

MAINE STATE LEGISLATURE

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Legislative Record

OF THE

Eighty-ninth Legislature

OF THE

State of Maine

SPECIAL SESSION

1940

KENNEBEC JOURNAL PRINT SHOP
AUGUSTA, MAINE

HOUSE

Thursday, June 6, 1940.

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

Prayer by the Reverend Mr. Hughes of Augusta.

Journal of the previous session read and approved.

Mr. Starrett of Warren, was granted unanimous consent to address the House.

Mr. STARRETT: Mr. Speaker, at yesterday afternoon's session I am on record as being absent, and I wish to explain that I was here and answered present on both calls, and rose on the floor and asked to be recorded as present, and I am on record as being absent. I think the gentleman from Turner, Mr. Pratt, will tell the House that I was here when the roll call was given.

The SPEAKER: The Chair hears the gentleman's remarks.

Is it now the pleasure of the House to take up out of order a communication from the head of a department?

The following papers from the Senate were taken up out of order and under suspension of the rules:

From the Senate:

The following Communication: (S. P. 746)

STATE OF MAINE
EXECUTIVE DEPARTMENT
Augusta

June 5, 1940

To the President and Members of the Senate:

To the Speaker and Members of the House:

I herewith transmit for the consideration of the Legislature a memorandum received yesterday from the Commissioner of Health and Welfare in reference to the activity known as "Aid to Dependent Children."

As the memorandum indicates, a slight revision in existing State law apparently is necessary in order for the State of Maine to receive the maximum amount provided under Federal law. If such a change were made, it would appear that the State of Maine would benefit on existing cases to the extent of \$15,528 per year from Federal funds. Of this amount, present State funds would benefit to the extent of \$10,200 per

year and municipal payments would benefit to the extent of \$5,300 per year.

If, in the opinion of the Legislature, this is sufficient cause to consider an amendment to our existing law, I trust the necessary legislation may be prepared and introduced.

Respectfully submitted,

(Signed) LEWIS O. BARROWS
Governor

Comes from the Senate, communication with accompanying paper read and ordered placed on file.

In the House:

Mr. VARNEY of Berwick: Mr. Speaker, because of the fact that this communication apparently calls our attention to the possibility of some amendments to the statutes pertaining to aid to dependent children, and because of the fact that the standing committee on Judiciary considered all amendments pertaining to aid to dependent children at the last regular session, it seems to me that this communication should be called to the attention of that committee, and I therefore move that it be referred to the standing committee on Judiciary.

Thereupon, on motion by Mr. Varney, the communication with accompanying paper was referred to the Committee on Judiciary in non-conference, and sent up for concurrence. (500 copies ordered printed)

On motion by Mr. McGlauffin, out of order and under suspension of the rules, it was

ORDERED, that Mr. Winslow, of Auburn, be excused from attendance June 6th, on account of urgent business.

Mr. Burgess of Limestone, was granted unanimous consent to address the House.

Mr. BURGESS: Mr. Speaker, at the last regular session of this Legislature there was enacted what was known as the travelling bill, pertaining to all employees in the State, and you are all familiar with the details of the travelling bill, which started off, I believe, with five cents a mile and reduced it finally to three.

I speak now relative to employees of the State in the Agricultural Department, or those who are inspectors, and due to the conditions under which they operate and due mostly to the fact that not one cent

of tax money goes into their expenses—they are paid entirely from fees which the farmers pay to the Agricultural Department, and it represents no saving at all on the part of the State—I have prepared here an amendment to the bill changing the particular set-up, and at this time I would ask the unanimous consent of the House to introduce this measure.

The SPEAKER: The Clerk will read the title of the Bill.

At this point the Senate entered the hall, amid the applause of the House, the members rising, and a Joint Convention was formed, in accordance with a Resolution (S. P. 740) (L. D. 1236) passed by both branches of the Legislature providing for a Joint Convention for the purpose of considering the adoption of an address to the Governor for the removal from office of Belmont A. Smith, Treasurer of the State of Maine.

In Joint Convention

(The President of the Senate in the Chair)

The Convention was called to order by the President.

The Secretary called the roll.

Present: Senators Beckett, Boothby, Boucher, Burns, Chamberlain, Chase of Piscataquis, Chase of Washington, Cony, Dorr, Dow, Elliot, Findlen, Friend, Graves, Harkins, Hill, Kennedy, Laughlin, Lewis, Littlefield, Marden, Morse, Owen, Sanborn, Sewall, Spear, Thatcher, Tompkins, Wentworth, Worthen.

Representatives: Arzonico, Ayotte, Bacon, Batchelder, Bates, Belanger, Bird, Bolduc, Bragdon, Brown of Caribou, Brown of Corinna, Brown of Eagle Lake, Bubar, Burbank, Burgess of Limestone, Butler, Chandler, Churchill, Cleaves, Clough, Cook of Lewiston, Cowan, Crockett, Cushing, Davis, Dean, DeBeck, Dennison, Donahue, Dorrance, Dorsey, Douglass, Dow of Norway, Downs, Dwinal, Eddy, Ellis, Emery, Erswell, Farwell, Fernald, Fowles, Good, Goss, Grua, Hall, Harold, Haskell, Hawes, Hildreth, Hinkley, Hinman, Hodgkins, Holden, Holman, Howes, Hussey, Jewett, Jordan, Keene, Labbee, LaFleur, Lambert, Larrabee, Latno, Leveque, Lord, Luro, MacNichol, Mahon, Marshall, Maxim, McGillicuddy, McGlauffin, McNamara, Melanson, Mercier, Meserve, Miller, Mills, Murchie, Norwood, Noyes, Otto, Palmetier, Paul, Payson, Peakes, Pelletier, Philbrick,

Plummer, Poulin of Waterville, Pratt, Preble, Race, Richardson, Robins, Robie, Robinson of Bingham, Robinson of Peru, Robinson of So. Portland, Shesong, Slosberg, Smith of Thomaston, Smith of Westbrook, Snow of Dover-Foxcroft, Snow of Hermon, Stacy, Starrett, Stilphen, Sylvia, Tardif, Thompson, Townsend, Varney, Violette, Walker, Wallace, Weed, Weatherbee, Welch, Williams, Winter, Worth, Young of Acton.

Absent: Senator: Cook.

Representatives: Babin, Barter, Buzzell, Dow of Eliot, Dow of Kennebunkport, Everett, Fogg, Ford, Merrifield, Pike of Lubec, Porell, Poulin of Rumford, Ramsdell, Stevens, Whitney, Winslow.

(At this point, at the request of the President of the Senate, the Speaker of the House assumed the Chair as Chairman of the Convention.)

MRS. RUTH R. BAGLEY, Sworn

Direct Examination

(By Mr. Gillin)

Q. Will you state your name?

A. Ruth R. Bagley.

Q. You are employed in the Treasury Department?

A. Yes, sir.

Q. How long have you been employed there?

A. Temporarily since 1918 and permanently since 1937.

Q. Is there in that office a register on which is entered the amounts of allotments which are made from the warrants of the Governor and Council covering the expenditures of appropriations?

A. Yes, sir.

Q. And whether or not there was posted on that register the quarterly allotments as they are made by warrants from the Governor and Council from annual appropriations?

A. I didn't hear your question.

Q. Whether or not the quarterly allotments made by warrant of the Governor and Council on annual appropriations are posted in the register?

A. The warrants are posted daily.

Q. In that register?

A. Yes.

Q. Have you made, at my request, a compilation of the total warrants as they appeared on that register for the years 1938, 1939 and 1940?

A. I have taken various days for 1937, 1938, 1939 and 1940, different amounts showing the fluctuation from day to day.

(Defendants' Exhibit No. 3, being compilation of warrants, marked)

Q. Handing you document marked Defendants' Exhibit No. 3, I ask if it is a tabulation from the register showing allotments appearing on the register, reflecting the quarterly allotments made by the Governor and Council?

A. It is.

Q. Do I understand that compilation reflects the totals of the quarterly warrants covering allotments?

A. Those warrants I have taken there are as of one date. One date I remember is August 8th, consisting of 12 warrants and gives a total of the warrants and those warrants go from \$40,000 to a million dollars. They vary. This one date I remember. Those are by days.

Q. That is what I mean.

Mr. GILLIN: If the court please, this evidence is introduced out of order to save time and I am about to offer some evidence now, the admissibility of which is going to be objected to, but if admissible, the form of introduction is not objected to. I desire to show by this class of evidence this situation, that the handling of the State funds in banks, because of the wide spread of the collecting in departments, institutions and agencies of the State government all over the State makes both necessary, proper and expedient the depositing as permitted by statute by departments and institutions located away from Augusta of receipts received by them as they are taken in, which funds are eventually distributed by and under the warrants of the Governor and Council. Accounting for the situation wherein at times certain of the depositories scattered throughout the State reached a figure which is in excess of 25% of the capital and surplus of those banks, cannot be controlled by the Treasury Department which does not know from day to day what deposits are made by those departments and institutions. This particular evidence shows how those funds, as they accumulate, are continually being reduced. It shows a situation where the State, as it has a large number of depositories, the balances which are fluctuating up and down quite freely and more or less out of control by the central head in Augusta because deposits which are made, for instance in Aroostook County last night, are not known to the Treas-

ury Department until today. I should like, under the liberal rule which governs the introduction of evidence here, to be permitted to show documents from which counsel may argue their views as to whether or not the deposits over 25% of capital and surplus in some banks from time to time is or is not in violation of the statute, which has a provision that the limitation does not apply to deposits which are being expended by warrants.

I will say frankly that at this time I would have to appeal somewhat to the application of the same rule of liberality, general liberality, in an attempt to get the complete picture before the Convention here as to just what situation exists. It is evidence that of course would be harmful to the prosecution, and the prosecution cannot be harmed. It is a type of evidence which I think in justice to the respondent or the defendant here should go into the evidence to make up the complete picture. I therefore offer this evidence.

The CHAIRMAN: Do you care to be heard, Mr. Brown?

Mr. BROWN: I might simply say I have been so overwhelmed with Mr. Gillin's persuasiveness that I have changed my own position. I will withdraw that objection.

The CHAIRMAN: The Chair feels, if it correctly understands Defendant's Exhibit 3, that it is similar in nature to Proponents' Exhibit 41 which was admitted yesterday over Mr. Gillin's objection, partly on the ground it was an original office record, the authenticity of which had been attested by competent witnesses, and partly, as suggested by counsel, the objection that a fairly liberal view should be taken of evidence on which there is discretion by the presiding officer. Defendant's Exhibit 3 is therefore admitted without objection for what it may be worth.

Mr. GILLIN: Another point I would like to ask the witness, because I do not know exactly what I am going to ask:

Q. (By Mr. Gillin) Handing you Defendant's Exhibit 3, and calling your attention to the first figure on it, which is March 30 and 31, 1939, \$543,731.93, do I understand that on those dates that was the total of the drafts under the allotment of the Governor and Council?

A. It was the total of the warrants for those two days handed to us by the Controller's office.

Q. Which were honored on those dates by payment from the funds?

A. Yes.

Q. And every one of those amounts indicate amounts that were expended from the State funds on the warrant of the Governor and Council?

A. Yes, sir.

Q. That is all, thank you. (Witness excused)

MISS LILLIAN CHASE Recalled.

Direct Examination

(By Mr. Gillin)

Q. Have you testified before, Miss Chase?

A. I have.

Q. And you are employed in the Treasury Department?

A. I am.

Q. And as a part of your duties do you assist in the handling of the money or checks which are received by the Treasury Department from the Controller's office reflecting revenue received by the Highway Department?

A. I do.

Q. And you confirm my understanding that with the passing into the Treasury of all the revenue of the Highway Department, whether by cash or by check, those remittances are accompanied by what we term an income blank?

A. They are.

Q. On which is distributed by classification number and total the accounts on which that income is to be credited on the Treasurer's books?

A. Yes, sir.

Q. And you confirm my understanding that all of the revenue from the Highway Department comes in under the general classification of "Highway Department", and that none of it on the income sheets which accompany the remittances indicates what if any portion of it is received from sales of commodities at the State Garage?

A. That is true.

Q. Now is it a fact that in remitting to the Treasury Department a large number of the remitting agencies, departments of the State, accompany their remittances with these carbon copies of receipts which were discussed yesterday here?

A. We would receive those from institutions mostly and from departments where they would have occasion to sell anything. That is just a receipt given to a customer, as I understand it, for anything that would be sold from that department. We get those mostly from the De-

partment of Agriculture, get them from the Fish & Game, get them from practically all of the institutions.

Q. And all of those institutions that you have mentioned also accompany their remittances by the usual income distribution?

A. Yes, sir.

Q. Now while you have been in the Treasury Department have you ever received any instructions, or do you know of any rules and regulations issued by the Controller or any other controlling department which imposes upon anybody in the Treasury Department the duty or the responsibility of even examining or handling such of those receipts that do come in with the remittances or distribution sheets?

A. They have never been considered of any value to us. They are given by the departments, and if any question ever came up, naturally they would go to that department. All we are ever interested in is to see that the money received agrees with the income blank, and that is credited up on our cash book to the department.

Q. So that to the extent those receipts come in from the departments, you do not pay any attention to them?

A. They meant nothing to us whatever.

Q. And that is in accordance with what you understand the rules and regulations governing the handling of remittances, income and distribution sheets,.

A. Yes.

Q. I would ask you this question: Whether the Highway Department, in sending these remittances in, so far as you know, ever includes with the remittances and the distribution sheet covering those remittances, any of these cash receipt slips?

A. So far as I know, I could say positively that they never accompanied the Highway remittances.

Q. From your own personal observation over the period of time that you have worked, have you ever seen one of those carbon copies of the receipts which we spoke of yesterday accompanying a remittance of any sort from the Highway Department?

A. I never have.

Q. And is it a fact that the question of whether or not such receipts did accompany such remittances was the subject of conversa-

tion prior to the hearing between you and Miss Currier of the Controller's office?

A. Yes.

Q. And you heard Miss Currier on the stand yesterday?

A. Yes, I did.

Q. Testifying as to whether or not she did send them in and to what extent.

Now would you tell us what the conversation was between Miss Currier and you and who else participated in it?

A. Mrs. Wheeler.

Q. What was that conversation?

A. When I came up Miss Kelley said to me, "You don't act frightened or nervous." And I said, "I am not awfully nervous about it. It is not a pleasant thing to do." Miss Currier spoke up and said, "I don't know what they called me up here for. I don't know what they want me to testify." I said, "They probably are going to ask you about those pink slips. You never brought those slips into our office." She said, "We don't call them sales slips, we call them receipts." I said, "Whatever they are, those pink and blue sheets that accompany the income from the departments, you never brought them in with the Highway." She said it was very seldom she did bring them and it was possibly once a week, and there would be so few you wouldn't notice them. That is all that was said, but, even if there were only one or two you couldn't help notice them.

Q. And you never noticed them?

A. I never noticed them come in.

Q. So to the extent Miss Currier testified yesterday she sent them in with her remittances, I understand you contradict her?

A. I never saw any of them, absolutely, with the Highway.

Q. And as you observed the situation as an employee of the Treasury Department, will you state what you considered to be the attitude of Mr. Winship and the employees in your department as to the authority and power of Controller Runnells while he was functioning?

A. Well, we always felt that he had absolute power over our office, that anything he might suggest that we do we never hesitated about doing it and when he came into the office we just feared him, that is all. If we couldn't give him the necessary information quick enough that he wanted or if we weren't all at

our desks at work we felt that it would be a black mark against us.

Q. That is, you felt that he had complete authority, is that right?

A. Yes.

Q. Well, did you share the inferiority complex?

A. I don't know that I would say that.

Mr. GILLIN: You may examine.

Cross Examination

(By Mr. Brown)

Q. Miss Chase, you have testified in regard to some conversation that you had with Miss Currier?

A. Yes, sir.

Q. And when did you have that conversation?

A. That was Tuesday morning when we first came up to this assembly.

Q. When did you report this conversation to Mr. Gillin?

A. That was yesterday. I believe that he was over there talking with us and he asked us about the sales slips, if we—

Q. Just a minute, Miss Chase, I think you can answer my questions more briefly. When did you report this conversation that you had with Miss Currier to Mr. Gillin?

A. It was yesterday noon, I believe, or yesterday forenoon.

Q. You didn't report that to him last night?

A. Absolutely I did not.

Q. Or this morning?

A. Absolutely I did not.

Q. Now, did he seek you out to get this information or did you give it to him voluntarily?

A. Absolutely I haven't seen Mr. Gillin, only in this room.

Q. Well, did you volunteer that information to Mr. Gillin or was it the fact that during the discussion he approached you and it was talked over?

