retain it for two years, for five years, for ten years, or for fifty years, unless its development shall be in accordance with the dictation of the men to whom you have granted it, because once granted you can never recover it.

Now I am aware that the Legislature of this State in its wisdom, in its general laws, has provided that any special act of incorporation shall become null and void in two years from the day when the same takes effect unless such corporation shall have organized and commenced actual business under their charter. Is not that sufficient? you may ask. Does not that mean that they must commence actual business under their charter within the two-year period? That is the provision which the Legislature in its wisdom has felt was so important that it is in the general law to the limitation of every special act that passes this Legislature, entirely aside from matters of storage or anything else. It is even more important that in matters of storage we should not abdicate our rights without some guarantees of results. Is that provision sufficient to secure storage for the development of our water power? If you will read the act, Senate 146, you will find that the provisions on page 2, section 3, and so on, page 3, page 4, and so on, relate to the driving of logs. Pages 2, 3, 4, 5, 6, 7, 8, 9, 10, all relate to the driving of logs.

You did not realize that we were creating a log driving company! It has been submitted here that we were creating a corporation to store water for the benefit of the powers down the stream. Why is it that over one-half of that charter is concerned with the driving of logs upon that stream? Even though it is provided in sections 3 and 4 and 5 that the corporation may acquire the franchise of existing log driving companies, which, so far as we are informed are doing the work now upon that stream, why all the detail regarding the log-driving companies? Because,—I do not say that this is the intent of the provision relating

to log driving,—I simply say that it is the effect of the provisions relating to log driving,—that it will keep the charter alive for an indefinite period if they simply carry out the log driving provisions of the charter without ever doing one thing to develop that stream for storage for the benefit of those powers down the stream in which they assert they are interested. I address myself to that simply to substantiate my proposition that you have not one guarantee in that charter that one thing will ever be done to develop the storage upon that stream for power purposes, but that charter can be retained indefinitely, simply as a log driving proposition, and the franchise retained by these private individuals.

Next, I submit that in the granting of this right by the State not merely of eminent domain to acquire the land of private owners but the right under this charter to acquire public lots owned now by the State, a thing of very great value to the powers down the stream and to the various companies interested in these powers, there is absolutely no guarantee that the public will ever get the benefit of this development. Now that is a pretty serious proposition. This is an important thing and it is a valuable thing, and if we were assured that the people of this State would receive the benefits as a result of the cheaper rates of their utilities, as a result of the development of the power, we might well think that we should carry on with the private enterprise in the fashion here outlined.

Now why is it that there is no guarantee that the public will get one iota of benefit from the granting of this charter? Because this proposition is not a public utility, if I am able to construe it correctly. It is not a public utility and is not subject to the regulation of the public utilities commission, is not subject to the regulation of such rates or charges as it may make. It is a private enterprise pure and simple.

But, you say, it is being granted to individuals who represent the various power owners down stream. It is the common thought that this is being granted to the power owners, but that is not the case. It is being granted, if you read section 1 of the act, to Philip T. Dodge, H. deForest Lockwood, Rudolph Pagenstecher, Waldo E. Pratt, Garret Schenck,

W. E. Winchester and Walter S. Wyman, their associates, successors and assigns. Those are the men who are receiving this grant of public rights.

Now what are the possibilities, again remembering, as Mr. Skelton lays down the rule, that we must examine what is possible under the act—what are the possibilities of this act? You say those men represent the various corporations with which they are associated. Those corporations have very large groups of stockholders. The gentlemen who have opposed certain legislation here have submitted that they were not willing to trust succeeding legislatures with certain grants of power. We are asked to trust these men with the granting of very great powers, and the only guarantee that we have that they will exercise them in the interests either of their corporations or of the public is whatever confidence we may have in the men. When these same men come in here and say that they will not trust the Legislatures of this State, may we not apply the same rule to them? And what would it be possible for these men to do? Again I do not say that they have any intent, or that they will do this, only that it is possible for them to do this within the limitations of this charter, legally and properly, as it is laid down.

Those men, if I read that charter correctly, may charge the power owners down the stream any price that they see fit for the storage rights which they are creating, for the release of the water which they are sending down. Is there one sentence in that act which limits the charge which they shall make for the flowing and regulation of that stream? Well, you say, they are interested in their corporations. That is true. But are they so interested that they may not capitalize the franchise value which we are granting them, if they see fit, and capitalize it at such value as they see fit, and we shall then have at some future time the proposition of paying for the cost of what those rights may then be. It seems to me that in granting such important rights to private individuals to administer absolutely as they shall see fit, so far as I can discover, without any regard to restriction or regulation of any public authority, or even of this Legislature, that we

are going to a very great extreme. And so I say that there is absolutely no guarantee in that charter that the public, or even the corporations concerned will ever get one iota of the benefits flowing from the grant of this franchise right.

Now as to the Constitution. On that I speak with some diffidence, after the recommendation of the judiciary committee upon this question. I think it is something that we might well pause to consider. The Supreme Court in answer to the question of the Legislature in 1919, made certain answers to questions submitted to them. Many of you were in the Legislature at that time and are undoubtedly familiar with them. Can we give the right of eminent domain to a private corporation or to private individuals for the development of storage for the benefit of the powers down the stream? That is the question.

Now the answers of the Justices of the Supreme Court to the question as to whether the Legislature could authorize the development by the State of water storage basins, went into these questions of eminent domain at some length. Question number one was whether the Legislature could authorize the development by the State of water storage basins for the sake of increasing the capacity of the water powers down the stream. In its answer the Court went somewhat further than the actual question before it, and took occasion, and properly so, to define the matter of public uses, which alone would warrant the exercise of the right of eminent domain, and on page 12 of that opinion the court goes on to define the matter of public use, which alone you understand, as I am informed and believe, will justify the exercise of the power of eminent domain. "Public use means use by the public, and that therefore to make a use public, within the eminent domain clause, a duty must devolve on the person or corporation holding property appropriated by right of eminent domain to furnish the public with the use intended, and the public must be entitled as of right to use or employ the property taken." "Property is devoted to public use when and only when the use is one which the public in its organized capacity, the State, has the right to create and maintain and therefore one in which all the public has a right to demand and share in."