A. I volunteered the information because I didn't like the attitude that she took in saying that there was possibly one or two and that we wouldn't notice it because if there had been one or two we would have noticed it just as much as if there had been fifty.

Q. Now, Miss Chase, my recollection may be faulty, of course, but as I recall yesterday's proceedings it was well into the afternoon when Miss Currier testified.

A. Well, I won't say absolutely it was after Miss Currier testified but I believe it was. It was when we were excused here and we girls sat

there and Mr. Gillin came over and said something about the slips and I up and told him what the conversation had been between us and Miss Currier. It was right there in that corner. I don't exactly remember what time of day it was yesterday. I think it was after she had testified.

Q. That was the point I was trying to make. Of course it would be a fact that you would not report that conversation to Mr. Gillin before Miss Currier testified because you had no reason to and since you must have reported it afterwards, in your judgment you wouldn't now state, would you, that probably last night was when you—

A. Absolutely not. I never saw Mr. Gillin last night, never spoke to him.

Q. But the fact remains that you volunteered the information?

A. I certainly did.

Q. Whenever you did?

A. Yes, whenever I did. It was some time yesterday, I don't recall when.

Q. The receipts which come into your office such as we have been discussing, do you ever retain those in your files?

A. Beg pardon. I didn't get that question.

Q. The receipts which come into your office with deposits made by different departments, do you retain those for your files?

A. No, we do not.

Q. Do you know that it states on the pink carbon copies of those receipts that they are to be retained by your office?

A. I do.

Q. But regardless of that, they were not?

A. They were not.

Q. Now, you have stated under Mr. Gillin's examination that you assumed that Mr. Runnells had control of the affairs of your office.

A. I did.

Q. Did the other employees in the office take the same position?

A. We all felt the same.

Q. And so it was the general impression in the Treasury department that the Controller had charge of the Treasurer's Department?

A. He gave instructions. At the end of the month he would tell us when we could close our cash and if the head of the department O. K.'d a slip—

Q. Just a minute. I think you can answer that question a little more briefly, Miss Chase, as to

whether that was the attitude of yourself and other employees in the department.

A. From the first time that I went to work there I have always been under the impression that whatever he said pertaining to anything about our office it was always done as he wished it to be done.

Q. Did you ever receive the impression from anyone that Mr. Smith had anything to do with the Treasury Department?

A. Yes, I think that Mr. Smith, if he had known—

Q. Just a minute. I asked you if you ever received the impression from anyone that Mr. Smith had anything to do with the Treasury Department?

A. Well, I knew he was Treasurer and naturally I did.

Q. And knowing that he was Treasurer you and the other subordinates connected with the Treasury still assumed that you should take orders from Mr. Runnells?

A. Well, we just supposed that we should—

Q. Miss Chase, is that the fact?

A. That is the fact.

Q. So consequently there was never any demonstration on the part of Mr. Smith so far as yourself and other subordinates were concerned to indicate that he thought that he had something to do with the running of the Treasury Department?

A. Mr. Smith had no way of knowing anything about those things.

Q. Just a minute, please. I ask you if there was ever any indication on the part of Mr. Smith to impress yourself and the other subordinates in the office that he was running the affairs of the Treasury?

A. There certainly was.

Q. And still regardless of that impression which Mr. Smith attempted to make—

Mr. GILLIN: Leave out the word "attempted" please.

Mr. BROWN: Pardon me. I will make a new start.

Mr. GILLIN: That's it.

Q. Regardless of the impression which Mr. Smith made upon you that he had something to do with the running of the Treasury Department you still considered that Mr. Runnells was the man who had the last say in the Treasury Department, did you?

A. Yes, we did. Had the last say with everything in the department.

Mr. GILLIN: Mr. Chairman, I

object. The witness did not finish her answer. I would like to have the question read and the witness permitted to answer fully.

(Question read)

A. Yes, we did. We all—

Mr. BROWN: Just a minute. Of course, Mr. Chairman, it is a technical fact that I put this witness on and it is also apparent that this witness is a hostile witness. Now, I am entitled to confine her answers to the questions which I ask and Mr. Gillin can do his cross examining in his turn.

Mr. GILLIN: I didn't raise the question, Mr. Chairman, as to the form of my brother's question. I don't care what form he puts the question in. My only objection is that he has the habit and does interrupt the witnesses before they can complete their answers and this is an instance of it. I think I am right. He has just made the statement, completely unfair as I see it, that this witness is hostile, and as a matter of record I protest that statement. I don't want him to call any witness hostile until he has demonstrated that fact.

The CHAIRMAN: You may proceed, Mr. Brown.

Q. Now, Miss Chase, regardless of the fact that Mr. Smith informed you and other subordinates that he had some responsibility for the functions of the Treasury Department, you still considered that Mr. Runnells was the directing head, as I understand it?

A. Yes, we did.

Q. Would you say that this impression made upon you by Mr. Smith was done in a forceful manner on his part? What I mean is this, to clear the matter up: Did you ever know Mr. Smith to take the stand that he would run his own department?

A. Yes, I have.

Q. And even in view of that and knowing that, and knowing that Mr. Smith was Treasurer, yourself and the other subordinates in the office still considered that Mr. Runnells was running the Treasury Department?

A. We felt that he could run anything in the State House that he wanted to.

Q. Now, Miss Chase, you say, "We felt that he could run everything". Does that include Mr. Smith?

A. That includes everyone that works in the State House, almost, I should think.

Q. So would you go so far as to say that Mr. Smith also had the impression that Mr. Runnells was running his department?

Mr. GILLIN: I object to that for it's obvious unfairness and because it is not a competent question.

The CHAIRMAN: The witness is not qualified to answer that.

Q. Do you know how Mr. Smith looked at the proposition as to who was the responsible head of his department?

Mr. GILLIN: I object to that for the same reasons.

Mr. BROWN: I asked if she knew.

Mr. GILLIN: Of course she can't give Mr. Smith's views.

Mr. BROWN: I asked her if she knows the position that Mr. Smith took. I am entitled to have that answered Yes or No.

The CHAIRMAN: The Chair will allow her to answer Yes or No.

(Question read)

Mr. GILLIN: I object to that.

The CHAIRMAN: Answer Yes or No.

Q. (Question read)

A. Mr. Smith considered that he was the—

The CHAIRMAN: Yes or No.

A. Yes, I do.

The CHAIRMAN: If you are going to continue on that line, Mr. Brown, the Chair suggests that you ask the witness upon what she bases her opinion, whether upon facts or merely guesswork.

Q. You have stated that you do know? Is your answer Yes or No to that question?

A. Yes.

Mr. BROWN: I don't see any necessity of pursuing that further.

Redirect Examination

(By Mr. Gillin)

Q. With respect to these slips, is it true your job, when you received this income sheet, was to take it to the Treasurer's office and post it on your books to the right department?

A. That is what our duty was, to check the money with the income blank and give credit to the proper department.

Q. Whether or not you had complete, full and detailed information which enabled you to do those two things, taking it in and crediting it to the right department from the income sheet?

A. Yes.

Q. So far as to either of these

things, these slips did not assist you at all?

A. Not a bit.

Q. Whether or not you attended to the billing out for taxes?

A. Yes, I do.

Q. And with respect to the taxes to banks and to railroads, what did you do in connection with billing the taxpayer for those taxes?

A. On the railroads, there are three notices sent to the companies calling their attention to the tax.

Q. Would you attend to the sending out of those notices?

A. I do.

Q. Were those notices sent out to all banks and railroad companies which are in arrears on taxes when Mr. Smith came into office?

A. From 1937 I can answer yes; that is the time I have been employed there, since 1937.

Q. Did Mr. Runnells have occasion while you were in the department to check up the functioning of your department with respect to bookkeeping and handling vouchers and posting of various items?

A. Our cash book—

Mr. BROWN: I object.

Mr. GILLIN: The reason for that is this: The statement has been made that he was more or less supreme. I wish to show to some extent on what that was based. It has already been testified that he had control of the set-up of department bookkeeping, vouchers, etc. I was asking the witness if he did exercise the authority in that department.

(Question read)

The CHAIRMAN: You may ask the witness as to anything Mr. Runnells did.

(By Mr. Gillin)

Q. What if anything did Mr. Runnells do by way of inspecting or directing things in the department or handling books or vouchers or other documents?

A. Well, I wouldn't say to that that he supervised any of that. Our offices worked in conjunction with one another. We received the income and Mr. Berry in his department uses our cash book to draw off the credits that have been given to the different appropriations.

Q. The group in your office, headed by Mr. Winship, and consisting of yourself and the other girls, whether or not that group took full charge of taking in all cash and the bookkeeping of that cash?

A. That is right.

Q. And Mr. Smith had very little to do with that functioning of that internal group?

A. I would say he had little to do with the detail.

Q. Isn't it a fact because of the close contact between your office and Mr. Runnells, there were frequent contacts between Mr. Runnells and the group in your office?

A. Yes.

Q. Isn't it a fact that it was the situation that Mr. Smith did not interfere with the subordinates in the office in regard to the taking in of the cash and depositing the cash, and, as you expressed it, Mr. Runnells was to some extent in control of the department?

A. That is true.

Q. That is the basis of your answer.

Mr. GILLIN: No further questions.

FREDERICK ROBIE, Recalled

Direct Examination

(By Mr. Gillin)

(Exhibit 4, Defendants—marked)

Q. Your name is Frederick Robie?

A. Yes, sir.

Q. You were on the stand yesterday and have been recalled by me this morning?

A. Yes, sir.

Q. Whether or not at my request you have examined the books of account in your office as Secretary of State on which is carried and distributed the income taken in by your department from your main and branch offices which receive money for the registration of motor vehicles and the licensing of operators?

A. I have the distribution of the branch offices. I haven't the main office.

Q. Handing you Defendant's Exhibit 4, I would ask you if that is a statistical compilation of the monthly receipts of the branch offices over the years 1937 to 1940, inclusive, summarized by general totals, as shown on the first page of the exhibit?

A. Yes. 1940 is to June 1st.

Q. Could you give approximately the amount of money which was taken in by the main offices at Portland, Bangor, Auburn, Presque Isle, Rockland and Calais for the year 1937?

A. About \$3,700,000 I believe. I can get that fairly accurate for you in a very short time.

Mr. GILLIN: For the same purpose, Mr. Chairman, as I introduced Defendant's Exhibit 4, which indicated the volume of outgo from the Treasury for the inclusive dates appearing on that report, I should like now to submit evidence of two large departments, and at this time put in evidence from the Secretary of State's Department indicating the rate and volume of income received by that department from the various sources of revenue.

The CHAIRMAN: Is there any objection, Mr. Brown?

(Defendant's Exhibit No. 4, admitted without objection)

ALVIN T. WILKINSON, Sworn

Direct Examination

(By Mr. Gillin)

Q. I am going to impose upon you, Mr. Wilkinson, to the extent of helping me make a few computations with respect to trust fund accounts. Are you equipped with pencil and pad there?

A. I am.

Q. Yesterday there was read by permission, from the report of Ernst & Ernst, the portfolios in the case of the following trust funds: Augusta State Hospital, Coburn Fund; Western Maine Sanatorium, Levi Stewart Fund; State Military and Naval Children's Home, administration account. Now I should like to have you, if you will, reduce the total of securities in the Coburn fund, which are not state or municipal investments—will you give that amount?

A. The Coburn Fund securities were \$50,000.

Q. What portion of that is in municipal or federal bonds—or what securities in that portfolio are not securities issued by federal or state or municipal government?

A. In my opinion, the \$25,000 of the Portland Water District.

Q. Will you put that down on your pad, please. Now, if you will please turn to Western Maine Sanatorium, Levi Stewart Fund. Would you, by reference to your report, state the number of securities by name and amount in that portfolio which are securities other than federal securities, state securities or municipal securities?

A. The Portland Terminal Company, \$2000; Southern Pacific Company, \$5000; Pittsburgh and West Virginia Railroad Company, \$5000; Canadian National Railway Com-

pany, \$5000; Phillips Water Company, \$5000; Republic of Cuba, \$5000.

Q. Would you compute the total of the listed value of those securities as the second figure on your pad?

A. You wish the total of those I have just called?

Q. Yes.

A. \$27,000.

Q. Please turn to the State Military and Naval Children's Home administration account. Would you read from that portfolio the investments which are not either federal, state, municipal or county bonds?

A. Portland Railroad Company, \$2000; Leadville Water Company, \$1000, and a group of securities of the United Public Utilities Corporation carried at \$250.

Q. What is the total of those securities?

A. \$3,250.

Q. Will you give me the total of all of the securities in those three funds which you have read?

A. The total of all, including those which were legal and those which were not?

Q. The totals of the securities you have read to me?

A. \$55,250.

Q. That is, in those three funds there are \$55,250 of securities which are neither federal, state, municipal or county or savings bank or time deposits?

A. That is right.

Q. Will you give me the total of the entire portfolios added together in those three accounts?

A. Excluding the cash?

Q. Including the cash.

A. \$131,812.10.

Q. Now have you in mind or have you a notation as to the names of the funds which yesterday, by opinion, were testified to be permanent funds?

A. My understanding was that these three funds were the only ones which were.

Q. Do you recall yesterday other funds were designated permanent funds by opinion of Mr. Cowan?

A. I do not understand the question.

Q. You have not got that?

A. No, sir.

Q. Now would you give me the total of all of the portfolios in all of the trust funds except the Teachers Retirement Fund?

Mr. BROWN: I shall object to that, Mr. Chairman. I cannot see the materiality of it. The only

thing in question here are the investments in three particular trust funds. That is all there is in issue. I object to the introduction of evidence as to the value of securities in any trust funds which are not under discussion.

Mr. GILLIN: The purpose of that evidence was not, I think, as my brother apparently thought it was. There is testimony that Mr. Smith gave his attention to the investment portfolios of all these funds, that he had charge of investments. As a matter of background I would like to state briefly and give a picture of the extent and scope of that total investment portfolio, of what it was worth.

The CHAIRMAN: Does the Chair understand that the counsel claims the difference in the two figures would not be argued as to legality?

Mr. GILLIN: May I say I would not argue the difference between the two figures would be contested as to legality.

The CHAIRMAN: Then the witness may answer the question.

Mr. GILLIN: I do reserve the right to argue whether it would be considered a legal investment or not.

Q. (By Mr. Gillin) Have you got that figure, Mr. Wilkinson?

A. Yes, I have.

Q. Would you state it?

A. Excluding the amount of securities in the State Teachers Retirement fund, the total of securities in the trust funds at June 30, 1939—

Q. And the cash.

A. And the cash—I have excluded the cash.

Q. You misunderstood me. I asked you to include it. Now have you got the total, Mr. Wilkinson?

A. Yes, I have.

Q. And would you state it?

A. Excluding the amount of cash and securities in the Maine Teachers Retirement fund, the total cash and securities in all other trust funds at June 30, 1939 was \$2,224,-693.26.

Q. And I would ask you at recess—we won't take the time now, to either confer with Mr. Brown, who can give you the necessary facts, or get it from the record—and it does not make any difference to me—and ascertain the trust funds which yesterday Mr. Cowan testified in his opinion were permanent, all of them, and to take such funds and give me the total portfolios in each of those funds. I believe there

are nine of them. Include both the securities in them and the cash in them, and later I will question you on them again.

Mr. GILLIN: One stipulation which I think we can make by agreement:

It is stipulated that the Revised Statutes of Maine and the Public Laws of 1931 may be considered as exhibits in the evidence and that counsel may be at liberty to discuss or read any part or parts thereof.

The CHAIRMAN: It is stipulated by agreement of counsel.

Mr. GILLIN: And that includes, incidentally, the Constitution.

The CHAIRMAN: The Convention may be at ease for ten minutes.

Convention at Ease

FREDERICK ROBIE, Recalled

Redirect Examination

(By Mr. Gillin)

Q. Now, Mr. Robie during recess did you make a compilation from your record as Secretary of State as to the total receipts of your main offices in Portland, Bangor, Auburn, Presque Isle, Rockland and Calais, which compilation was the total receipts taken in by those main offices in the years 1937, 1938, 1939 and 1940 respectively?