They go on then and they say this very significant thing which it seems to me by fair implication answers one of the questions before us here today: "Further, if the State may exercise the power suggested,—that is, the power to take land by eminent domain for the creation of storage basins for the development of water power, which is our question here, I understand,—"If the State may exercise the power suggested, it may commit the execution thereof to any agency, corporate or otherwise, and this far-reaching right may be committed to any corporation."

Can this Legislature commit this far-reaching right of eminent domain to a private corporation for the sake of taking lands by eminent domain for the creation of storage basins for the development of water power? That was the question before that court, except that they were considering the right of the State, but they go on clearly to say that if the State may exercise the right, the State may then grant it to a private corporation. By fair and honest implication does it not follow that the State cannot grant it to a private corporation if it cannot exercise it itself for this purpose? Again we come to log driving. It is possible—I am not an authority upon the log driving question, whether or not this proposition may be supported in its log driving phase I am not now prepared to say,—but again we come to the proposition that the log driving feature is the only thing that justifies us in this grant. And, gentlemen, is that observing the Constitution, when the log driving is now being carried on in that stream by duly authorized agencies, to introduce into this charter eight pages of log driving simply to justify the grant of the storage rights to these corporations for the sake of their water power, when if we attempted to do directly what we are doing indirectly it would be absolutely unconstitutional if I read that decision correctly. Is that a decent respect for the provisions of this Constitution which we are bound to observe? So much for its constitutionality and its observance of the constitutional provision.

Now two other questions and I am done. It has been said very many times in the discussion of this question, the water power question, that the State has no other powers, that

its timber lands and its powers are gone, and that that is a closed question, and it is undoubtedly to a very large extent true, that the powers and the timberlands are gone and that whatever might have been the wise course as to the licensing of their development in the past, it is certainly not now a question proper or possible for us to consider. But in the acquisition of those powers over this state as incident to the acquisition of the timber lands along the shore, a few were overlooked. There is one large power where one bank of the stream still remains the property of the State. There is another power at Long Falls where the State owns both sides of the stream, that is, owns the public lots appurtenant thereto, and has as an incident to it the water power resulting, some 2800 horse power—the second largest water power remaining in the possession or ownership of the State. The location of this dam is such at the head of those falls that it will necessarily involve the acquisition of that remaining power, so that the State's ownership in powers will be practically gone, because this is the only large power where the State owns both sides of the stream. The last one is to go for the sake of the storage development. But it is provided by section 18 on page 17 of the act that this corporation shall not generate, sell or distribute electricity in any manner, and shall not dispose of its property or franchise to any corporation which has authority to do so. I presume that is put in, or it might be calculated to have been put in, to take care of this water power question. I do not presume that it is taken to mean that the water power will not pass to the private owners, but simply that they shall not develop power, although that is not entirely clear. Now a water power in itself cannot be valued. The Supreme Court has ruled that it is not property in itself, but that it may be an incident giving value to the land to which it is appurtenant. Now we are placed in this peculiar situation,—that the gentlemen to whom we have granted this franchise will take these lots under the provisions just preceding, that they are authorized to acquire public lots which may be necessary for this development—and first as to the question of compensation?

When it comes to determining the

compensation which they shall pay, will they, or will they not figure the value of the water power which they cannot use? Will they urge that since they are simply acquiring the two public lots there on the bank of that stream for the sake of storage, since they are prohibited by their charter from generating, selling or distributing electricity in any manner, that therefore they cannot take into account the value of the water power appurtenant to those lands?—the only large power the State has left. I asked Mr. Skelton that question yesterday and he declined to answer in so far as I could make out his response. I asked him whether or not the value of that water power would be computed in the valuation of that lot, and I was unable to get a direct answer to that question. Whether or not when this question comes up as to the acquisition of these public lots, the fact that the charter prohibits the corporation from generating electricity will be used to argue that you cannot attach a value to the water power now belonging to the State, I do not know. It is possible. That is all I can say. However, having acquired the lots, they will certainly have the water power as appurtenant to it.

Now let us see what this provision is all about. They cannot generate, sell or distribute electricity in any manner. Let us move on say five years or ten years. The dam is built, let us say—let us hope, if they are granted this franchise,—the dam is built, the storage is developed. Now they cannot generate, sell or distribute electricity in any manner. There is that good dam. There are ten million cubic feet of water flowing down over it, a flow of some 2800 horse power, and they are prohibited from making any use of it.

There is only one answer. This Legislature will be asked to strike out that provision. No other answer is possible. Would any body of men, would any Legislature then refuse to grant them such a simple exercise of their legislative power as to strike out that prohibition if the corporation should desire it? The State can derive no power from it. The State can derive no good from it. It simply means that the power there is flowing to waste, that it is locked up useless because of the prohibition in this charter. Therefore the clause is struck out. The

right to generate is gained. Whatever it was put there for, its removal will be a certainty as the years pass, if the corporation shall desire to have it done, because no Legislature could refuse to make use of such a power when the occasion should arise. However, is it even necessary? That provision seems well calculated, if it is not intended, to remove them from any possibility of regulation by the public utilities commission as a corporation engaged in the distribution or generation of electricity. It will certainly go far to accomplish that purpose. But does it necessarily require that they shall even have legislative authority for the use of this power now belonging to the State? The provision is that this corporation shall not generate, sell or distribute electricity in any manner and shall not dispose of its property or franchise to any corporation which has authority to do so. Now I am trying to read that clause as fairly as I may, and do you see in that any prohibition of their sale of the water at the foot of those falls? Is there anything to prevent the creation of a water power at the foot of those falls which shall use this power as it comes down? It shall not sell its property,—but is that water property? No, that water is not property, that water is simply the property of all men as it flows down that stream, and if any one below there shall be able to use that water for the generation of power, it is well within the rights of this corporation to make that disposition of it. Nor do I believe that a fair reading of the act, using the word shall not "dispose" of its property, means that it cannot lease its property. That may be a legal refinement. Certainly, if you mean to prohibit its lease of its property for the development of power, it would do no harm to say so in the act, and not have any question as to whether or not the property down below that dam which is located at or near the head of Long Falls, shall not be leased to corporations to develop that power, unless you intend to do that now, and if you intend to do it you may as well say so,