A. Yes.

Q. Will you read the amount the main offices took in in 1937?

A. \$1,662,262.06.

Q. And in 1938?

A. \$1,451,089.20.

Q. And in 1939?

A. \$1,302,251.57.

Q. And in 1940?

A. \$1,087,261.38.

Q. Did you also add the total receipts of both the main and branch offices for those years?

A. Yes.

Q. Will you read those figures for 1937?

A. \$3,836,003.65.

Q. In 1938?

A. \$3,552,553.24.

Q. And in 1939?

A. \$3,764,431.00.

Q. And 1940?

A. 1940 to June 1, \$3,550,587.36.

Mr. GILLIN: Mr. Speaker, I am adding the sheet on which are carried the figures that Mr. Robie has read with the totals as I have discussed them, to Defendant's Exhibit No. 4 which gives a complete picture both of the totals and of the breakdown of the main and branch office receipts of the office of Secretary of State for the years 1937 to 1940 in-

clusive. The exhibit in its original form, as I understand, was offered and admitted and this is merely an addition of the main office receipts and the grand totals, and I will re-offer the exhibit with this addition.

The CHAIRMAN: Is there any objection, Mr. Brown?

Mr. BROWN: No, Mr. Speaker, I think not.

The CHAIRMAN: Admitted without objection.

Mr. GILLIN: Thank you, Mr. Robie.

Mr. Chairman, subject to possible inadvertence I have now produced all of the evidence that the defense is to introduce prior to Mr. Smith's testimony. The State yesterday asked permission to put in some consolidations out of order and I would like if possible to have the State's case completed before I go on with my final witness.

The CHAIRMAN: Are you ready to do that, Mr. Brown?

Mr. GILLIN: There was one figure that Mr. Wilkinson was asked to produce during the recess which is not here and I will put that in when it comes in.

EVERETT W. DOWNS, Recalled

Redirect Examination

(By Mr. Brown)

Q. You are the Deputy Treasurer of State?

A. That is right.

Q. I believe I asked you last night to go over the records in the Treasury office and tell me all of the trust funds which have been purchased by the Treasury office since Mr. Smith has been in office; that is, since January 4, 1937 to last Tuesday, I believe?

A. Yes. I attempted to comply with that request and found it impossible to obtain the information which you asked for on the two funds which you asked for in addition to the list which you took from me last night and I accordingly asked the departments, the respective departments handling those funds, to furnish me with the list, which list I have with me but to the correctness of which I cannot swear.

Q. Well, just a minute to see if I understand you. Do you mean that there was in the Treasurer's office no record of these trust funds purchased during January 4, 1937?

A. No. No permanent record of the purchase of the trust funds. That is right; those two funds.

Mr. BROWN: That is all.

Recross Examination

(By Mr. Gillin)

Mr. GILLIN: There is a record in the Treasurer's office, a register or some other type of book in which is carried all of the securities in all of the funds?

A. Will you repeat the question? (Question read)

Q. Do you know?

A. The answer is no, qualifiedly. I have here the only record which I have been able to find in the Treasury office, which is a pencil record of Mr. Winship's which I mentioned last night. That is, in substance, an inventory of the securities in each of the trust funds for the end of the fiscal period. I have two lists. One is at the end of the fiscal period of 1936 and one at the end of the fiscal period for 1939.

Q. Have you seen this document which I am now going to show you entitled: "State of Maine, Treasury Department, Schedule of Bonds and Stocks Held for Trust Funds, Trust Deposits and Guaranty Deposits" which was, until I brought it in here, one of the documents in the Treasury Department?

A. You mean the list compiled as an inventory by Mr. Foss of the Banking Department?

Q. Yes.

A. I have seen that, yes, sir.

Q. Have you any question as to the correctness of the inventory of the securities?

A. I have not.

Q. That is a document of the Treasurer's office?

A. It was up until—

Q. And still is, but temporarily in my possession?

A. Yes.

Q. So in answer to the question that you were not able to find anything but the two documents which you have indicated, one in pencil reflecting the security situation, there was a document in my possession belonging to the Treasury Department?

A. That document would not permit me to determine any securities bought within that period, as to the date bought or anything of that nature.

Q. You ventured the information that you were unable to find in the Treasury Department any record of the securities except two reports, one of which you volunteered was partly made in pencil. Is that cor-

rect? Do you understand the question?

A. I don't think I do.

Q. Didn't you just a few moments ago say you were unable to find in the Treasury Department any record except the two documents you have in your hand, one of which is in pencil?

A. That is right.

Q. And I had a list in here. Have you checked the securities since you have been Deputy Treasurer?

A. You mean have I inspected them? No.

Q. How long have you been Deputy Treasurer.

A. Since May 1st.

Q. This list of securities in the Maine Teachers Retirement Association and listed under the title: "Securities purchased since January 1937, called or sold since that date," who compiled that?

A. The lady whose name is on the front sheet in the Education Department.

Q. Did she compile all of it?

A. She did, this morning.

Q. Does that have reference only to the Teachers Retirement Association?

A. That is right.

Q. Didn't you give me another document?

A. The other one is a blue sheet.

Q. On this memorandum to Mr. Downs from C. A. Douglass, Department Auditor, under date of June 6, have you had an opportunity to check the actual securities in that fund?

A. I have not.

Q. That is furnished you on your request from the Department Auditor, Mr. Douglass?

A. This morning, yes, sir.

Redirect Examination

(By Mr. Brown)

Q. To straighten out a matter that I am confused about, I did ask you to make a list last night of the trust fund purchases since January 4, 1937, as they appeared of record in the Treasurer's office?

A. That is right.

Q. I understood you to state you made a search for that record. Is that correct?

A. That is right.

Q. Did you find a record of such purchases in the Treasurer's office?

A. I did not.

Q. And what has this document that Mr. Gillin now has, which he says was out of the office at the time you made your search, to do with that? Has it anything to do with it? Let me ask it this way: If the document which Mr. Gillin now has had been in the office, would you have been able to make that list?

A. I think not.

MR. WILKINSON, Recalled

Redirect Examination

(By Mr. Gillin)

Q. Mr. Wilkinson, can you now give us the total of the portfolio including the securities, time deposits, and savings bank deposits in all of the trust funds which yesterday Mr. Cowan testified were permanent trust funds in his opinion? Have you the total?

A. I have.

Q. Will you give that?

A. Including the three to which I have previously testified, the total of the seven funds which Mr. Cowan testified were, in his opinion, permanent funds is \$395,244.84.

Q. Thank you.

MR. BROWN: Mr. Chairman, I would like at this time to read two sections of the Revised Statutes of 1931. Section 70 of Chapter 2. "The treasurer of state shall keep his office at the seat of government and give the bond required by the constitution, to the state of Maine, with good and sufficient sureties residing therein or with two or more surety companies authorized to transact business therein, as sureties in the penal sum of not less than one hundred and fifty thousand dollars. Provided that each surety or surety company shall give bond for only a fractional part of the total penal sum and shall be held responsible for its proportional share of any loss." I propose to read a few lines of section 71, because so far as I am concerned, the rest of the statute does not apply. "The condition of the bond shall be for the faithful discharge of all the duties of his office and the fidelity of all persons by him entrusted with any of its concerns . . ."

Stipulation: It is stipulated and agreed that the bond complying with these provisions has been filed by the Treasurer.

BELMONT SMITH, Sworn

Direct Examination

(By Mr. Gillin)

Q. Would you state your name and place of residence?

A. Belmont Smith, Bangor.

Q. And what is your official capacity in the State of Maine?

A. State Treasurer.

Q. When did you become State Treasurer?

A. January 4, 1937.

Q. Prior to that time you have been a member of the Governor's Council?

A. In 1925 and 1926.

Q. You have served one or more terms in the Legislature?

A. I have.

Q. When you became State Treasurer, Mr. Smith, did you find in the office an organization consisting of Mr. Winship, who had been deputy treasurer under your predecessor, and a staff of girls who had been in that organization under your predecessor?

A. I did.

Q. And did you ascertain how long Mr. Winship had been working in the Treasury Department?

A. I did.

Q. And whether or not you made some check by investigation as to Mr. Winship and those subordinates?

A. I did.

Q. Whether or not as a result of that, you appointed Mr. Winship deputy treasurer?

A. I did.

Q. And retained the staff that had been working under him before you came in?

A. Right.

Q. What is your salary as Treasurer of State?

A. \$3,000.

Q. And what is Mr. Winship's salary?

A. \$3,900.

Q. And whether or not since you have been Treasurer, you have permitted Mr. Winship and that staff of assistants to handle to quite an extent exclusively matters of bookkeeping, handling of documents and vouchers, receiving and depositing cash?

A. I have.

Mr. BROWN: Just a minute. I do not understand the question, myself. He has asked if he allowed this force to handle to quite an extent exclusively.

The CHAIRMAN: Perhaps Mr. Gillin can rephrase his question.

Q. Whether or not, Mr. Smith, the bookkeeping, the handling of cash, vouchers, posting of figures and depositing of funds that came in over your counter was handled by Mr. Winship and his staff?

A. To a very great extent.

Q. Did you have much to do with it?

A. Nothing with the bookkeeping.

Q. And did you depend upon Mr. Winship and his staff to do that work?

A. I did.

Q. How old are you?

A. Sixty-three.

Q. Would you state generally the various classes of things that you did as Treasurer of State?

A. Well, when I became Treasurer of State, of course I tried to familiarize myself with the workings of the department, to some extent the set up, bookkeepers and what they were doing. I also discovered there were many things perhaps pertaining to the duties of the Treasurer of State that were not confined entirely to the office.

Q. Such as what?

A. Taxes, some towns, interviews, banks.

Q. And did you, as Treasurer of State, become a member of the board for municipal relief?

A. I did.

Q. The other members were Mr. Holley, Commissioner of Taxation, and Mr. Hayford, the State Auditor?

A. Right.

Q. When did the State get out its last bond issue?

A. August 18, '39.

Q. How big was it?

A. One million.

Q. Did you attend to the details, as Treasurer, of arranging for and getting out that bond issue?

A. I did.

Q. And as an example of one of the things you did, just what did it involve, briefly?

A. Well, it comes from the Governor and Council, the authorization for the sale, and then we had the bonds, the per cent which was agreed on by the Governor and Council, two per cent, and then also in this last bond issue there were some personal contacts perhaps through the Merrill Trust Company, where we got a very big premium.

Q. What premium did you get?

A. If my memory is right, 10532, a premium of about \$53,000.

Q. Whether or not you know that is a very respectable premium?

A. I think it is the largest of any bond.

Q. Did you, while that trust indenture and bond issue were being worked out, attend to all the details in connection therewith in behalf of the State of Maine?

A. Personally?

Q. Yes.

A. In connection with Mr. Winship and other people in banks, and bonding people.

Q. Approximately, and only approximately, how much money does the State of Maine expend annually, and I am now confining that question to periods of 1937 to date—how much does the State expend?

A. Approximately forty-five million dollars goes through the Treasury.

Q. And whether or not the system of disbursing funds by the Treasury Department on checks prepared in the Bureau of Accounts and Control which were signed in facsimile by the Treasurer's signature was a system which had been installed prior to your becoming Treasurer?

A. It was.

Q. And approximately how many of such checks per year go through the Treasury Department?

A. Approximately a million.

Q. That approximation covers each of the years since you have been Treasurer?

A. These are the State checks.

Q. And whether or not the actual make-up of those checks, the signing of those checks, and the routing of the checks through to the payee and the handling of the checks until they go to the payee, is something that has been done in the Controller's office and by the subordinates in your department after the Controller's office furnishes them with the checks?

A. Correct.

Q. And do you undertake to personally inspect the correctness of the handling of each one of those million checks a year?

A. I do not.

Q. That is something, I understand, you have to rely on others to do?

A. Correct.

Q. Have you had occasion, since you have been Treasurer, to inspect any one of those million checks that have been issued with your name on it in facsimile?

A. I have not.

Q. Now in connection with your duties as Treasurer and ex officio

member of this municipal relief association, have you given considerable time to assisting in the problems which confronted many of the towns of the State which have sought relief under that relief law?

A. Yes.

Q. And how many towns, would you say, have been involved?

A. You mean at the present?

Q. No.

A. You mean how many is this Board operating?

Q. Yes.

A. Twelve.

Q. And have you had occasion to visit each of the twelve towns?

A. Most of them.

Q. And have you in some instances been the only member of the Board who in the first instance was sent out to investigate and initially handle the problems of some of these towns?

A. To make the investigation; I have.

Q. And has that required considerable time?

A. Why, I know at Eastport I went down there at the request of the Board. I think I was there for three days with the city government and the citizens.

Q. Is it a fact that those towns which seek relief do so because of the predicament they find themselves in caused by a lack of revenue or cash and the pressing demands of creditors and the immediate local needs, such as schools and pauper supplies?

Mr. BROWN: Just a moment. If he knows?

Mr. GILLIN: You know that to be so?

A. I do.

Q. (By Mr. Gillin) What does the Board do in the first instance on going into a town that is in that predicament?

A. Usually a petition from the town, either the selectmen or the citizens.

Q. And what do you do?

A. We hold a meeting with the citizens.

Q. Just describe briefly an incident.

A. That is about it. We make investigation, the audit department makes an investigation, and, after that, if they decide to take it over, they take it over.

Q. And what do you do about keeping the creditors off?

A. Everything is suspended from the date that we take over the town.

Q. And does that require contact by you and other members of the Board with bondholders and general creditors?

A. Quite a good many contacts.

Q. Now whether or not in the last three years or since you have been State Treasurer, the tax situation with respect to the towns paying their State tax has been an acute one for many towns?

A. It has.

Q. And how acute has that problem been to many towns?

A. Many of the towns were back for a good many years on their taxes. We have some towns back to '35.

Q. How does that embarrass, let us say, the towns? How acute does that situation become to the town?

A. You mean the enforcing of the taxes?

Q. Yes.

A. For the State to collect those taxes, with no credit, probably the schools would have to close in many of those towns.

Q. And whether or not as State Treasurer that situation with respect to a large number of towns has required your contact with and investigation of the situation in many towns other than those seeking relief, to see whether the distress is acute enough to give the towns a break in the matter of promptly paying their taxes?

A. It has.

Q. And whether or not it has been a policy which you have followed of temporarily sacrificing the State's collections in order that the towns might have current funds to keep their schools open?

Mr. BROWN: Just a minute. This is not directed to the purpose for which I thought it was. I thought the purpose of this examination was to show Mr. Smith had no time to devote to his Treasurer's office. Now I find, or else I am impressed with the fact that it is an attempt to excuse him for not collecting particular taxes. Now he is not charged with the failure to collect any local taxes; he is only charged on the bank tax and with one railroad tax. I object to this evidence going in as to why he did not enforce the collection of the municipal tax.

Mr. GILLIN: I apparently have misled my Brother. Might I state why this evidence is introduced?

The question has been raised, at least inferentially, that the treas-

urership is more or less of a figure-head or a sinecure position, and some of the questions my Brother asked some of the subordinates in the department indicates that he may well argue or intend to argue that is the situation, and it may have been the impression gained from the evidence as it has been developed up to this point.

Now I simply propose to introduce this type of evidence to show the field of activity which actually devolves upon the Treasurer, which has engaged his time since he has been Treasurer and which possibly many of those who are sitting in judgment on him might like to know. It is not for the purpose of excusing the collection of back taxes, which I agree is not in itself an issue, nor is it any attempt to excuse the performance of any other duties. It is just in fairness, to show the activities and scope of what the Treasurer was doing, which I think in fairness he is entitled to have go in, in view of the intimations and the inferences to be drawn from the examination of the subordinates by my Brother.

Mr. BROWN: Mr. Speaker, I do not want to be unfair here. I cannot see how the disclosure that municipal taxes have not been collected can support Mr. Gillin's position. However, I want to be fair about this, and, if it really is of consequence, I will withdraw my objection.

The CHAIRMAN: The Chair would prefer to allow counsel considerable leeway in the evidence to be drawn from the Treasurer, but will ask counsel to keep the evidence as much as possible to the charges in question.

Q. (By Mr. Gillin) And whether or not it has been the policy which you have adopted over these years in the cases of towns which got in these acute situations of deferring the prompt collection of these taxes in order that the towns may keep their schools open and meet their immediate current local needs?

A. Yes.

Q. And has that involved a lot of time and a lot of contacts with the governing officials of a lot of towns?

A. There have been more or less contacts; there has been quite a good deal of correspondence. I wouldn't state just how many contacts there have been or how much it has taken, but I regarded it as a

detail pertaining to the duties of the State Treasurer.

Q. And with respect to that detail, could you state at this time how much back interest the Treasury Department has collected on taxes which have been assessed and deferred, for the period of your administration, approximately, if you haven't the exact figure?

A. Rising \$70,000.

Q. Now with respect to the State's system of banking its funds, if I may be permitted to be quite leading, but I hope fair, is this briefly the situation: That because of the wide spread over the State of collecting departments and agencies such as institutions, liquor stores, the Secretary of State's main and branch offices, you have adopted the policy of permitting those departments to deposit the daily funds in banks in the localities of the agencies?

A. I have.

Q. Whether or not you receive information of those deposits after they are made?

A. We do.

Q. So that at no time, even right now, is it possible for you to know the amount of money in those banks?

A. It is not.

Q. For instance, money might have been deposited yesterday afternoon or today, greatly increasing the deposit in one or more of those banks and you now wouldn't know it?

A. That is right.

Q. And might not know it for some brief interval?

A. Two or three days.

Q. And is it a fact that because of that volume of money going into the depositories in that way, that frequently some of these banks have on hand more than 25 per cent of their capital and surplus?

A. Yes, sir.

Q. And can you state off-hand approximately how many banks that are designated to these outlying departments as depositories, approximately?

A. You mean depositories from where?

Q. Around the State.

A. Or our regular depositories. It would be a matter of guess. I should say right around forty, forty to fifty.

Q. And is it a fact that this condition where money runs over at times, the 25 per cent of capital and surplus, is it a fact that different

banks might be in that situation on different days?

A. Yes.

Q. And in the Ernst & Ernst report were recorded as of a given date a group of banks which on that date were in that condition?

A. Correct.

Q. And on some other date it might be some other group of banks?

A. Right.

Q. Now whether or not that situation was discussed by you in conference with the Bank Commissioner and the Attorney-General?

A. You mean in regard to what?

Q. In regard to the fact that these current funds at times might run over the 25 per cent of capital and surplus in your outlying banks as the outlying agencies put money in them without your knowledge?

A. It was.

Q. And what was your impression—

Mr. BROWN: Pardon me. Before you go into this, I would like to establish when this conference was had, whether recently or how far back.

Q. (By Mr. Gillin) And when was this particular conference you are speaking of now? When did that take place?

A. I would say it was in early 1939.

Q. And what was the impression that you took away from that conference as to the consent or approval of the Bank Commissioner and the Attorney-General?

A. Subject to the warrants, the quarterly warrants of the Governor and Council.

Q. That is roughly speaking that statute which provides that funds of the State shall not be deposited in banks to exceed 25 per cent of their capital and surplus, has a proviso in it that that restriction shall not apply to banks where money is deposited to pay bonds or bond interest or for the purpose of meeting warrants of the Governor and Council?

Mr. BROWN: Just a minute. I think the law speaks for itself here.

Mr. GILLIN: I will read it.

Mr. BROWN: Will you include in that "if he knows"?

Q. (By Mr. Gillin) That was your understanding of the law?

Mr. BROWN: Just a minute. If he knows that is the law, I have no objection to his testifying to it, if it is within his knowledge.

Mr. GILLIN: If he is familiar with this particular statute.

Mr. BROWN: That proviso is attached. As I understand your question, you are asking him if a proviso of a particular nature is attached to a particular statute. Now I just request that you include in that question "if he knows that proviso is attached."

Mr. GILLIN: I will withdraw the question.

Q. (By Mr. Gillin) Do you know, and have you known that that statute which restricts generally the deposit of State funds in excess of twenty-five per cent of a bank's capital and surplus, contains a proviso which makes that statute inapplicable to funds deposited in banks to meet bond principal or interest, or to be expended on warrants by the Governor and Council?

A. I don't quite understand your question.

Q. Did you know, have you known, and do you know that the statute which limits the amount that can be deposited in banks contains a proviso or provision that that does not apply to deposits to meet bond interest and principal or to be used to pay expenditures under warrants of the Governor and Council?

A. I knew that.

Q. And was that a matter which came up for discussion and consideration in view of the depositing system in these outlying banks which permitted some of the banks to overrun the twenty-five per cent restriction without your knowledge?

A. It was.

Q. Whether or not at that conference because these were current funds to be used to pay the warrant of the Governor and Council, whether or not it was considered and you came away with the impression that it was decided that the law did not apply because that money was to be used for the payment of warrants?

A. I thought it was simply temporary deposits to be drawn any time to go into my regular depository.

Q. And was it a fact that you continually reduced those balances to accommodate the paying out of money from Augusta?

A. Correct.

Q. So that the money which went into these banks in that manner was deposited for the purpose

of, and eventually used, to pay the warrants of the Governor and Council?

A. Yes.

Q. And as a matter of fact would there be times when you would exhaust all of the money in all of the banks of the State?

A. Practically all.

Q. Well, would you give us an instance of how far down this fluctuating balance was drawn at one time?

A. I have had instances where I have had to hold checks or have held checks because we didn't have money on deposit to take care of them. I have had times when I have drawn every bank in Maine practically to a thousand or two thousand dollars. I have had times when the Portland banks wouldn't have an excess of \$25,000 to \$30,000 combined. Other banks similarly.

Q. And in connection with your arrangements at the Depositors Trust Company in Augusta, which I understand at present is the bank on which you draw your checks, how frequent contact do you have with that bank and its officials with respect to the condition of that deposit?

A. Quite frequently.

Q. And whether or not these banks that were used as depositories and your main bank at one time considered attempting to charge you service charges?

A. It was discussed.

Q. But they never have?

A. Not yet.

Q. That is, it was proposed, wasn't it?

A. It was suggested.

Q. Can you give us a fair approximation of the annual revenue that is taken in from all the scattered liquor stores and the main store here at Augusta?

Mr. BROWN: Just a minute. I would like to have that question prefaced with the question as to whether this particular witness has made a study of the report made by the Liquor Commission or whoever sends in these deposits and if as a result of that study he is able to give evidence. Then I will not object.

Mr. GILLIN: I would object, of course, to prefacing my question by that because he would not be confined to that one source for information. He might, as a matter of fact, know from his own books or the books of the Liquor Commission.

I am asking him if he knows and you may cross-examine him.

Mr. BROWN: I want it to appear that he has had access to accurate records of some kind on which his judgment is based. I don't object to putting it in but I want some foundation for it shown.

Q. Can you approximate from the books of the Treasury Department or from information received from officials or records of the Liquor Department, can you approximate the amount of annual revenue that the State is receiving from the sale of liquor at the main and branch stores?

A. Approximately.

Q. How much?

A. The total would be five million—

Q. Annually?

A. More than that. Five million, seven hundred thousand.

Q. That would approximate the annual figure of receipts?

A. Right. That is all deposited, with the exception of the Augusta warehouse which has about four hundred and fifty thousand, that is deposited here in our local bank. The rest of it is deposited around the different banks of Maine.

Q. And there is no way of approximating from day to day or week to week what the volume of those outside deposits are?

A. It would depend slightly on the amount of liquor drank.

Q. Now, was there ever anything occurred in the Treasurer's office which made you suspicious of, or indicated any irregularities or departure from the established system of work, of Mr. Winship or any of his subordinates up until the time of his resignation?

A. There was not.

Q. And to what extent did you have confidence in Mr. Winship's capacity and integrity?

A. Perfect.

Q. And to what extent, up until the time of the recent disclosures, did you have confidence in the capacity and integrity and authority of Mr. Runnells?

A. No suspicion of Mr. Runnells.

Q. Well, you had confidence in his integrity? Is that right?

A. Yes.

Q. When did you first know that Mr. Winship had cashed any checks or any of the checks that are in evidence here or any other checks for

Mr. Runnells from cash from the Treasury Department?

A. I can't tell you the date.

Q. Approximately?

A. No.

Q. Well, at the time that it now develops that checks were cashed did you have any knowledge that they were being so cashed?

A. I did not.

Q. Well, might I refresh your recollection by this: Was your knowledge obtained somewhere about the time that the recent disclosures were made?

A. I think it was previous to that. I was called up to the Governor's office. Mr. Wilkinson, I think and Mr. Noon and the Governor and Mr. Winship and maybe the Attorney General were present. I have forgotten but I think it was Mr. Wilkinson who produced two checks which had evidently been cashed and asked me if I knew about them and I said I didn't know, that I had never seen them. And then from Mr. Winship they got the information.

Q. So it was after Ernst & Ernst were obtained to make this audit that you learned that those checks were cashed by Mr. Winship?

A. Right.

Q. Now, did you know anything about this, whether or not the Treasury Department was receiving the full cash which the Highway Garage was taking in over at the Garage?

A. I did not.

Q. And when did you first learn that the Treasury Department was not?

A. Somewhere the first days of April; maybe after the eighth or tenth.

Q. And was that after the auditors had been retained?

A. Right.

Q. So that, as I understand you, you had no knowledge of any irregularities in your department, as it later transpired there were irregularities on the part of Mr. Winship, until after Ernst & Ernst had been retained to make the audit?

A. I did not.

Q. Now, with respect to purchasing securities for the various funds of the State, trust funds permanent or otherwise, have you sought advice on that problem?

A. Many times.

Q. And when did you first seek such advice?

A. When I first became State Treasurer.

Q. And have you continued to do that?

A. I have.

Q. And from whom did you first seek such advice?

A. I had rather an advisory board. I had Mr. Cassidy, President of the Eastern Trust Company. I had Charles Hichborn of the Granite National, and I had Nelson McDougal of the Bank of Commerce in Portland.

Q. And whether or not up until the time of Mr. Cassidy's death it was upon their advice largely that you did handle the purchase of securities and in general the portfolios of the various trust funds?

A. I didn't make one investment without consulting Mr. Cassidy or Mr. Hichborn or both.

Q. Now, since you have been Treasurer you have had occasion, have you, to reinvest the proceeds of securities which have been matured or called?

A. Yes.

Q. And whether or not you were advised or understood it to be your duty to sell out of these portfolios, any of them, any securities that there were when you came in?

A. I did not.

Q. And have you done so?

A. I have not.

Q. So that the security portfolios except for investment of possibly new funds or the investment of funds acquired from the maturing or calling or payment of securities, the portfolios in the main are as they were when you became Treasurer?

A. There are no new funds. It is all maturities.

Q. That you have reinvested?

A. Right.

Q. Now, in connection with the reinvestment of funds, what has been the type of such reinvestment?

A. Well, I have had three sources. I have invested in municipal of the New England states, New York and Pennsylvania. I have placed them in time deposits. I have placed them in savings banks. Those three sources.

Q. And to the extent that you have reinvested funds have you given considerable attention to obtaining securities within those classes to produce the best yield?

A. My object has been wholly to

have them left a hundred cents on the dollar.

Q. And in reinvesting the funds that came into your hands did you give some attention to the yield of that investment?

A. Naturally, to a great extent.

Q. What was your first consideration?

A. The first consideration was the safety of the investment by consulting.

Q. Now, with respect to the direction of your department as Treasurer since 1937 have you ever had your attention called to anything by the State Auditor which he did not approve of?

A. Never have.

Q. Did you ever have your attention called by the Governor or any member of his Council—

A. In the way of investment?

Q. No, wait a minute. Did you ever have your attention called by the Governor or any member of his Council to anything or any manner of handling in your department since you became Treasurer.

A. Yes, I did.

Q. And what was that?

A. One was the amount of cash that we had on hand and another was the way that the money for deposit was taken down to the Depositors Trust Company by Mr. Winship.

Q. What was the criticism of the Council about that?

A. The same as mine.

Q. What was that?

A. I didn't quite approve of the method.

Q. What did you do about it?

A. I had a carrier insurance—by consultation of the Governor, I had a carrier insurance, burglary insurance and more burglary insurance put on the funds in the State Treasury office.

Q. When was that?

A. I would say in the winter of '37 or '38.

Q. Prior to that time Mr. Winship had just taken it down in a bag?

A. Right.

Q. That is no reflection on Mr. Winship?

A. It is not.

Q. It was a desire on the part of the Governor and yourself that these funds should be carried down with safety?

A. That is right.

Q. So that the old manner of

taking the funds down to the bank was changed by you?

A. By way of insurance, yes.

Q. Whether or not it has been your custom since becoming Treasurer to spend all the time in Augusta while the sessions of the Legislature were in session?

A. I always have.

Q. Now for the remaining time, over the years, what is your fair estimate of the actual time that you spent in the State House and the Treasurer's office in connection with your Treasurership, measured in terms per week, days per week?

A. At least two or three days per week.

Q. And were you permitted in those two or three days per week to attend to what you had to do as Treasurer in Augusta?

A. I was. May I enlarge on that?

Q. Yes.

A. Also frequently when I have been in Augusta for two or three days a week, I have had to take trips from Augusta on what I considered important business pertaining to the Treasury Department.

Q. Where did you go, for instance?

A. Boston; also some of the towns around to the different banks of Maine.

Q. Did this banking situation where deposits were piling up in banks around the State, and the fact you were routing your checks out of the Augusta Trust Company, and some of the other banks would get overloaded, did that require your attention?

A. I didn't get the question.

Q. In order to keep your Depositors Trust account filled up to draw on and to keep the money flowing out of the various banks as balances developed in them, did that situation, that banking situation, take up considerable of your time and attention?

A. I wouldn't say a lot of time. Every time I was here I found out what the amount was in the Depositors Trust Company, and if it was getting low in the Depositors Trust Company I would draw from the other depositories. In addition to that we had anticipated warrants of what might come in the next week.

Q. I don't know whether I asked you this or not. Did you personally attend to the purchasing or reinvesting of all trust funds?

A. I did.

Q. Were you also on the Board

which purchased securities for the Teachers Retirement Fund?

A. I was on the Board.

Q. Whether or not those securities were purchased by you?

A. Not purchased by me. They were in consultation with Dr. Packard, Chairman of the Board, and usually if Dr Packard called my attention to anything and if I at that moment did not have time, I would return to the Bank Commissioner who is on the Board. The other members of the Board are the Attorney General, the Commissioner of Insurance and two members from the Maine Teachers Association.

On motion by Mr. Spear of Cumberland,

Recessed until 1:15 P. M., Eastern Standard Time.

Thereupon, the Senate retired to its Chamber, amid the applause of the House, the members rising.

In the House

Called to order by the Speaker.

On motion by Mr. Varney of Berwick,

Recessed until 1:14 P. M., Eastern Standard Time.

In the House

After Recess—1:14 P. M.

The House was called to order by the Speaker.

The SPEAKER: The matter pending before the House when the Joint Convention assembled this morning was the request of the gentleman from Limestone, Mr. Burgess, for unanimous consent to introduce a Bill. The Clerk will read the title of the Bill.

An Act relating to Automobile Travel by Agricultural Inspectors.

The SPEAKER: This Bill, for its introduction, despite the joint closing order, requires unanimous consent. Is there any objection? The Chair hears objection.

Paper from the Senate, out of order and under suspension of the rules:

From the Senate:

Report of the Committee on Military Affairs reporting "Ought to pass" on Bill "An Act permitting State to Accept Federal Funds for Promotion of Aviation." (S. P. 714) (L. D. 1220)

Comes from the Senate, report

read and accepted and the Bill passed to be engrossed.

In the House, report read and accepted and the Bill was given its two several readings. Under suspension of the rules the Bill had its third reading and was passed to be engrossed in concurrence.

At this point the Senate entered the hall, amid the applause of the House, the members rising, and a Joint Convention was formed.

In Joint Convention

(The President of the Senate in the Chair.)

The Convention was called to order by the President.

The Secretary called the roll.

Present: Senators Beckett, Boothby, Boucher, Burns, Chamberlain, Chase of Piscataquis, Chase of Washington, Cony, Dorr, Dow, Elliot, Findlen, Friend, Graves, Harkins, Hill, Kennedy, Laughlin, Lewis, Littlefield, Marden, Morse, Owen, Sanborn, Sewall, Spear, Thatcher, Tompkins, Worthen.

Representatives: Arzonico, Ayotte, Bacon, Batchelder, Bates, Belanger, Bird, Bolduc, Bragdon, Brown of Caribou, Brown of Corinna, Brown of Eagle Lake, Burbank, Burges, of Limestone, Butler, Buzzell, Chandier, Churchill, Cleaves, Clough, Cook of Lewiston, Cowan, Crockett, Cushing, Davis, Dean, DeBeck, Donahue, Dorsey, Douglass, Dow of Norway, Downs, Dwinal, Eddy, Ellis, Emery, Erswell, Farwell, Fernald, Fowles, Good, Goss, Grua, Hall, Hanold, Haskell, Hawes, Hildreth, Hinckley, Hinman, Hodgkins, Holden, Holman, Howes, Hussey, Jewett, Jordan, Keene, Labbee, LaFleur, Lambert, Larabee, Latno, Luro, MacNichol, Mahon, Marshall, Maxim, McGillicuddy, McGlauffin, McNamara, Melanson, Mercier, Merrifield, Meserve, Miller, Mills, Murchie, Norwood, Noyes, Paul, Payson, Peakes, Pelletier, Philbrick, Plummer, Poulin of Waterville, Pratt, Preble, Race, Richardson, Robbins, Robie, Robinson of Bingham, Robinson of Peru, Robinson of So. Portland, Shesong, Sleeper, Slosberg, Smith of Thomason, Smith of Westbrook, Snow of Dover-Foxcroft, Snow of Hermon, Stacy, Starrett, Stevens, Stilphen, Sylvia, Tardif, Townsend, Varney, Violette, Walker, Wallace, Weed, Weatherbee, Welch, Whitney, Williams, Winter, Worth, Young of Acton.