Now as to the final matter to which I wish to refer, and I am done,—as to the value of this franchise which we are granting, concerning which we had some discussion yesterday. I think it is a matter of sufficient public importance so that

the people of this State and the members of this Legislature should have a fair idea of just what is involved in the proposition, both its present and its future. I asked the question yesterday of the attorneys representing these companies as to what they valued this franchise, and they declined to answer—they declined to give any answer. Mr. Skelton, when he opened his remarks referring to the question of valuation, gave the figures upon which he based a value of sixty to ninety thousand dollars for this franchise, being based upon 6000 horse power which it would give to the owners down the stream, who are now using power at a valuation he figured and capitalized, at a cost of ten to fifteen dollars per horse power, or sixty to ninety thousand dollars for its value. Is that a fair valuation of the interests here involved?

Now I asked Mr. Skelton a series of questions designed to bring out the proper basis of calculation of this franchise, and I think I quote him absolutely correctly as I give his answers to these questions. First, these companies which he represents are now using coal for the development of power, necessarily so. Second, they have constantly expanding power requirements, so that they are interested in securing additional development of power to supplant the use of coal. Third, that they capitalized the value of these things at approximately ten per cent, that is, they figured a carrying charge of ten per cent for a storage development to carry the cost of the overhead and the investment and retiring the bonds, and so if they can make an expenditure which will save them any given sum of money annually, they figured that they could fairly capitalize that saving at ten times the amount. That is, if they save \$50,000 a year by reason of the expenditure, ten times that is \$500,000 as the value, the fair value of that franchise right, all other considerations being equal. The suggestion that this might have a large value was at first ridiculed by these men, the possibility that this franchise here granted could have any considerable or substantial value to them, although they answered my questions as I have stated.

Now the actual figures put out by this corporation as a basis for this development show that the cost of

the Dead River storage development would be one million dollars with an annual carrying charge of \$109,000. They further show—and these figures are not created by me or imagined by me, but they are the official figures of this corporation put out for what purpose?—to persuade the various power owners on that stream to enter into this scheme with them for this development. Are they not then a fair basis of comparison? Were they deceiving their associates? Were they not putting out these figures as a basis to show the value of this development to those men? And what did they use as a basis or foundation? They used the comparative cost of the development of this same power by coal. Those are their official figures. One of the gentlemen in replying to me here yesterday afternoon, Mr. Merrill, stated that the fair basis of comparison to determine the value was the cost of acquiring other power at other locations by means of water, other water power. That may or may not be accurate. Certainly they did not themselves in their reports use that as a basis of comparison in valuation, either because they knew that it would not be available to them or because they knew that the comparison would not be so favorable to them. I do not know which. I only know that they have elected to stand upon the proposition that it is fair to estimate the value of this Dead River storage basin by the comparative cost of development of power by coal. I take them at their own appraisal. Can we ask more?

Now what is that cost? They show in the table showing the comparison of this scheme and showing the cost of the extra power obtained by storage compared with the equivalent amount produced by steam—I read from the official report, the Dead River storage development: Cost of the storage development \$109,000; cost of the development of steam power to furnish the equivalent, interest, taxes, etc., at ten per cent on the investment in steam \$307,200; cost of operation at one cent a kilowatt hour \$282,000. Add those together and you have \$589,000 as the annual cost of securing the equivalent amount of power by steam to the amount which would be given them by the simple development of this storage basin at that stream, \$589,000 for steam,

\$109,000 by water. The difference is \$480,000 a year. \$480,000 those men state in their official report to persuade individuals to enter into this scheme of exploitation with them is the saving which they will make by reason of this development.

Remember that they are now using coal, that they must continue to use coal for their expanding requirements unless they can secure some other solution; and they do not suggest it here. \$480,000 a year that storage franchise is worth to them according to their own figures. And they say that ten per cent is a fair basis of capitalization of that value and ten times \$480,000 is \$4,800,000, that on their own figures they stand charged with as a capitalized value of this franchise which we are asked to hand to them here today as a free grant of this State. Mr. Skelton said that if he was satisfied that there was any such value in the proposition he would not ask that the State grant such a value to private companies. * Mr. Skelton, recognizing that the State does have rights, recognizing that the State does have interests, said that he personally would not ask that such a right be granted to them. Mr. Sanderson, from Portland, representing some interests, said that it did not seem to him to make any difference whether this thing was worth \$10 or \$10,000,000, that he was perfectly willing to see the State give it to the private individuals who were asking for it. With that Mr. Skelton and some of his colleagues did not agree.

Now it was suggested that the water is the property of individuals. That is true. It was suggested that there are other bases of comparison. That may be true. I simply ask you to take their own basis of comparison. It was suggested the price of coal might come down. That is true. The price of coal may go up. They say they own this water to the bank of the stream, that is all Mr. Skelton had to say about the riparian owners down the stream, and the right to the natural flow of the stream. That is elemental law. They do not now own the public lots which, as Mr. Skelton admitted, were the key to this power development here today. They do not own the public lots which are absolutely necessary to unlock this storage basin for their use.

The State now owns these public

lots. The question is whether or not the State shall pass that right away for the value of wild land, with a possible appraisal of an undeveloped power appurtenant thereto, and we are not sure of that. That is what we are asked to do here today, to give this franchise away.