Absent: Senators Cook and Wentworth.

Representatives: Babin, Barter, Bubar, Dennison, Dorrance, Dow of Eliot, Dow of Kennebunkport, Everett, Fogg, Ford, Leveque, Lord, Otto, Palmeter, Pike of Lubec, Porell, Poulin of Rumford, Ramsdell, Thompson, Winslow.

(At this point, at the request of the President of the Senate, the Speaker of the House assumed the Chair as Chairman of the Convention.)

Direct Examination of Mr. Smith (Resumed)

(By Mr. Gillin)

Q. I do not think I asked you this question this morning, Mr. Smith,—what has been the extent in terms of dollars and cents that you have invested or re-invested since you have been Treasurer, in the trust portfolios?

A. Between three hundred and three hundred fifty thousand dollars.

Cross Examination

(By Mr. Brown)

Q. Mr. Smith, I understood you to state, on direct examination, that you had arranged for the bond issue of the State, is that correct?

A. I said that I was at the head of it. I will go farther and say I arranged it by vote of the Governor and Council.

Q. Said bond issues were taken care of under your supervision?

A. Yes, sir.

Q. And do I understand that you take the position that because of the manner in which you handled these bond issues they were disposed of at a premium?

A. I take a position on account of some bank connections there was a substantial premium.

Q. As I understand it, the Merrill Trust Company underwrote the bond issue of the State?

A. In connection with one other house.

Q. What was the amount of the premium at which the bonds were disposed?

A. If my memory is right they were—you mean what premium?

Q. The premium on each bond? We will take, for instance, an individual bond, 100 par—what would be the premium?

A. If my memory is right it was 105.32.

Q. So that there was a premium

on each bond of approximately two, three or five dollars?

A. There was a premium on a million of \$53,200.

Q. As I understand it there was a premium on 100 of from two, three or five dollars?

A. It was more than that. It would be \$5.32.

Q. Now it is a fact, is it not, that the premium on these bonds was largely determined by the interest rate of those bonds?

A. They were two per cent bonds.

(Question read)

A. It is always determined that way.

Q. So it would be a fact, would it not, that if these bonds which were floated had run at an interest rate of 1½ per cent, the premium would have been less?

A. That is right.

Q. And if they had been floated at an interest rate of three or four per cent, the premium would have been more?

A. That is right.

Q. What were the maturity dates of these bonds?

A. Ten years, \$100,000 a year beginning with 1941, I think—1940.

Q. So it is a fact, is it not, that for the privilege of obtaining a premium as to the amount which you state on these bonds, the citizens of Maine acquired the privilege of paying two per cent interest over a period of ten years?

A. That is right.

Q. Now in your opinion when these bonds mature, is it not a fact that the amount of interest paid would vastly exceed the amount of the premium obtained?

A. I don't understand the question.

Q. Is it not a fact that when these bonds mature the amount of interest paid would greatly exceed the amount of premium received at the time of sale?

A. Greatly exceed what?

Q. Would greatly exceed the amount of premium received at the time of sale?

A. Yes.

Q. And do you claim that is through your efforts?

A. No.

Q. Now are you taking the position that you disclaim any responsibility for these bond issues?

A. I am not.

Q. Now I understood you to

state on direct examination that your salary is \$3000?

A. It is.

Q. And that the salary of Mr. Winship is \$3900?

A. That is right.

Q. Do you offer that evidence to prove any particular point?

A. What do you mean by that?

Q. Well, do you mean to intimate by that that Mr. Winship is your superior?

A. I do not.

Q. You do not mean to convey to this Convention that the duties of the Treasurer's office were really on the shoulders of Mr. Winship?

A. I do not.

Q. Well, do you know the purpose for which your attorney put that evidence into this record?

A. I do not know the purpose.

Q. How often would you say, Mr. Smith, that you were in the Treasurer's office a week?

A. Well, as I testified this morning, two, three days, sometimes longer, sometimes I took trips from Augusta. The work connected with the Treasury Department, I should say it would average three to four days a week outside of the two sessions of the Legislature, when I was here all the time during the Legislature.

Q. Would you state the particular days of the week which you would be usually here?

A. Usually the first of the week, Monday, usually, and then stay until I got through or went somewhere else on business or went home.

Q. Were you usually here Tuesday and Wednesday of each week?

A. Almost invariably.

Q. If you will take this calendar to refresh your recollection on the questions which I am about to ask you, Mr. Smith.

There was introduced here yesterday the dates on which you attended meetings of the Maine Municipal Emergency Finance Board—I don't know whether that is an exact designation, but the Board which handles defunct towns—and it appeared from the testimony yesterday that on August 11, 1937—I will inquire as to the year 1939, since that is the type of calendar which you have. It went into the record yesterday that on January 3rd, 1939, you attended a meeting of this particular Board. Will you state the day on which January 3rd appears? On what day does January 3rd come in 1939?

A. Came on Tuesday.

Q. It went into the record that on January 17, 1939 you attended one of these meetings. What day does that cover?

A. Tuesday.

Q. It appears that on February 7, 1939, that you attended one of these meetings. What day does that cover?

A. Tuesday.

Q. It appears on February 8, 1939 you attended one of these meetings. What day does that cover?

A. Wednesday.

Q. It appears that on May 3rd, 1939, you attended one of these meetings. What day is that?

A. Wednesday.

Q. It appears that on May 23, 1939, you attended one of these meetings. What day is that?

A. Tuesday.

Q. It appears that on January 14, 1939, you attended one of these meetings. What day is that?

A. Wednesday.

Q. And on August 1st. What day is August 1st?

A. Tuesday.

Q. It appears that on August 9, 1939 there was a similar meeting. What day is that?

A. Wednesday.

Q. It appears that on September 12th, there was a similar meeting. What day is that?

A. Tuesday.

Q. It appears that on October 2 there was a similar meeting. What day is that?

A. Tuesday.

Q. Now it is a fact, Mr. Smith, is it not, that all of the time which you devoted to the attendance of meetings, or practically all the time that you devoted to the attendance of meetings of these Boards was on the particular days which you were over here attending supposedly to your Treasurer's duties? Is that not correct?

A. I will have to have that repeated, please.

Q. It is a fact, is it not, that you devoted to the Treasurer's office two or three days a week in which you were here?

A. Yes.

Q. And those days were usually Tuesday and Wednesday, or Monday, Tuesday and Wednesday?

A. Yes.

Q. And is it not a fact that practically all of the time which you devoted to the Maine Municipal Finance Board, or the Board which

we are referring to, was devoted on those particular days?

A. All the time I devoted to them?

Q. I say practically all the time that you devoted to this Board was devoted on those first days of the week when you were here to attend to your Treasurer's duties?

A. There might have been other conferences we had other days.

Q. They would be rare occurrences, would they not?

A. About every time I was here I was in Mr. Holley's office, I was in the Auditor's office, the Bank Commissioner's office, I was in other offices over the State House.

Q. But that was on the particular two days of the week you say you were here to devote your time to the Treasurer's duties.

A. That was a part of the Treasurer's duties.

Q. Maybe you and I do not understand each other, Mr. Smith.

A. We don't.

Q. Is it not a fact that practically all of the time you devoted to this particular board was devoted Monday, Tuesday or Wednesday of each week?

A. I wouldn't say so. You mean to the board, or in conference with Mr. Holley?

Q. I mean your efforts devoted to matters which arose in connection with this Board which you are associated with.

A. Mr. Holley and I were in other places pertaining to that particular Board.

Q. When did you first state this morning that you were first aware of the improper disbursements of funds which had been made through your office?

A. I didn't give a date.

Q. Well, approximately, your best judgment?

A. It was after Ernst & Ernst, of course.

Q. Some time in the spring of 1940?

A. It must have been some time in March.

Q. And although this cashing of checks by Mr. Runnells, that is, of checks payable to you, had been going on in your office ever since you assumed that office, you had no knowledge of it until last March?

A. I did not.

Q. Have you ever read the Code?

A. Recently.

Q. You testified, I believe, Mr. Smith, that you were familiar with

the law relative to excessive bank deposits?

A. I am.

Q. Are you familiar with the provision of the Code relative to the duties of your office?

A. I couldn't give it in detail.

Q. Could you give the sum and substance of it?

A. No, not here.

Q. Are you aware of the legal provisions which state what course of procedure shall be followed in regard to protested checks which come into your office?

A. Not until I discovered the protested checks.

Q. You never made any attempt to find out what the duties of your office were with regard to that before this situation arose, did you?

A. I did not.

Q. I show the auditors' report in regard to trust funds and ask you if you will state from that which of those funds are permanent funds?

A. I can't state which are permanent funds.

Q. Did you ever make any attempt to find out which ones were permanent funds?

A. I don't know what permanent funds are.

Q. You have had the entire supervision of the investment of trust funds, have you not?

A. I have.

Q. Did you know there was a law which required you to make particular investments in regard to permanent trust funds?

A. I had observed the law as to all trust funds.

Q. That isn't responsive to my question. Were you aware of that particular law?

A. As to permanent funds?

Q. Have you ever known before this hearing started that there was a law in the State of Maine which restricted the investments which might be made with a permanent trust fund?

A. Ever since I have been Treasurer I have known the law as to the investment of trust funds.

Q. You knew, then, ever since you have been Treasurer that the law restricted the investment of permanent trust funds?

A. I have.

Q. And yet you state that having supervision of all the portfolios of trust funds you never made any attempt to find out what a permanent trust fund was?

A. I have not.

Q. You don't contend here now, do you, Mr. Smith, that by virtue of your office while you were a member of the various Boards that you were thereby entitled to deprive the Treasury Department of your time so that it might be used in connection with affairs connected with these other Boards?

A. I regarded it as the duty of the Treasurer for whatever Board he is on to pay some attention to that as well as to the Treasury Department.

Q. These various Boards which you are on always had several members, did they not?

A. Right.

Q. But you were the only Treasurer of State?

A. Correct.

Q. So that if you were not able, because of the pressing duties of your Treasury office, to attend any of these particular meetings, it is fair to assume that the duties of those Boards would have been attended to anyway, is it not?

A. Probably.

Q. Now, Mr. Smith, I believe you have already stated you are not familiar with the provision of the Code which sets out the duties of your office? Now I will say to you that the Code provides—and your attorney may check me if I am wrong—that checks that shall be issued by the Controller, signed by him, which when your signature is affixed thereto shall become a check entitled to be cashed by the payee, bearing that in mind it is also my understanding that a system was installed in Augusta whereby there was a check writing machine, and I ask you now, did you retain in your custody that check writing machine?

A. I did not.

Q. In whose custody was it?

A. The Controller's.

Q. And was that check writing machine so set up that there appeared on the checks which went through, a facsimile signature of yours as Treasurer and of Mr. Runnells as Controller?

A. As far as I know.

Q. So it is a fact, is it not, that because you did not retain the control of this check writing machine it was thereby possible for the Treasurer's office to draw checks to anyone that it saw fit, issue them when it saw fit, and your counter signature was on there

whether you preferred it to be on there or not?

A. Correct.

Q. Do you here take the position that there was no duty upon you to be the distributing agent of those checks? Let me reframe my question. Do you take the position here that there was no duty on you to see that your office was the last department which those checks went through before issuance?

A. I did not so state.

Q. Do you take that position?

A. I do not.

Q. What position do you take on that?

A. That the checks all come in to my office as far as I know, and they have been distributed from our office. They come in on Controller's warrants and have been mailed and distributed from the Treasurer's office.

Q. Well, maybe I am wrong on this then. These checks were drawn by the Controller and he did not mail them out, you say?

A. They were mailed from the Treasurer's office.

Q. Well, that is my misunderstanding. You stated that you never examined the signature on any of the checks which went through your office which came out of this machine?

A. I said that I didn't look at the checks coming through my office.

Q. You never did?

A. No.

Q. I understood you to state on direct examination this morning that you knew or were familiar with the law in regard to the collection of bank taxes?

A. I don't know that I said that.

Q. Well, you said, or did you say, that you were familiar with the tax situation which existed in your office in regard to uncollected bank taxes?

A. I did a part of it.

Q. Were you aware of the fact that there was in 1933 more than \$70,000 of uncollected bank and trust taxes?

A. I was not.

Q. When were you first aware of that situation?

A. Maybe the first of March.

Q. Did you ever require an inventory of the Treasurer's office when you took it over?

A. I asked for it. Will you qualify that? What do you mean?

Q. Well, did you ever require an

inventory as to what there was in that office in regard to assets so that you would know with what you were charged?

A. The bank balances.

Q. All you require from inventory was the cash?

A. Right, and securities.

Q. Now, I believe you did state this morning, Mr. Smith, that you had occasion to talk with representatives of the Merrill Trust Company and one Mr. McDougall and others in regard to your investment. Is that correct?

A. No, sir.

Q. What did you say?

A. I said Mr. Cassidy of the Eastern, Mr. McDougall of the Bank of Commerce and Mr. Charles Hichborn of the Granite National.

Q. How often did you check with Mr. McDougall in regard to investments?

A. Quite a few times.

Q. Did you have several conversations in 1937 with him?

A. I have had conversations since then.

Q. Did you have a number of conversations every year since you have been in the office with Mr. McDougall?

A. Will you repeat that?

Q. Have you had several conversations each year since you have been in office with Mr. McDougall?

A. I have.

Q. Now, it is a fact, is it not, that Mr. McDougall is a director of the Lime Rock Railroad?

A. I don't know.

Q. Well, did you ever mention to Mr. McDougall that the Lime Rock Railroad owed the State some taxes?

A. I did not.

Q. And you say that you don't know whether Mr. McDougall was a member of the Lime Rock Railroad?

A. I do not know.

Q. You stated this morning that there were deposits in various banks throughout the state which were made by State agencies, and you would not know the amount of the deposits in those banks until the deposit slip came through? Is that correct?

A. Right.

Q. How long would it be after the deposits were made before the slip came through?

A. It might be two days.

Q. After the deposit slips did come through, would you know the

state of the deposits in those banks?

A. Yes.

Q. Did you make an examination of the deposit slips which came through?

A. The bank books. I frequently made an examination of the bank books, our bank books down in the office, of the different banks.

Q. Did you attempt to keep a constant check on the amount of deposits in these various banks?

A. Not constant.

Q. So far as you were concerned, you would not know whether deposit slips came through or not, the constant amount of deposits in those banks did you?

A. Only by consultation with Mr. Winship.

Q. How often did you consult with him?

A. I cannot state.

Q. Now if there had been more banks designated as depositories for State funds, the amount of the deposits in each would have been less?

A. Probably.

Q. Have you made an examination since you were aware of the fact that this hearing would take place—

A. What took place?

Q. Since you were made aware of the fact that this hearing would take place, have you made an examination of these banks as to whether or not there are excessive deposits?

A. I have not.

Q. So you are not in position today to state whether or not there are excessive deposits in any of these banks?

A. I regard them all as subject to the warrants of the Governor and Council.

Q. Now you stated this morning that you have made investments of trust funds since you have been in office?

A. I did not understand.

Q. You stated this morning that you have made investments of trust funds since you have been in office?

A. I have.

Q. And you also stated that your primary consideration in making those investments was the legality of those investments?

A. I don't think I said that. It was the safety of the investments.

Q. Did you not state this morning that your main idea when you

made an investment was to see that it was a legal investment?

A. I did not. I said the safety. I made legal investments.

Q. When you made an investment then, were you primarily concerned to see that it was a safe investment? Is that correct?

A. No, it would not, no. It would be safe and legal. I did not make an investment unless it was legal.

Q. Before you made an investment you then inquired as to whether it would be a legal investment?

A. I did know.

Q. You did know?

A. Absolutely.

Q. You would also know, would you not, as to whether any of the securities in the portfolio which you had inherited from your predecessor were legal?

A. I would know whether they were.

Q. Those which were not legal, did you make any attempt to dispose of them and procure investments which were legal?

A. I did not.

Q. Did you testify this morning, Mr. Smith, that you had purchased in your capacity as State Treasurer approximately \$350,000 worth of securities for trust funds?

A. This afternoon I testified between three hundred and three hundred fifty thousand dollars in the trust investment; not securities; not all securities. I invested between three hundred and three hundred fifty thousand dollars.