I have spoken only of the existing value to the developed powers down the stream, using their own figures, as I have said. I have not spoken of the undeveloped power down this stream which will be equally benefitted, and whenever the time shall come that those powers shall be developed,—and the undeveloped powers affected by this storage are equal to the developed head, that is, there is the 190 feet of developed head effected by this storage and 205 feet of undeveloped head affected by this storage, so that the undeveloped power receives the same value whenever it shall become wise and prudent to develop it,—and we may fairly then estimate that the value of the storage to the undeveloped powers will be equal to those here: so that at some future time the value of that franchise will be doubled, aside from whatever value power may have in the future as the needs and uses of electricity are developed.

Now to summarize what I have said:

I have submitted that you have no guarantee in this charter that this proposition will ever be developed as a storage basin for the sake of our water powers in which we are all interested, because it may be used indefinitely as a log driving proposition, and the State will be helpless to recover the value of the franchise which it has granted.

2. You have no guarantee whatsoever that the public will ever get any benefit from the development of this storage basin, because this is not a public utility, is not subject to public regulations, and the agreements which may be entered into between the owners who develop this storage basin and the power owners down the stream is a matter of their private contract, and the public utilities commission will order the users of electric power to pay whatever the private interests owning this storage basin shall demand of the public utility furnishing the electricity. You say that the power owners hold the key in their hand

because the storage basin is of no value unless the power owners shall pay for its use and that they have no power of assessment. That is true. But the individuals who own this proposition can simply play the dog in the manger and hold that indefinitely undeveloped unless the other power companies down the stream shall make such trade with them as they see fit, and there is no power under heaven that can ever compel those private individuals to develop that storage basin unless they receive the price which they demand. They can simply hold that forever so far as any section of that act is concerned. It is a log driving company.

3. You have the very serious question, under the opinion of the justices of our Supreme Judicial Court, as to whether you can grant a storage basin for the sake of the powers down the stream, or any right of maintaining dams as incident thereto. Again it is a log driving company. You may evade the Constitution, if you like, with those nine sections of provisions for log driving, but was that what they came here for, to evade the Constitution? Did they put these provisions in, when the log driving purposes are now being carried on in that stream, simply to gain this infinitely valuable right, because they could not do it legally or constitutionally as a storage basin proposition which is what it has always been represented to us to be? They are asking us to turn over these public lots, with the only large water power the State still owns, at a value of the timberland lots plus, what is not at all certain, the value of the water power appurtenant thereto. Whether or not that will be included we cannot know. Even if it is included it is a song in comparison with the rights which we are passing away. And you may rest assured, absolutely assured, that either that water power at the proper time—and I realize that water power development incident to a storage basin is not now in many cases practicable or feasible because it is only during certain periods of the year it will be valuable, I realize that fully—but it is also recognized doctrine that the development of water power at a storage basin as incident to and in connection with other power developments down the stream is now

or will soon be practicable and feasible, and when that time comes we may rest assured either that it will be carried out by other companies within the provisions of this charter by lease or sale of the water, or that it will be carried out by this Legislature itself doing what it cannot then refuse to do, and striking out, if they shall see fit, section 18 of this act, permitting that water power to be unlocked for the benefit of the people of this State. They could do, we could do, if we had that question today, no other.

And finally, as to what steps might be taken. As I said, the question for us today is not whether we believe in public or private development of these storage basins. That question is not for our settlement today. The question today is under what restrictions we shall grant these very valuable rights; whether we have had an eye sufficiently single to the interests of this State in taking this charter which they have submitted to us here and passing it practically in the phraseology which they have brought to us, or whether or not there might be provisions inserted well within the doctrine of private ownership and public control that would be designed to conserve for the future whatever this proposition might mean.

And there I just wish to give you a few simple suggestions as to what not only might be done but is being done by other states and the Federal Government in the development of these propositions. Take the Federal water power act with which many of us are in very great disagreement when it tries to assert rights in our water powers in this State. We may yet learn from that some provisions which would be very wise and very appropriate for us to impose when we come to grant this right away. In the first place the Federal act requires under any grant of this sort that it shall only be a license for fifty years; in the second place that there shall be an accounting of the development and conduct of that proposition from year to year, so that we shall know that in the development of that proposition the power owners and the people are to get the benefits accruing therefrom, and that there is not to be a series of high finance which may carry it to any limits that the private individuals see fit to impose. Third, the charges are limited for

the same object. Fourth, the charges may be readjusted,—the charges to be paid for the use of those rights, not a sale of the fee but an annual charge for the use of those rights, the charges may be readjusted in twenty years, and every ten years thereafter.

Sixth, that they must begin the development within two years. Seventh, when it comes to the time that the Federal government,—or here the State government,—is to recover these rights, as my friends may urge is possible under this act, it is provided in the pending act—on page 17, that the State may take these rights, the compensation therefor not including the value of the franchise, and not exceeding the cost of the property and the franchise so taken. We do not know what they may have done with the development of the project, or what its profits may have been meanwhile, yet we are to pay not exceeding the cost. The Federal act uses these words—this act uses the remaining language of the Federal bill so I am very sure the ones who drew it were familiar with this phraseology, but they did not use these words here: instead of the word "cost," the words "net investment" are used, net investment, meaning that after the proper charges have been made for depreciation and retirement of bond issue, and a reasonable return on the investment, that then the State may recover the rights on the net investment of the company. And finally it provides that the State may take over the proposition at any time on payment of the reasonable value thereof—not the prohibition such as we have in this charter that the State cannot move for forty years.

Now why should the State impose any such restrictions as I have suggested? Because the risk involved in this development is practically negligible. We have got beyond the day when great risks must be taken and great returns were proper for the development that these private individuals were making. This is such a certainty, according to the report of these men to their own associates, that there is no practical risk being taken in carrying out the purposes of the act. May not the State fairly, if it is to adopt the policy of granting these rights to private corporations, ask that they shall be subject to such reasonable

restrictions as I have suggested and outlined here?

Is it unreasonable that they should recognize the paramount interest of the State in this great future of our water powers and our storage basin? that they should recognize them to the extent of such limitations as I have suggested?