Q. Those investments would include funds other than trust funds?

A. They would.

Q. What would the nature of those be?

A. Time deposits and there would be savings banks.

Q. It is a fact, is it not, that you have invested since you took office, since January 4, 1937, approximately \$110,000 in trust securities?

A. That is right.

Redirect examination

(By Mr. Gillin)

Q. With respect to the premium on that Merrill Trust Company bond issue, what was the rate on that?

A. 2%.

Q. Whether or not that premium price if you know was an exceptionally good one on the market at that time?

A. In my opinion it was the biggest premium, largest premium rather, that Maine ever received.

Q. With the ratio between premium and interest?

A. Correct.

Q. Now with respect to this money you have invested or reinvested, since becoming State Treasurer in securities what type of securities did you buy?

A. All legal.

Q. What type?

A. Municipals. I think they are all municipals of the New England States. I think I bought five thousand of New York. I think so. I would have to refresh my memory on that.

Q. You were interrogated as to my position in asking you why Mr. Winship was paid more than you were. That we had not discussed at all?

A. Not at all.

Q. Is it a fact that Mr. Winship's position is a full time job?

A. It is supposed to be.

Q. He is obliged with his crew to keep working all week?

A. He is.

Q. Yours is not a full time job?

A. No.

Q. And was this check-writing system one which had been installed by the Bureau of Accounts and Control under the Finance Department before you came into office?

A. It was.

Q. Did you consider that you had any right to change that system, it having been established by the Bureau of Accounts and Control and the Finance Department?

A. I did not.

Q. Now with respect to the attention which you gave to these fluctuating bank balances, in your office whose duty was it to take the information as it came in from around the State as funds were deposited from time to time and enter and post it?

A. Mrs. Bagley, I think.

Q. And on such occasions as you required the exact balances in these banks, you got it from her?

A. Or Mr. Winship.

Recross examination

(By Mr. Brown)

Q. You stated Mr. Smith—

A. I can't hear.

Q. You stated, Mr. Smith, that you do not consider your job a full time job?

A. I think it has never been considered so. I haven't been

there six days a week since I have been Treasurer.

Q. I am asking you, do you consider your job a full time job?

A. I don't think I could answer that intelligently.

Q. Do you have an opinion as to whether it is a full time job or not?

A. I think the Treasurer of State has the responsibility of the job whether he is here or whether he is outside. I do not believe he has to be in the office six days a week perhaps as State Treasurer.

Q. You do consider then that the State Treasurer is responsible for the acts of the employees of his office?

A. As far as he knows.

Q. And if he knew nothing about the acts of his employees, he would not be responsible—is that correct?

A. That is correct.

Q. You take this position, Mr. Smith, that you were not required to know what is going on in your office?

A. I had no way of knowing. I had perfect confidence in my office help. I did of my deputy and outside of when Mr. Winship got so badly fooled by Mr. Runnells, I still do.

Q. You say, therefore, that no supervision is required of you?

A. I do not say that.

(Defense rests)

(Defendant's Exhibits No. 1 and No. 2, admitted without objection).

The CHAIRMAN: Are you ready to proceed, Mr. Brown?

Mr. BROWN: Yes, Mr. Chairman.

Mr. Speaker and Mr. President, and members of this Convention: The time has now arrived when, as in accordance with the procedure established in democratic nations, an opportunity is accorded counsel of both parties to review the evidence which has been submitted.

Now I will try not to prolong you unduly, because I know that you are tired and I know that I am tired and I know that Mr. Gillin is tired, and I will try to prolong you no more than is necessary considering the duty which I feel is upon me to adequately review the facts in this investigation.

I wish to repeat at this time a statement which I made in my opening, that this is a very solemn occasion, that we are here to consider a very serious matter, a matter which is of the utmost serious-

ness to the citizens of this State and to the Treasurer of this State. It may not be necessary for me to say to you that in considering the evidence in this case you should not be affected by any bias, prejudice, any political influence, and I do not believe that you will. You should look at this thing coldly and dispassionately. The Treasurer of this State has either been neglectful in his duties or he has not been neglectful in his duties, and you will determine that question on the facts that have gone in from this witness stand.

Now I will try, for the sake of convenience, to confine my remarks in the order in which counts appear in the indictment, and I will try to take them up in that order.

Now, it appears here that the first charge which is made against Mr. Smith is that he negligently failed in the performance of his duty to collect back taxes. And the evidence has been confined solely to the bank taxes so referred to and the one railroad tax, and the evidence discloses that the bank taxes were mostly in the year 1933 and that the railroad taxes ran from about 1931 down to around either to date or 1938 or 1939. I don't recall which, and it is not material.

Now, Mr. Smith, through his counsel, will undoubtedly take the position that Mr. Smith inherited this particular set-up and that therefore he is not responsible. I shall take this position, that Mr. Smith being a public officer is not entitled to claim in this investigation that he is not obligated to attend to the unfinished business of his predecessor. It obviously is true in the business of the State, in any other business: in the banking business, for instance, the Treasurer of a bank would be expected to attend to the unfinished business of a former Treasurer.

And so it appears in the evidence from the testimony of the Attorney General and, I think from Mr. Smith but I am not positive and you will recollect whether it is true, that there was never brought to the attention of the Attorney General that there never was any attempt on the part of the Treasurer's office to collect these particular back taxes, and the Attorney General has stated on this stand—and he was called by the defense—that those taxes in his opinion are collectible today on a percentage basis and he did state

on cross examination that those banks which are in liquidation and have paid dividends were in a position today to pay the ratio which they would have been able to pay on those taxes if those had been followed up at the beginning of Mr. Smith's regime.

So it seems that generally the position on that particular count is that Mr. Smith, being obligated to attend to the unfinished duties of his office, neglected to make any attempt whatsoever to collect these particular taxes which amount to something over \$72,000.

Mr. Smith is charged that he failed to use proper diligence in attempting to collect amounts due the state of Maine in connection with checks which went to protest. Now, if you will remember the evidence that was listed on this particular point. It appears that it was customary when checks came into various departments that they be deposited with the Treasury, that they were then deposited by the Treasury in the Depositors Trust Company where the checking business of the State is carried on. Those checks which were not paid were returned to the Treasurer's office.

Now, bearing in mind the fact that the Code provides specifically that when checks go to protest the Treasurer must turn them over to the Finance Commissioner who shall attempt the collection from then on, but it appears that it was the customary method of the Treasurer to send those checks back to the departments from which they originated. And that those departments, some of them, had State Police working on those checks, and so on.

Now, the seriousness of this is not the amount of uncollected checks that there appear to be because there are approximately \$2600 worth of them which have arisen during Mr. Smith's regime and that of course isn't a large amount taking into consideration the money which the State does handle annually, but it is just another instance where the Treasury department did not function in accordance with the law. And Mr. Smith tells you, and Mr. Winship tells you that neither one of them read the Code and it is in evidence and you probably will have a chance to look at it. And I say to you that when you examine it you will find that the duties prescribed therein

relative to the Treasurer's office can be read in less than fifteen minutes.

And Mr. Winship—and he a fine old gentleman and he has been splendid in this thing—whom Mr. Smith says himself he trusted implicitly and referred to him the business of running his department—I don't mean that exactly but the detail work at least—that is the general stand which Mr. Smith takes, that he placed his trust in Mr. Winship and let Mr. Winship run the office, when Mr. Winship hadn't even read the Code.

Now, I say to you is that evidence of inefficiency or is that evidence at an attempt at proper supervision? Now, that is the only matter concerned in this particular count. In and of itself it would create no claim but taking into consideration the general picture, the accumulative evidence in this case, it is just another instance that adds fuel to the fire, and does that fire indicate to you generally inefficiency throughout the Treasurer's office?

Now, that is for your consideration, and I want it strictly understood at this time that I have a particular duty here as I understand it, that I have come in here to present evidence for your consideration. I am not here to urge anything. I am here to present. You are here to decide. And I am not going to attempt to tell you what your decision shall be because I do not think it is any part of my business and I am not concerned with what it is. It may be one way, it may be the other, and it makes absolutely no difference to me.

The only thing that does concern me is that I do feel that I am obligated to call to your attention particular points which indicate efficiency or indicate inefficiency, and you can make up your own minds what you want to do.

Passing now to the third count which states that Mr. Smith neglected to reinvest trust funds in accordance with the particular statute therein stated.

Now, that statute provides this, that the Treasurer of State shall invest permanent trust funds in particular securities and that those securities may be the state bonds with the New England states, New York and Pennsylvania, or the cities, towns and counties of those particular states, as I remember it, and also may deposit in any bank

in this State or bank of the United States as a time deposit.

Now, it appears from the evidence that Mr. Smith has exclusive control of these trust funds. He admits it so we can require no deliberation on that point. Mr. Smith, having exclusive control of those trust funds and making the investments himself that were made states to you that he knew the law in regard to this particular matter, that he knew the type of securities in which he could make investments in regard to trust funds, and he knew, he said, that the law required permanent funds to be invested in a particular manner.

Now, I asked him, where he has exclusive control of these trust funds and admits that he knows that the law requires a particular type of investment with regard to permanent trust funds, did he ever make any attempt to find out which of these funds were permanent? And he said No. Now, I submit to you, a man having a particular duty and knowing that these funds should be invested in particular securities and admitting that he never made any attempt to find out which of the funds were subject to this law, is that evidence of neglect on his part?

Mr. Smith is also charged in the fourth count, or in "A" rather, under the fourth count, with not having kept in his department receipts from the sales in the Garage and with having permitted remittances from the sales of the State Garage to be made by the Controller's office. Now, in regard to this count this appears in evidence, that over in this particular Garage there were certain commodities sold and that every time a commodity was sold a receipt was issued therefor, of which there were an original and four copies.

Now, the customary method of procedure was that the cash represented by that receipt, either cash or check, would go down to the Controller's office. From there an income sheet was made up on that cash, and there is some dispute as to whether it was also accompanied by a sales receipt, but it went into the Treasurer's office and the deposit was thereby made.

Now it also appears from the evidence that Mr. Runnells, who was the Controller of the State, had prescribed forms to be used by different departments, and the Code provides that the Controller has

that authority. And apparently Mr. Runnells had prepared this form of receipt and on it it said, on the pink copy, to be retained in the Treasurer's office or to be filed in the Treasurer's office or words to that effect. So this cash and the income sheets and the receipts, were taken into the Treasurer's office, if the receipts were taken, were then credited on the Treasurer's books and a record made of the particular department from which the funds originated.

Now on these receipts, to clear up this matter, Miss Chase has testified that the receipts did not come in to the Treasurer's department. Miss Currier has testified that they did come into the Treasurer's department until about a year ago and since that time there have been many occasions when they did not come in.

Now I don't think there is involved here a test of credibility between these two witnesses. It is a matter of probable recollection but Miss Chase said that the other departments did send in their receipts.

So are you going to take this position, that the Treasurer's office, receiving no sales receipts from the Highway Department, should have required them, should have said, "Well what is the matter here, we are getting receipts from these other departments. What is the idea that we don't get them on this particular matter?"

Did that indicate inefficiency? Now if you do decide that those slips did go in there, it then appears that the Treasurer's office did not file them as the slips required on their face. And it also appears that the Treasurer's office would be apprized of the fact that these funds originated over in the garage, because on this slip it is stated the department from which it originated. For instance, it would have said Highway Garage. So that on examination they would have been aware of the fact that funds were coming in from the garage which they contend here now to you that they are to be excused because they never knew they were receiving funds from the Highway; that they all came in under the general Highway Department account. But I say to you: You can throw all of that overboard. It doesn't make any particular difference in considering this which is the fact beyond dispute. The

Treasurer's office was aware of the fact that the Controller's office was turning in to it Highway funds, and if anyone in the Treasurer's office had been aware of the provisions of the Code which states that department shall turn in its own funds into the Treasury, if anyone in the office had been aware of that provision, they would have known with these funds coming from the Controller's office, they would have asked: "Why is the Controller's office turning Highway funds into us?" They would have inquired. Now that is the meat of that particular set-up, and so you will say to yourselves, is that evidence of inefficiency, evidence of neglectful supervision?

Now under (b) of the fourth count, the Treasurer is charged with the fact that he negligently failed to supervise the acts of his Deputy, whereby the Deputy cashed five checks aggregating at least three thousand dollars. As I recollect the evidence on that particular point, five checks came into the Controller's office, payable to the State Highway. These checks were endorsed in this manner. You can examine them; they are in evidence. "State Highway Commission, By W. A. Runnells, Controller." Now anyone, whether they knew the law or not, would know that was an improper endorsement. They would know that Mr. Runnells, the Controller, has no right to endorse State Highway Department checks. They are two separate functions. And yet when these checks were presented to Mr. Winship by Mr. Runnells, he gives the cash for them to Mr. Runnells and then, so far as we know, there was a loss to the State of that amount of money.

Here is another situation which is like the protested checks. It is a small amount compared with the other amounts involved here. It is just another question of inefficiency. If Mr. Smith had ever taken any occasion to inquire in a general manner as to the way Mr. Winship was handling the cash in that office, he would have been aware of this situation. Perhaps not these particular five checks, because there are only five, but taken in conjunction with those which were later produced, the practice was continued over the three and one-half years that Mr. Smith was in there, does it all add up to neglectful supervision?

Now Mr. Smith is also charged that he permitted the Controller, or rather that he negligently failed to supervise the acts of Mr. Winship whereby Mr. Winship cashed ten checks for the Controller, thereby depleting the cash of the State Treasury. Now it appears on that that the Controller used to come into the office and Mr. Winship says, and I have no doubt of it, he told him that he was trying to check up on some payroll or something of that sort, and if a check went through to pay for the service of this particular spotter, or whatever you choose to call him, people would be aware of who he was, thereby meaning that it would decrease his effectiveness. He says to Mr. Winship, "Cash this check for me and I will use the cash instead of putting through the check." Now here is the thing: These checks were made payable to the Treasurer of State. There was a designation on it of the Bureau of Accounts and Control which meant that the job would be charged or credited to that particular department. And so that check was cashed in the Treasurer's office. I submit that any man would know that that was a most irregular procedure because, for instance, if I came up to one of you gentlemen and handed you a check payable to yourself and asked you for the cash, does it make sense? That is the set-up on that.

Now as far as Mr. Winship is concerned, he had implicit confidence in Mr. Runnells and perhaps Mr. Winship isn't to be condemned for this because he had implicit confidence, but is it just another method of doing business in the Treasury office?

Now under (d), Mr. Smith is charged with failing properly to supervise the acts of his Deputy whereby interdepartmental checks were cashed by Runnells and it appears that there were twenty-three of these checks, which totalled some \$47,000. The other ten which I referred to totalled some \$7,000. Now in regard to these interdepartmental, it appears that Mr. Runnells came in the same as the ten checks previously referred to and cashed them for a different reason which he explained to Mr. Winship. So probably so far as you are concerned, the same general set-up maintains. The fact of the matter is they were all checks pay-

able to the Treasurer himself. You have the same situation again as if I brought you my check payable to yourself and asked you for the cash. That is about the whole story on those checks. They have run over a period, as I previously mentioned, from the beginning of Mr. Smith's regime, and the practice would have apparently continued if it had not been for the fact that an audit had been made.

Now do you think that it is proper to excuse Mr. Smith because of the fact that, as he says, he actually did not know? He told you on the stand that he did not consider it a full time job, and he relied on his assistants to do what they were supposed to do. I don't know whether he knew what they were supposed to do, but he says, at least the impression I got, was that he relied on Mr. Winship to see that the other subordinates did what they were supposed to do.

Now there is another matter, which is contained in the fifth count, in regard to the excessive deposits. It appears there that there are several banks as set out in the complaint or information, five or six, which contain deposits more than 25% of the capital stock and surplus of those banks. I am not going into each and every one. The exhibits are all in evidence and you can examine them for yourselves. Mr. Smith's position on that is apparently that there were agencies around the State which had to deposit funds and they would be deposited in these various banks, and he could not know until the deposit slips came through just what the amounts were in those banks.

I think on cross-examination he stated, if I remember his testimony correctly, that he seldom did see the deposit slips after the time they came through. It seems that his excuse that a deposit slip did not come through is not effective because if it had he would not have examined it. He will probably take the position, from evidence which has been put in by Mr. Gillin, that there were large sums of money coming in from these agencies and consequently large deposits had to be made, and consequently there would be times when these deposits would creep up.

You will note, if you will examine an exhibit which I put in here, that these deposits run up and down. There might be several days when

they would be way up and then again they might be way down, and then they might be way up again. You will find that these deposits ran thirty-five thousand, that is, the excess of forty thousand dollars, twenty thousand dollars, and so forth and so on.