Now it may be said that these objections should have been urged before the committee. In the first place most of the information which I have given you did not come into my possession until this act was introduced in this Senate only a week or ten days ago. Otherwise I should certainly have submitted it to the committee which was considering this matter, because I believe they were entitled to it and that it would have had very great weight in their deliberation if it had been presented to them in so far as the figures of this company are concerned. The report showing what this project is, what it contemplates and what it is to be, is available for this Legislature or for these committees if they ask for it, according to the statements of Mr. Skelton. That report is a public document of transcendent importance in my judgment, showing the people of this State what the issue is in this case and what may fairly be done in the consideration and settlement of a matter of this importance before us. That is said in courtesy to the committees which have considered this. I will leave the matter here, asking that you shall treat what I have said with whatever charity it may demand, knowing that I am simply doing what I see to be my duty in circumstances which seem very distressing.

I thank you.

Mr. BAILEY of Penobscot: Mr. President, I was on the committee on interior waters which passed the bill.

Very early in the making of this State and the separation of this State from Massachusetts, charters like this were granted, for I will say, sixty years after the incorporation of this State, and part of the time when we were consolidated with Massachusetts. The principal industry of this State was lumbering, and this is a very familiar phrase, in the '40s and '50s when certain men were created a body corporate to do certain things. Under the act of the legislature they were created a corporation, and

when any suit was brought against them—as lawyers know from the Maine reports—they were not sued individually but as a corporation.

In order that the people who were engaged in the lumbering business,—and I will say that in the early stages of this State they were at least one-half of them,—it was necessary to conserve the flow of the streams in order that they might get their lumber to market.

In my own county of Penobscot in the '40s and late '30s certain men were given in some cases the right to build dams at the foot of certain lakes in order that the logs cut upon those lakes might be flowed down to the mills. When the water was released from storage in those lakes any one below got the benefit because the water as it flowed down took all the logs below on that river or stream.

So that I say we are simply following that which our ancestors did. Up to 1878 the city of Bangor was the greatest lumbering market in the world. Why? Because the Legislature of this State granted to these corporations or bodies corporate the right to dam up the water so that they could flow logs to market and the saw mills, and saw it into lumber and ship it to all parts of this country and to England.

The distinguished senator who spoke before me (Senator Brewster) stated that the people get no benefit from this. If we had not dammed up the water in those days we would not have got the logs to the market and the saw mills would have been shut down. So that under this proposition today which we have before us, it is necessary to regulate the flow and also store the water so that the logs can be driven to the market and the mills run year around.

If the mills shut down for want of water I will say that there might be some suffering among the people. Therefore I say this measure is a benefit to all those who use the water upon this Kennebec reservoir.

If our ancestors in their wisdom granted the right to build dams and create storage basins, I say that we will make no mistake in following their example.

Mr. HINCKLEY of Cumberland: Mr. President, when I came into the Senate chamber this morning it was the remotest thing in my mind that

I would take part in this discussion at this time.

I have no particular interest in any hydro-electric power company; I have no particular interest in any hydro-electric power politician, both of whom, during the past several years, have been playing this water power question, seeking to gain an advantage one way or the other.

My interest is solely in the citizens of the State of Maine, and I believe, Mr. President, that the time has arrived when the State of Maine through its Legislature should take a decided stand and establish a definite policy. Those who have been urging State ownership of water powers have argued for the past fifteen years that the State of Maine should have a policy on that question, but that policy meant accept State ownership and State control or there would be no policy. That has been their position.

Several years ago a very distinguished citizen of the State of Maine went about over the State telling the people that if the State of Maine owned its water powers and controlled them that every home in the State of Maine could be heated by electricity cheaper than by coal or other fuel. Many of us knew that was not a fact; many of us knew that it could not be brought about; many of us knew that the only heat developed by such arguments and by such persons was hot air and not electricity.

The time has come for the citizens of the State of Maine and for the members of this Legislature to speak plainly, to speak fairly, because there has been more real bunk thrown out on this water power question during the last ten years than on all other subjects combined, and the citizens have suffered accordingly, after exploding and doing away with the proposition that had fooled the people that their houses might be heated at a small cost by electric energy, if owned and controlled by the State of Maine.

Then came the proposition that the State of Maine must, regardless of this, own and control its water powers because it would be an advantage to the people of the State. That was discarded; that was given up, and today, Mr. President, this Legislature is confronted with a bill in connection with a constitutional resolve, that is most pernicious and the

most wild-eyed proposition I have ever known of in my experience in this Legislature. It is a proposition providing in substance that the State of Maine shall permit a corporation to be organized, consisting of five men appointed by the Governor of this State, and to be selected by—

Mr. BREWSTER: Mr. President, I rise to a point of order, and to inquire whether the gentleman is discussing the bill before the Senate.

The PRESIDENT: The President will rule that the Senator from Cumberland, Mr. Hinckley, is in order so far as the Chair can see.

Mr. HINCKLEY. Mr. President, my distinguished colleague discussed his bill more minutes than this bill. I am making a comparison between the two bills, for it is for this Legislature to decide which of these bills is to become a law of this State, because the time has arrived when the people are going to demand that these great water powers of this State shall be developed and they get an advantage from them.

Now we have arrived, Mr. President, as I was about to say, to a bill which provides that the State of Maine shall organize this corporation composed of politicians, to do what? To take any property they wish in the State of Maine for the purposes named in the act, whether it be your home or my home, a corporation organized without a dollar of capital or without a dollar of property behind it; a corporation giving them the right of power to take all property, and then what more? That they shall not be required to do as all other corporations given power by the Legislature of this State to do business, to deposit certain specie or other security indemnifying, insuring to this property they have taken payment for same.—

The PRESIDENT: The Chair, when the Senator from Cumberland, Mr. Brewster, raised the objection, felt that the senator was within the point of debate. The Chair is now inclined to think that the senator is discussing something not before the Senate.

Mr. HINCKLEY: Mr. President, I will be very glad not to go further into that matter.

Mr. President, are we going in this Legislature to adopt legislation that will give to the people of the State of Maine advantages which are theirs in the development, in the storage of our great water power basins, or

are we going to do something else? It is for you to decide, gentlemen, what the policy of this State of Maine shall be, and I will discuss this bill very briefly in connection with the question raised by my distinguished colleague from Cumberland.

In regard to the protection of the scenery about the lakes, this Legislature has for seventy-five years been granting similar power to this without once considering its scenery, and I am going to claim, Mr. President, the distinction of being the one who insisted for the first time in this Legislature that the scenery of the State of Maine should be protected about our lakes, and I insist on it in connection with this particular bill. I want to read to you "This corporation shall remove all growth on the area flowed by it seasonably to prevent it from falling and being carried away by the water." And my brother, the Senator from Cumberland, says they might remove it many years after they flowed it. If the time has arrived and we have reached that point in invention and progress whereby it is feasible for this company or any other to go under water, by submarine, perchance, and cut the growth around our lakes and rivers twenty feet under water, and clear it in that way, then I will yield the point to him. If not I say to you in all fairness and all right this means that it must be cleared and that right must be taken care of before it is flowed. Oh, so many of these bugaboos that have been raised, and so much of this shooting at imaginary things!

It is time for this Legislature to get down and consider facts as they are, and not the imaginary obstacles that have for fifty years kept the State of Maine back and prevented it from making the progress which it should.

When shall they commence work? It is necessary, I say, out of this act for this corporation to commence work within two years or their charter is lost to them, in spite of the argument in connection with this matter by the gentlemen from Cumberland. Because as he read the general law any private corporation incorporated by the Legislature must commence work within two years or lose its charter, and he has called your attention to the fact that several pages of this bill have been devoted to log driving, and that is the nigger in the wood pile.

Mr. President, it does not make any difference if every page but one is devoted to log driving, the question is what is the business of this corporation, and any one reading this act will realize that the business of this corporation is building dams and developing that territory, and sending water down to the owners below, and that the log driving proposition is merely incidental to it. And this Legislature has always recognized in granting rights to build dams the fact that log driving associations must be protected and taken care of, and their rights given them by previous legislatures be protected. That is all that is being done under this act. And the fact that not a log driving association came before the committee to oppose it, and that the attorney for several of the larger ones came before the committee and told us they were absolutely in accord with the provisions of this act, and that it was satisfactory to them, was satisfactory to the twenty men who served on these two great committees who reported this bill unanimously that it ought to pass.

My brother told you he did not raise these questions before the committee because he was not acquainted with them until a week ago Tuesday. Not one matter, and I challenge him to show one item that he has discussed here this morning that was not in the original draft before the joint committee and was discussed fully at that time. And the matters in the new draft have not been mentioned in any way—the changes in the new draft. So that every matter was before the committee, and if he had not studied the bill and did not understand it that was not the fault of the committee, but that was the place to have made the argument and presented these matters.

In regard to the Constitution, I will not weary you on this matter. I will simply say this: Referring to the opinion of the justices of the supreme court in answering the question propounded by the House of Representatives, which was read by the gentleman from Cumberland, it provides, as the reading of it you will recall, it provides that the State, or at least lays down the legal proposition that the State has certain rights in these water powers, and having these rights they can delegate them to a private corporation or an individual, and I say to you, Mr. President and Senators, as a matter

of law it is not necessary for anything more to be said in this proposed charter than is said, and if the rights are given to build dams at the head of tidewater and store this water, any person below that dam will be protected by the courts of our State, and no corporation, regardless of anything said, can deprive the riparian owner below of the right to use that water, provided he pays a reasonable price for the use thereof.

The court will protect him, for the court has already said, as quoted, that these rights must be passed along, and by implication they go along.

I am not going to weary you as to the value of the franchises in the discussion of this matter. It is problematical. Under this act if property is taken this corporation must pay the value of that property, and if an agreement cannot be made between the Governor and Council and the corporation itself, then other parties are brought in and a reference is made and they determine what is the value of the property taken. Is it the value of those lots of land up there owned by the State as to the amount of timber on them alone? No, gentlemen, it is the value of those particular lots of land allowed to be taken by eminent domain under the provisions of this act, having in mind their location, having in mind the growth on them, having in mind the potential possibilities of water power development in connection with those lots, and that is the value and what any court would consider in fixing the value. And I am not fearful but what the people of the State of Maine are not fully protected in this respect.

What if the State of Maine is giving a franchise which is valuable to a corporation which will develop more than 14,000 horsepower in addition to what is being used or developed on the Kennebec river today? The proposition of my brother Brewster is for a corporation fathered by the State of Maine to build a dam up there and give that water to the owners below, the owners of industries below, at cost, not making any money. He specifically declared yesterday it was not to be a money making proposition, but cost of delivery and the cost of investment, of course, on the property.

Gentlemen, it means something to the citizens of the State of Maine, a

development on the Kennebec river in the near future of 14,000 more horsepower; it means employment, and thousands of men and women in the Kennebec valley who need that employment; it means the bringing to our State of tens of thousands of more people than we have at the present time. Is that not worth the State of Maine making some concession for? Gentlemen, it is for you to decide today whether the policy of the State of Maine will be one that will say to the financial interests of this country that we have great possibilities for developing our State, we have matchless resources in the great water powers which God Almighty has given to us; we have here power that is cheaper than you can get it from any other source or from any other place; we have a citizenship in the State of Maine that is of a high class, and if you come here you will not be disturbed by labor troubles as you are in the great labor centers.

It is for us to say, Mr. President and gentlemen, at this time whether we as the State of Maine would rather trust ourselves in the hands of the business men of the State of Maine who have made this State great, who, as my colleague said yesterday, have brought this State to a point in the development of its great water powers third to all the states in the entire country. And against whom no person has ever yet pointed his finger and said they had unfairly treated it or him in connection with the use of the waters running down our rivers. And we would rather leave this business proposition of developing our water powers and creating our storage basins in the hands of these business men of our State, than to leave the development of our water powers in the hands of five politicians appointed by the Governor of this State from time to time.