Now I submit to you that there were two methods by which that situation could obviously have been remedied. First, as Mr. Smith admitted on the stand, he could have designated more depositories around the State. For instance, in Portland there are a lot of banks. Here is one Portland bank listed in here. So there would be no need of getting an excessive deposit in that particular bank. Or the slip would come through the very next day and the amount could be withdrawn by the Treasurer's office, yet you will find, if you examine this exhibit that those deposits would continue in those large cases.

Now, how does that impress you? That the law was adhered to by the Treasurer's Department in this respect, or was there a neglectful supervision of these particular deposits, and would you expect Mr. Smith to keep himself familiarized with the amount of State cash deposited in different banks throughout the State? Now, it is entirely up to you.

There are two situations you can look at here, the general philosophy you may take in approaching a decision which you must eventually make in this matter. I have got to go at this in reviewing the thing, from the standpoint of a lawyer, because I have been engaged to come in here and present it and I am an attorney, and I presume it is the way I am expected to approach it, and if you approach it from a legal point of view there are certain requirements of the Treasurer's office set out in the various laws and constitution of this State, and they say that the Treasurer's office shall do this and this and this. I have not time to review them, but you will remember some of them were read here. Mr. Smith is going to take this position, "well yes, although I didn't do that, I didn't conform with the law, still I functioned as efficiently as my predecessor and I relied upon my subordinates and so consequently I am not to be censured for it". Looking at this from a legal point of view, are you going to require that the State department conduct its business affairs to

conform with the law? Are you going to require it? Now the constitutional provision was made for some reason, and the Code was passed for some reason, and the bank law passed for some reason, and the bank statutes passed for some reason and trust fund statutes passed for some reason. Now, if you are going to require the Treasurer's office to live up to those legal provisions you will probably reach one decision.

Now, if you are going to approach this, we will say perhaps from a layman's point of view, the point of view of anyone who is not familiar with the law and its operation, you may say, "Well what of it? As Mr. Smith says, it was not a full time job and he has done as well as his predecessor and perhaps better, and some, at least one of his subordinates failed to give proper attention and I do not think we ought to condemn him, because he has done as much as his predecessor." Now, if you are going to approach it from that viewpoint of course there is only one decision you can reach.

Now, as bearing upon the position which the defense will take, that Mr. Smith cannot be expected to familiarize himself with all the intricate mechanics of the Treasurer's department, which of course, is true and I would even admit that he is not supposed to know when one of the girls makes an entry on the twenty-third day of May on a particular matter, but he is supposed to supervise his department as is set forth in the statute which I read into the evidence. It says that the Treasurer shall give a bond in the sum of \$150,000, which I admit has been given, conditioned upon the faithful performance of his duties and the duties of his subordinates.

If you are going to take the position that Mr. Smith did as much as his predecessor, what is the object of having a law which requires him to file a bond? Does it seem to indicate to you the fact that the constitution speaks of the faithful performance of the Treasurer's duty, and this particular statute speaks of the faithful performance of the duties of Mr. Smith and his subordinates. It thereby was intended, in the case of the statute, passed by this legislature—perhaps not the same members were in it, but generally speaking—and it was intended by them and they passed the law, or rather, was it intended that the Treasurer's office should function or

the Treasurer himself, function with a considerable degree of effectiveness and that he should be charged with the neglect of himself and subordinates. Now, that is for your consideration.

There has been some testimony here in regard to the effect that Mr. Runnells had upon some of the employees and the position will be taken by the defense that the subordinates in the Treasurer's office thought they should do what Mr. Runnells told them, and Miss Chase even stated here from this witness stand that Mr. Runnells, when he spoke, made a bigger impression upon her than Mr. Smith did when he spoke, as I recall it. In fact she said—I do not know whether it was Miss Chase, but one of the ladies connected with the department said—everybody seemed to have an inferiority complex in regard to Mr. Runnells. Now, it is apparent from those statements that Mr. Smith never made any attempt to impress upon his subordinates that he was running the department. If such is the case, does that appear to support a contention that Mr. Smith has not provided personally, adequate supervision of his department in these particular matters with which he is charged?

Of course you are to consider only the inefficiency in regard to these particular counts because in this particular investigation it is confined to this and cannot go outside, and I feel it my duty to present what I have on all the counts. You may consider the evidence presented on some of the counts doesn't amount to a great deal, but as I stated before, I was requested to come in and put in what evidence there was on each count. If it supported them, all right, and if it didn't, all right.

Now, the defense put on here yesterday Mr. Holley to establish the fact that Mr. Smith was so busy that he had little time to—I want to state this fairly if I can—he was so busy that he could not devote all of his time to the Treasurer's job, thereby inferring if it had not been for these ex officio duties he would have devoted more time to it. I do not believe I will comment on the details of Mr. Holley's testimony. I might in passing say this, that even though the Treasurer's office might have been under an inferiority complex, that situation certainly cannot pertain to the State Assessor. When he tells you the innumerable duties

that the Treasurer's office had, of course it is for you to decide the amount of weight you can attach to it.

Now Mr. Smith says he is a member of various boards and that he comes over here to Augusta two days a week, sometimes three, the first of the week. He is here Tuesday and Wednesday as I remember, and sometimes Monday, Tuesday and Wednesday, and at that time he attends to his particular duties. Now there was put in yesterday by the defense some evidence whereby it appeared there were innumerable meetings of this Emergency Municipal Finance Board, and on these particular dates they were attended by Mr. Smith, thereby indicating to you that Mr. Smith was over here Monday, Tuesday and Wednesday, and apparently looking after the duties of the Treasurer; but here are a lot of meetings of the Board and other times apparently he was attending those meetings, but you will remember in passing upon the question, that Mr. Smith testified here today from a calendar, in regard to questions which I asked him, that all of the questions I did ask him it was apparent that the meetings of the board were on that particular day.

Does it impress you from this evidence that generally speaking, Mr. Smith attended to the duties of his office, his primary office, the office of the State Treasurer, on the same days that he attended the board meetings? If you are impressed with that and if you are impressed with the fact that Mr. Smith is not obligated to give full time, as he says, to his duties, then of course, there is only one decision you can reach on that particular point.

Now, in regard to these board meetings, I just want to say this, and I think I am nearly finished.

Mr. Smith was elected to the office of Treasurer of this State. That was his primary job. He was the sole responsible head of that office. He was, by virtue of that office, a member of different boards which dealt with different matters, and he has admitted to you from the stand that if he did not attend these board meetings the other members would take care of the business just the same. But of course it is apparent that if he didn't attend to his duties as Treasurer of State there was no one to attend to them.

Now you were confronted with this point. It is for you to decide

whether Mr. Smith, if he were so pressed for time, should sacrifice his board meetings for the sake of caring for his Treasury meetings, and it is apparent to me, at least, as the evidence went in, that most of these board meetings were on the same days as Mr. Smith had set aside to look after his Treasury duties.

Now I do not know anything else that I can say to you. You have heard the evidence. I have tried to be as fair as I possibly could in this investigation, bearing in mind the fact that I was obligated to put in what evidence I had and to present it to you. And so, in closing, I will simply say to you: Is the general set-up of this investigation as disclosed by the evidence this: That in regard to all these counts there was a general lack of supervision?

I ask you: Does that appear?

Now of course if it does appear, and you are going to look at this from the view that the legal requirements of the office were such, then your duty is plain. If you are going to look at it from the standpoint that Mr. Smith performed as adequately and perhaps better than his predecessor, of course you will perhaps reach a different conclusion.

In closing, I would just like to say that I appreciate the patience that you have shown. There have been times when it was necessary for an adjournment here because I did not have my evidence sufficiently marshalled, and I want to thank you again for the consideration you have shown for me. And I also want to thank this Convention for being afforded an opportunity to come here and assist in this investigation, if I have been of assistance.

MR. GILLIN: Mr. Chairman, and ladies and gentlemen of the Convention: This has been rather a long, tedious, uninteresting affair, but, as Mr. Brown has suggested, and of course as it has occurred to you all, a tremendously important one, important in respect that it involves the integrity of the administration through one of its officials, and of extreme importance to the individual who holds that office. It is of course an extremely unpleasant situation that you who may know the individual, Mr. Smith, find yourselves called upon to judge, and it is not pleasant to assume the responsibility that counsel must assume in defending a friend under charges.

I think it is fair to note the direction which this prosecution has taken. I think it fair to say that it

was a direct incidental result of the embarrassing disclosures which came publicly to light several months ago. It demonstrated to the public this: Not only that we had one man who was apparently extremely corrupt, but that the very structure of the administrative set-up of our State was subject to break-down, that however much care the authors of the Code, who sought to unify control and to concentrate authority and to promote efficiency, took in their study, presentment and passage of the Code act, that the Code itself was so passed that it could break down tremendously.

As an incident of that, because this corrupt official, either by original design or because as he went on in his administration, he discovered an opportunity to take advantage of that situation, the citizens are aroused, the administration is embarrassed, the State has lost money and we are here today. And Mr. Smith, because the department of which he has charge permitted the possibility of the State's losing large sums through the cashing of checks indicates that there was never any proper correlation betwixt the Code administration and the many distributing departments of the State.

So that at the outset I trust you will bear with me that the start of that line of events which has brought us here today to consider Mr. Smith's case is basically and fundamentally the result of an improper Code, and the advantage taken of that situation by a thoroughly corrupt official.

Now it has been said that one can read the Code in fifteen minutes. I think it possible that in the brief review I am going to make of some of these provisions there will develop things about it that many of you today have not known.

The Code was set up, if you read it carefully, to concentrate the basic administrative authority in departments under the control of the executive department. It was the executive department which in the first instance appointed the heads of departments, of the administrative departments, and it was the executive department exclusively which under that Code law had any regulation, control or power over the administration or authority or power to supervise it or authority or power to prevent its going astray. And that is not, as I see it, criticism of the failure of the executive

to so do. It is a statement that that department was the only one that could do it.

Now the Code provided for a Department of Finance, under which was the Controller, and the Code permitted and provided that that department should investigate and set up a complete administration "to investigate duplication of work of departments and other agencies of the state government, to study the organization and administration of such departments and agencies, and to formulate plans for better and more effective management". That was the basic power, to investigate and set up.

"To audit and approve all bills, invoices, accounts, payrolls, and all other evidences of claims, demands, or charges against the state government; and to determine the regularity, legality, and correctness of such claims, demands, or charges." Practically full and complete power subject to the appointing executive.

"To prescribe the forms of receipts, vouchers, bills, or claims to be filed by any and all departments, and agencies with the department of finance."

"To exercise the rights, powers, and duties heretofore conferred and imposed by law upon the state auditor in so far as these relate to financial administration and general accounting control of the State government, involving the keeping of general accounts, the auditing before payment of all bills or vouchers; and the authorizing of all claims against the state for which appropriations have been made."

Now what administrative power or authority was left outside that department? They could set up, they could investigate, they could change, they could approve, and they alone had that power.

Further, to broaden that power, which, as you will see, was an investment in that department of powers heretofore exercised by other departments, a further general enabling section is found:

"Whatever rights, powers, and duties shall have been vested in, or exercised by any officer, board, commission, department, or institution, or any deputy, inspector, or subordinate officer thereof, which are by this act transferred either in whole or in part to a department created by this act, shall be exercised by the department to which the same are hereby transferred and not otherwise;"

So that all of the administrative power which theretofore was exercised by other institutions and departments either in whole or in part were completely divested, including every power, right and authority in the Treasury Department, except those specifically named in the Constitution, and of course you know the Treasurer was a constitutional officer. When the Code was passed, the Treasurer could not be brought in under the Code unless the Constitution was amended, and it was not seen fit so to do. So we have this anomalous situation: A constitutional officer had what I may describe in common parlance as the "till", and a set of accounting books. He received the money of the State. He deposited the money of the State. He held the securities of the State and he reinvested the securities of the State. But the complete direction of expenditure, the complete control for bookkeeping, auditing, administrative set-up and administration itself passed under this general provision, plus specific provisions you have had read to you, to the Finance Department. And what could the Highway Department, or the Treasury Department or the Banking Department head or any other department head, whose powers were transferred into this department, do about it? It says: "shall be exercised by the department to which the same are hereby transferred and not otherwise."

"All books, records, papers, documents, property, real and personal, unexpended appropriations, and pending business in any way pertaining to the rights, powers, and duties so transferred to or vested in a department created by this act shall be delivered and transferred to the department succeeding to such rights, powers and duties." Now, back of that law, which I argue invested in that department the duties of the general administrative department, there was only one Controller and that was the executive.

Now, the Code provided that the department should "make monthly reports of all receipts and expenditures of the State government to the Governor and State Auditor; to make monthly reports on appropriations, allotments, encumbrances and authorized payments to the Governor, to the State Auditor, and to the head of the department or agency directly concerned". And

again "the State Auditor shall keep no accounts in the department of Audit but he shall conduct a continuous post audit of the accounts, books, records and other evidences of financial transactions kept in the Department of Finance or in the other departments and agencies of the State Government. He shall prepare and publish a report setting forth the essential facts of such audit in summary form within two months after the close of each fiscal year. If he shall find in the course of his audit evidences of improper action or of incompetence in keeping accounts or handling funds, or of any other improper practice of financial administration, he shall report the same to the Governor immediately." And I submit that under the constitutional duty, the general constitutional duty, imposed on the Governor to see that the laws are enforced and upon the Council to assemble with the Governor in a majority from time to time for the purpose of directing the affairs of the State according to law, that the breakdown of this Code, or what went on under this Code, could only be controlled, could only be determined, by the function of the Auditor or the Governor and Council through the reports furnished them by the Auditor or which he could have furnished them by request.

And I submit as a general proposition, as a general proposition, that the responsibility for the continued abuse of power by the Accounts and Control Head was solely the responsibility of the Executive Department; and I don't think that in your debate you can select any other conclusion out of that Code.

What could the Treasurer do? What are the conditions imposed? Basically, the Code warrants no other conclusion.

Now this department of Audit cashed a lot of irregular checks in the Treasury Department. Witnesses have testified and it is probably within the realm of common knowledge that Mr. Runnells, with that power behind him and with the concentration of the power which he apparently developed for himself for the period from 1932 down to 1937, had put himself in a position by which he warranted the remarks of one of these girls who testified that he apparently ran the State House—and that was not a facetious remark on her part.

With that departmental authority and with his apparent capacity for

auditing organization he gradually extended his tentacles around the vitals of every other department until gradually he had the complete control of the hearts of all the departments.

And because he did effect such a focus of control, and because that operated from 1932—and I am going to say, and I believe, that his Excellency has admitted that he as well as everybody else who had anything to do with Runnells had a complete trust in his integrity—that is the thing that is so disturbing in this situation: the same general charge that is being leveled at Mr. Smith in connection with this check drawing itself, that he had no right to rest his responsibility and trust upon a subordinate, that same charge can be made as fairly and more pointedly at the Executive.

Now, that is fair argument. That is an absolute conclusion that cannot, I submit, be successfully contested. If Mr. Smith is to be evicted from this office for the main charge, the charge that set up this investigation that by reason of his trust in a subordinate he has to be responsible for that subordinate's lack of judgment, because there is no intimation that Mr. Winship is a dishonorable man, if the Treasurer is to be responsible for the misjudgment of that individual subordinate who was up against this man who was running the central part of your government, as this man was, that same blame in a much greater share attaches to the Governor and Council for having that same trust in that very subordinate who came so nearly to wrecking the financial administration to this State.

Now, that is not a defense of Mr. Smith but I wanted to call your attention to the direction this thing is taking and I wanted to call your attention to that situation which is a correct analysis, I submit, of the situation as it is.

Now the charges in this presentment bear this mark. At the outset a large defalcation occurred because out of the Treasury Department money was taken by Runnells cashing checks with Mr. Winship and I am in the very anomalous situation of defending the reputation, the integrity, the official position and the emoluments of a man whom everybody concedes is absolutely honest, generally and absolutely honest. as Treasurer.

Now that is the shift that the

course of events have given to this. If you will, let us measure Mr. Smith's responsibility. It has not yet been measured. Let us measure it. The Legislature that passed this Code and the Legislatures succeeding it were charged with the knowledge that the Treasury Department was divested and denuded of all its power and authority. He was simply, so far as the funds of the State were concerned, a depositor with no executive or administrative power or responsibility, to take in the funds of the State, to keep them safe and to dispense them as the Bureau of Accounts and Control ordered them out.