If you believe that our business men can be trusted, that they have developed our State as you must know they have, have confidence in them in the future, give them the right to develop this great reservoir, and do not consider for a moment the State of Maine, even by proxy, going into business and having that business handled as it necessarily will be, by politicians.

Mr. BREWSTER: Mr. President, I tried to make it very clear in everything I have said that I was addressing myself to what I understood

to be the question before the Senate. Assuming that this Legislature is to adopt the policy of granting these rights to private individuals, and the question is whether this charter is designed to protect the very important interests of the State. I tried to make that very clear throughout every word I said. And in replying to my colleague I want to hew close to that line.

Is this charter designed as well as may be to conserving the very important interests? First, as to the scenery. I am no expert, but I can see nothing to prevent the trees being removed at such time in the future during the winter season when storage may be low. So that those trees may be removed, while meanwhile they may for many years have been an eye-sore. They will not at all times, if the purposes of this storage are carried out, be twenty feet under water, as my colleague has said. The very purposes of this storage is not merely to raise the water but also to lower it at the proper periods.

Second, as to the guarantee that this will be developed as a storage basin. It is apparently recognized that this is very important and that is should be done, and my brother says that the guarantee of the public acts that a corporation shall commence actual business under its charter within two years, is sufficient protection. Section 3 of this act is a general granting of power, the storing of water to create a reservoir, and retain and control the waters of Dead river and its tributaries, thereby increasing and making more constant the flow of waters in the Kennebec river. Any small development would conduce to that end if used at all seasons of the year.

This Section 3 is for manufacturing and power purposes on the Kennebec river, and for facilitating the driving of logs and lumber on Dead river. If this driving of logs and lumber is not one of the actual purposes of this corporation and not designed to be its business,—and if not engaged in the actual business of carrying on log driving, especially when you read the following nine sections which cover log driving, log driving, log driving— if any court says that this corporation was not engaged in the actual business of driving logs on this stream, then I

am not able to read the English language correctly.

As to the appearances before the committee, the reference which I made was in reference to the discussion of valuations, and it might seem that I should have furnished any information I had. My opinion on constitutional questions will not be equal to those of men of more experience on water power matters. I do not understand that the proposition is that this would be an unconstitutional granting of power, unless justified by the log driving clause of the charter. That was answered by my brother, that the Supreme Court has said that the power of eminent domain cannot be granted for the development of storage basin, for the development of power. The Supreme Court has clearly indicated that in its decision, and the only way the charter can be justified is on the log driving, and the log driving is what makes this charter perpetual, irrespective of the development, and alone sustains it constitutionally. And it seems to me that we are not fairly exercising our rights if we are resting upon such ground. Then my brother says that the charges must be reasonable to those below on the stream. That may be true, after you have your development made, although there is again I think serious doubt, but there is nothing under heaven, as I said, to compel these private individuals named in the first four lines of the act ever to begin that development unless satisfactory contracts are made by them in their corporate capacity,—unrestricted by public interest or control,—with the various power owners down the stream. There is absolutely nothing to prevent their demanding any price they see fit for the exercise of this franchise which they possess.

As to the value of the lots, my brother recognized the potential power development would go into the value of the lots. I trust that may be so, although I still think it is a serious question. He said nothing as to the potential storage, and that goes with those lots, and he made no reply as to what would become of the State's interest in that.

Finally, assuming that this Legislature is to make a grant of these rights to private individuals, my simple proposition is that you as custodians of this important public

trust, shall make the best trades you can with this corporation, with these individuals. First, get a fair value of this proposition. Second, require that this development shall be immediately guaranteed. And third, that there shall be an accounting of the administration of these important rights. And fourth, that we shall know their charges are to be moderate and within the carrying cost of the corporation. And fifth, that when it comes to the re-acquisition by the State, they shall receive nothing more than a reasonable return on the development, because that is all they are entitled to under the risk of this enterprise, and that if we are granting to these private individuals these rights, we shall ask that these custodians of this important public trust shall be subject to these reasonable requirements.

Mr. EATON of Oxford: Mr. President, I hold no brief for the Kennebec Reservoir Company, nor for any of the men named as incorporators in Senate Bill No. 146, but I am interested in this measure as a citizen who has the welfare of the State at heart.

The storage reservoirs on two of our great rivers, the Androscoggin and the Penobscot, have been developed by private capital, grant this charter so that the Kennebec storage reservoir may be developed in like manner for the good of the people of this State, and thereby fix, forever, a settled policy in regard to this water power question. Take the question out of politics and take it from the hands of politicians who have for the past ten years hindered and impeded the proper development of this State.

Mr. BUZZELL of Waldo: Mr. President and Members of this Honorable Senate, I wish to direct myself to this question for a few minutes. It is not my purpose to discuss either of the measures that were heard before the joint committee on judiciary and interior waters. As I understand it we are considering this Kennebec reservoir proposition at this time.

What has been the existence of this act in this Legislature? The matter has been heard before a committee of twenty men, and now it is ready to be passed to be engrossed and we are confronted by a motion to indefinitely postpone the bill.

For the benefit of the members of this Senate I want to give a little

history of that hearing. Those two committees devoted quite a quantity of time to this hearing; they gave it their undivided attention for a long while. There is nothing new nor mysterious about the bill. I think that all of us were fully apprised of its contents and just what it provided for, and I regret at this time exceedingly that the senator who presented this act is not here to take care of it. At that hearing no word of opposition was evidenced, and on talking about the new things of this proposition, it has been so long in this Legislature that we have heard it at home and heard it elsewhere, and when I consider the industrial and agricultural interests of this State I wish that the statute of limitation might run on the proposition. I for one feel that way about it, and I feel that it is time that we should not get in the way of constructive legislation that means something to the State of Maine.

I am not going to discuss the political ambitions of any one at this time or in the past, but it does seem to me that this is a constructive measure, that it means something to the agricultural interests of this State, to the industrial interests of this State, and why do we at this time want to consider for one moment the indefinite postponement of a proposition that has been heard by a jury of twenty men, favorably reported upon and now some one wants to throw a monkey wrench into the cog gear.

I am not going to discuss the motives of any one for a moment, but I believe we should seriously consider this point, when advocates of Constitutional amendments and acts providing for the State to take over these interests, and when they are asked the question if they approve of the proposition of the proponents of those measures, when asked a direct question, and when they cannot look you in the face and say "Yes," and say it frankly, I hesitate to give their proposition very much consideration.

I believe in this bill. I am not going into the merits of it for it has been discussed at some length here. I do have all the faith in the world in our chief engineer, who appeared before our joint committee. When I asked him the question if he objected to the passage of this bill, he said "No." That satisfied me that the bill had merit, and in the absence of op-

position I was only too glad to take part in making and sharing a unanimous report of both committees, that it ought to pass.

I do hope at this time that the motion from the senator from Cumberland will not prevail.

Mr. Bailey referred to the practice of former years in damming up waters to aid in lumbering and said the proposed measure would be a benefit to all those who use the water upon this Kennebec reservoir.

Mr. Hinckley spoke of the illusions regarding State ownership of its water powers and then gave a detailed defense of the measure.

The PRESIDENT: Is the Senate ready for the question?

Mr. BREWSTER: Mr. President, I ask for a division.

The PRESIDENT: All those in favor of the motion of the senator from Cumberland, Mr. Brewster, that the bill be indefinitely postponed, will rise and stand until counted.

Five senators voting in favor of indefinite postponement and twenty senators opposed, the motion to indefinitely postpone was lost.

On motion by Mr. Hinckley of Cumberland, the bill was then passed to be engrossed.

The PRESIDENT: The Chair will take from the table An Act to amend Section 49 of Chapter 219 of the Public Laws of 1917, relating to the protection of wild hares or rabbits.

On motion by Mr. Sargent of Hancock, the bill was given its second reading and passed to be engrossed.

On motion by Mr. Eaton of Oxford, the Senate voted to reconsider the vote of yesterday whereby An Act in reference to the salaries of clerks of the supreme judicial courts was referred to the committee on salaries and fees.

The same senator then asked unanimous consent to withdraw the act, which was granted and the act was withdrawn.

On motion by Mr. Hinckley of Cumberland, S. D. 197, An Act to prevent smoking in street railroad cars, was taken from the table.

Mr. HINCKLEY: Mr. President, I now move the indefinite postponement of this act. S. D. 197, An Act to prevent smoking in street railroad cars,

I wish to read the bill and make a statement in regard to it:

"Whoever enters any street railroad car with a lighted pipe, cigar or cigarette, or lights or smokes a pipe, cigar or cigarette therein, except in cars or apartments in cars provided for that purpose, shall be punished by a fine not exceeding five dollars, provided a copy of this act, in plain, legible characters, is kept posted in a conspicuous place in such car."

It seems to me argument is not necessary. This bill makes it a criminal offense for anybody, who upon stepping into a street car has a lighted pipe, cigarette or cigar. Now, think of it! It has been recognized for years that on the rear seats of open cars we should have the right to smoke if we desired to. It does not bother me.

I do say that a Legislature which would pass an act of this kind would be a proper joke for all time. Let us not pass a law that would make us a laughing stock of the ages. It is certainly not necessary.

Mr. BAILEY of Penobscot: Mr. President, I presented this bill to the Legislature because from the city of Bangor there run electric cars, some of them twenty-five or twenty-six miles. Under the established rule of all railroads they either have a smoking car on the train or else have some compartment where those who wish to smoke can do so. On the electric cars, as a general rule, there are no such compartments, but if any one wishes to smoke they can get into the vestibule of those cars, if necessary. At certain times these cars, going twelve or fifteen or twenty miles, are more or less crowded. There is not very much air in those cars in the winter time, and when contaminated and foul with tobacco smoke it is not very pleasant for the health and comfort of those in the car.

Therefore, on that ground and at the suggestion of some of the electric railroad companies in this State I presented that bill and it went before the committee on public utilities and they unanimously recommended it.

If this bill goes through I have no doubt but that the electric car people can separate parts of their cars

for smoking purposes, just the same as they do on the gasoline car which runs from Bangor to Bucksport. Therefore, I think that this will be a convenience, and in a way largely conserve the health of those who travel in the electric cars of our State.

Mr. HINCKLEY: Mr. President, it is inconceivable that any person will continue to smoke if requested by the conductor not to smoke. It is not a question in my mind whether the health of those who ride on the cars will be conserved. The railroad companies have ample power to prevent any one smoking in their cars and making a nuisance of themselves. To my mind it will make it a criminal offense for any one to step into a car with a lighted cigar or pipe.

A yea and nay vote being had the bill was indefinitely postponed.

On motion by Mr. Allen of York, H. D. 232, An Act to amend Chapter 197 of the Public Laws of 1921, by adding a new section 4, and making the present section 4 into 5 unchanged, relating to taxation of savings banks, was taken from the table.

On further motion by the same senator, the bill was referred to the committee on banks and banking, in concurrence.

Mr. Buzzell of Waldo: Mr. President, I move to take from the table S. D. 102, Resolve in favor of the Maine State Prison for maintenance and current expenses, tabled by me yesterday at the request of the Chief Executive.

The motion was agreed to and on further motion by the same senator the bill was passed to be engrossed.

Mr. BREWSTER of Cumberland: Mr. President, I would like to ask the exact status of this bill.

The PRESIDENT: The matter was brought to the Senate on order and the votes reconsidered whereby it was passed to be enacted and passed to be engrossed. The pending question was the passage of the bill to be engrossed, which has just been acted upon by the Senate.

On motion by Mr. Spencer of York,

Adjourned until tomorrow morning at 10 o'clock.