Now I don't think that anyone will rise to debate that a department of that size which has so much bookkeeping, which has so much voucher handling, is best administered as has been and is the treasury of Maine prior to and during Mr. Smith's incumbency. It's personnel was experienced and honest and efficient except for the swindling by Mr. Runnells and taking advantage of the power and authority that was invested in him. There is no criticism in the division of duties and responsibilities in the Treasurer's office. Obviously the Treasurer which you elect at a salary of \$3000 a year against a Deputy Treasurer whom you pay for full time work, you know that you expect the interior administration of the department to be carried on as it was by a group of intelligent, efficient, well trained girls, experienced girls under the head, if I may say it, of a professional administrator or accountant such as Mr. Winship's experience entitled him to be regarded.

Now, what is the measure by which we are going to measure Mr. Smith's responsibility? Who is satisfied how to measure it? Who of you have thought, so far, how to measure it? I submit it is this, in the absence of any statutory regulation about it, and I should like to cite to the members who are lawyers if they would care to make a note, the case of the inhabitants of Cumberland County versus Pennell, 69 Maine 357 where our Court gave very full consideration and extended discussion to the measure of the responsibility of a treasurership, and it narrows down simply to this, I submit, the same general rule which governs the conduct of reasonable men under given circumstances.

I submit that if Mr. Smith, coming into this well organized office, after investigation, in the exercise of reasonable judgment, having in mind that he was to be the custodian of public funds and an important unit in our administrative system exercised reasonable care, reasonably honest care, in the selection of the man who was to direct the mechanical parts of that department he measured up to his duty in the first instance. I suggest that is probably the ultimate measure of his responsibility so far as funds being taken out of his department, as they were, by Runnells.

Now he came into a situation where they wrote a million checks a year, eighty-three thousand checks a month, with facsimile signatures, in a machine. He was either responsible to personally see and inspect each and every one of those checks, to see to it himself that they were correctly drawn and to see that each and every one was either delivered or sent to the payee, or he wasn't charged with that responsibility in connection with any one. Take it or leave it. Figure it out any way you can. He had to depend on subordinates. The system required it.

Now you charged Mr. Smith with the responsibility for this Controller's cashing checks by fraud, by imposing on the trust which Mr. Winship says he had and which he was entitled to have because since 1932 the auditors who under that Code were supposed to check him had passed his work, you call Mr. Smith responsible for any one check that Mr. Winship, the tried and true, experienced man in that department, cashed and you say that Mr. Smith had to sit down and check over and attend to the distribution of every one of those million checks a year, that he had to let go out of that department with his facsimile signature on it without any knowledge of it because of the system which this man set up for him to do, and then see if that is what you really think his responsibility was when you measure up his salary against the salary of his head clerk.

Now, I submit that that is fair argument. I say that Mr. Smith, exercising a reasonable degree of judgment and care in the selection of this subordinate of his was unable, within the scope of the law or the injunctions of the Legislature, he was unable to carry forward such necessary degree of supervision

as to have caught any one of those items. Why? Because he wasn't charged with the inspection and handling of every one of those checks and the handling of the checks by his subordinate, and because those checks were issued and handled and cashed by the man who put Smith's name on them presumably when he wasn't there and didn't know anything about it, or when he was there and did know about it. How can you say that that situation even permitted Mr. Smith to exercise that reasonable degree of supervision which one must exercise over a subordinate after careful selection, because if Mr. Runnells could go in to Mr. Winship and presume on Winship's respect for his authority and integrity and tell him a story that Winship believed, with the full power under the statute that I have read to you, to pass on the legality and regularity of every claim without any complicity on Winship's part, that subordinate which Smith picked out was still faithful.

Call it misconception of his duty; call it a matter of misjudgment, but when you do that, measure up the power this man apparently had over all subordinates here.

You can say Winship was unfaithful. The conditions of the bond are that these officers shall exercise fidelity in the exercise of their trust. So I submit in fairness, that Mr. Smith's job, as the Legislature well knew it when they elected him, was to go into that department which had to be run by a well paid subordinate and group of clerks whose work was mainly clerical, his job was just about the kind of a job as you heard it described; no more and no less. You have got to take him off from one side of the job and put him into that mechanical department or leave him where he was, attempting to impose taxes and on this Board of municipal control. Do you want him there under a subordinate or is he the Treasurer whose duty is measured by the care which he exercised in the selection of his group and permitted them to function as they had been instructed to function and used to function under the head of a department who, according to one of these subordinates, and I guess it is fair criticism, the answer was elicited that he apparently ran everything in the State House.

Now with respect to these other charges, because that really was the

main charge, but when it got started it gained motion like a snowball, there was an effort made, and quite properly I have no doubt, not only to consider the removal of Mr. Smith for the thing which originally caused this situation and produced the commencement of this proceeding which we are engaged in today, but there has been added to it other causes, not so much relatively, which as my brother has said, in themselves amounted not to much.

Now let me briefly review the charges. There is an allegation that he failed in the performance of his duties, not in failing to collect back taxes. He is not charged with the failure to collect back taxes. He is charged with the failure to use proper diligence in the endeavor to collect back taxes. As has been said, except for the case of the Lime Rock Railroad where the taxes amounted to a negligible amount, the bills were handled in his office under the girl who handled the billing of the taxes, and I think you will agree with me that simply because the taxes in that little railroad are unpaid that does not go to the neglect of the Treasurer or for the removal of the Treasurer or public official. The Lime Rock Railroad tax which was billed out several times, alone and standing by itself, is relatively a minor thing. I do not understand that it has been demonstrated that it is uncollectible, so there is nothing wrong.

Now as to the banks that went into liquidation and receivership back in 1933. By the injunctive restraint of our Court and under the Statute, the Treasurer was directed and authorized to do but one thing, to bring an action of debt which, according to the Attorney General, he could not do. If you are going to measure his responsibility, as in fairness I submit he is entitled to have it measured, if Mr. Smith did not violate that rule of using reasonable care, I claim you cannot demonstrate he was negligent. The situation was that these banks were in the hands of receivers. He inherited these taxes and he could not collect them. The banks could not be sued. As he told you today, in 1937 he was not aware of these bank taxes, and there is no loss to the State because the Attorney General when I questioned him as to whether or not he had changed his opinion from that given in the Auditor's report that these could be collected, said no, except in the case of a na-

tional bank which had been liquidated completely. Mr. Brown in discussing the Attorney General's testimony, as I understood it, quoted the Attorney General as saying that because of the different ratio in the capacity of the banks to pay, there was going to be a large loss. I do not agree with that and I ask you to check it in the record. I think you will find it to be this way: The Attorney General believes those taxes are collectible today, except for one national bank, and Mr. Smith's removal is sought because of that, the failure to use due diligence to collect back taxes. I am going to leave that point with you without further discussion, measuring it as I know the distinguished and able attorneys who constitute in part these various branches, measure that with the degree of culpability which our Court has discussed in the well known case of Moulton v. Scully which, as the attorneys know, is the case under which our present proceedings, to a large extent, are governed. Mr. Smith is entitled to the limitation of these charges because I presume they were carefully drawn. Has it been demonstrated that he was negligent in not using proper diligence in attempting to collect these protested checks? What did he do? These checks which under my brother's construction of the law should have been collected by the Department of Finance, and I would ask the attorneys to look at that section of the Code at the word "he". It reads, "If any check, draft, or certificate of deposit shall not be paid on presentation, the treasurer shall immediately notify the commissioner of finance, and he shall proceed to collect***." There is an opinion that the word "he" meant the Treasurer. In any event that is the construction placed upon it by everybody. From then on the Treasurer started to collect the checks. How could he collect them in the first place? He wasn't responsible for the issuing of them and second, according to one of the witnesses, a large majority of them came out of the registration department, large numbers of them in small amounts, amounts which would not justify the expense of suit. In his department was a girl who attended to that. What did she do? She did what any of you would do if you had an organization with departments scattered around the State. She sent the protested checks

back to the department where it was originally taken in for collection.

Now is that reasonable diligence in the attempt to collect checks. That is what Mr. Smith is charged with. Is it or isn't it. Now what is the experience from that collection? The experience is good. Since February there has been, and you can check the record, some two thousand dollars collected and checks are coming in all the time. In what respect did Mr. Smith, measuring his degree of responsibility by the rule I have spoken of in Moulton v. Scully, in what degree did he not measure up to that degree of responsibility in attempting to collect checks. What would you have done? Would you have sent these two dollar checks to lawyers and involve yourself in a lawsuit or would you have done what any sensible and reasonable head of a store with departments throughout the State would have done? You would have sent them to the department for them to collect.

And because a majority of these came from the Highway Department, the Highway Department used the services of its police to collect the checks. Is that any failure of Mr. Smith to use proper diligence in attempting to collect checks?

Now we come down to the question of reinvesting trust funds.

We come to the question of reinvesting trust funds. The statute as has been discussed, says that hereafter all funds of the State, permanent trust funds of the State shall be invested in a certain type of security. I argue to you that that is a statute whose sole aim and intent is to restrict the manner of investment and the field of investment and it is not in its nature a directory statute, directing the Treasurer or whoever invests funds to do anything more than this. When he has funds to reinvest, and that word is used in the charge, when he has funds to reinvest, the manner and the field of his investment is then limited by that restricted statute and that is what he did. It is not contradicted that every single security that Mr. Smith has bought as Treasurer, since his incumbency, it is not contradicted it is a legal security because twice in direct and once in cross examination he has said they were invested in municipal bonds or time deposits or savings deposits. Well, what is the error? In portfolios in his charge which he inherited, there

were securities which did not measure up to that? The charge is he did not reinvest funds. Every investment Mr. Smith has made with the money of the State since he has been Treasurer, with lack of contradiction, has been invested in accordance with that restrictive statute. It is not a directing statute, using it in the sense of a statute which directs him to change investments in his portfolio which he had inherited, or it would have said so. It is a restrictive statute and must be so considered in these proceedings, which are not criminal at least for involvements or confiscation in the sense that a man's reputation and position and emoluments are at stake, but in that extent it is not exactly a civil proceeding, and I urge you men to read that section of the statute and consider the word "reinvestment" in this charge and consider the undisputed evidence as I have stated, and tell me if Mr. Smith should be removed from office for doing what he did and for investing securities in the way the law prescribes?

The next charge is he "kept no carbon copies of the books of receipts of sales by the State Highway Commission of tires and spare parts". Contrary to what? He didn't keep carbon copies, contrary to what? What is the charge? Contrary to law? No. Contrary to the directions of the Controller? No. "Contrary to the forms of the books of receipt", which doesn't simply make sense. In other words, he is charged in that part of the allegation here with offending nothing. There is no responsibility, according to any testimony in this case. There is no statutory duty. There is no prescribing rule which made it necessary for him to keep copies of those receipts in his office. His girls have testified in the handling of the income which came in that income sheets were all they needed and the rest was surplusage, and they paid no attention to it. And remember this, it was said or intimated that whereas these books of receipts were used only by some departments the Treasurer should be charged with the knowledge that he was not getting them from the Highway Department. It has not been demonstrated that all departments used them. We had a Highway Department which, to the extent of operating the State Garage, at least, was exclusively by Mr. Runnells, the man who prescribed

the forms, and that was one of the departments which never issued any directory regulations for the Treasury Department to pay any attention to filing of forms. If you believe the girls in the Treasury Department, the forms never came. Miss Chase testified she never saw one of them from the Highway Department. The lady who testified, Mrs. Wheeler, was more polite in contradicting the girl from the Controller's department who told three different stories on the witness stand, that she sent them in less than 25% of the time, that she didn't send them in because of neglect, and that she didn't send them in because she didn't think it was necessary.

It is no charge of itself, either singly or as a matter of accumulation which would justify the removal of Mr. Smith in such duty as he had as Treasurer, and it is something you have got to measure because the statute doesn't say so and if it is a common law proposition the attorneys who sit in your various bodies I think and hope will confirm the rule of measure, which I have stated and discussed, of our court.

With respect to the checks, I have discussed those. Runnells comes in with full authority to prescribe the regularity and legality of claims against the State. Runnells came in to the department which not only trusted him but feared him. He tells a story which they took from a man they feared and respected, who up to that time, since 1932, had been apparently running the State House, and he gave an explanation as to the cashing to old Mr. Winship, and with no complicity on his part and because he trusted him as the Governor trusted him and because he believed he was exercising the complete power which he believed him to have, he did what any subordinate would do, he obeyed the direction of that person who was his superior, because he felt he was his superior as was the head of the Treasury Department, superior with the power which had been vested in him. Was there complicity? The fact that Winship was fooled isn't enough. You have got to find complicity or failure to use sensible judgment which is vitally important because that is the measure of Winship's responsibility. If he was imposed on, and without complicity and with the exercise of reasonable care and judgment, under the cir-

cumstances Winship cashed those checks, then they were things which Mr. Smith cannot be held responsible. To state it in reverse, you must state the Treasurer is responsible for Runnells' stealing money from the State and that was an undertaking to prevent which was never his. His responsibility was, I submit, as I have stated.

Now, with respect to the capital and surplus in these banks. You have heard the system described in detail. It is reasonable that the State, with large amounts of money would run over,—and in the exhibits you will have a chance to see the way the bank account operated—the heavy figures show the deposits broken down by days of the week, and certain periods they would run over. All right, suppose they did run over and are over. What is illegal about it? Well, I submit, nothing.

The statute prescribes this, "The treasurer may deposit the monies of the State in any of the banking institutions or trust companies organized under the laws of this state or in any national bank or banks located therein. No sum exceeding an amount equal to twenty-five per cent of the capital and surplus of any one bank or banking institution shall be deposited therein. The above restriction shall not apply to deposits actually made to meet the payment of any bonded debts or interests or warrants of the Governor and Council". Now, these are the general funds of the State. It has been testified they were for the purpose of meeting warrants of the Governor and Council, so I submit the warrants of the Governor and Council, by dates, can be measured up against the fluctuation in the bank account. This money was earmarked to pay warrants of the Governor and Council. It was so used. It comes within the fair interpretation of the limitations of that statute which says again, "The above restriction shall not apply to deposits actually made to meet the payment of any bonded debts or interest or warrants of the Governor and Council". Now, it may be argued it was not in the bank in which the warrants were drawn. Since that statute was passed the business of the State has extended to departments all over the State which are collecting large funds. It is only safe—only safe that those departments have depositories named, and it is the Treasurer

whose responsibility it is to pick out those depositories. The funds are deposited every day when taken in and are eventually sent in by those depositories and no money has been lost. It apparently was acquired, certainly not contradicted, by the Bank Commissioner and by the Attorney General, with whom he consulted for advice. Is there any negligence to perform his duty? Any violation of the statute which I claim if fairly interpreted, in a restricted sense, because now it is being interpreted against the rights of an individual? Is there any illegality about it at all? Is Mr. Smith at all lax in the failure? My brother did not assume this phase of the matter.

The remaining charge that Belmont A. Smith from the fourth day of January to the date of the resolution neglected his duty, neglected his duty of requiring that all State funds should be delivered by the department receiving the funds, into the office of the State Treasurer, a duty which was not imposed upon him.

A duty which was not imposed upon him.

Now if you will turn to the Code, when you come to consider that, you will find a wording of one of these sections which reads like this:

"Every department and agency of the State, whether located at the capitol or not, collecting or receiving public money or money from any sources whatsoever, belonging to or for the use of the State, or for the use of any State department or agency, shall pay the same immediately into the State treasury", which envisages that one department might have in its hands the funds belonging to another department. And in this case, because I am presuming that charge is directed at the fact that the Controller was taking money from the Highway Department and depositing it himself instead of it going direct from the Highway Department itself, completely within the scope of the language in that one of the two sections which prescribes the duty of the Treasurer under the Code to collect public moneys.

It was a department, the Controller's, which was collecting and receiving public money belonging to or for the use of the Highway Department, belonging to or for the use of the State, or for the use of any State Department or agency, and, as the section says: "shall pay

the same immediately into the State treasury." But that is not the argument. I am saying that was envisaged by that provision of the Code.

Now the argument is this, and to me it seems unanswerable: The Treasurer and the Treasury Department was the depository of the State's funds, into which flowed the remittances from the various collecting agencies and institutions and departments, and the two provisions of the Code which I will briefly excerpt from provided, in the first:

"Any public officer, or any person, firm or association or corporation paying money into the state treasury may make such payment by delivering to the treasurer of state a check, draft, certificate of deposit, or money order, drawn, endorsed, and payable to the treasurer of state or his order, or may make such payment by delivering to the treasurer the proper amount of lawful currency."

That is a regulation which only the department collecting can break. That involves no duty on the treasurer to collect initially.

Now what are the treasurer's duties as prescribed by statute:

"The treasurer shall keep a record of all drafts, checks, certificates of deposit, money orders, and all cash received by him, and upon receipt thereof shall forthwith cause the same to be placed to the credit of the state of Maine in some state depository." And the following provision, which had apparently provided for the very situation we are in:

"Every department and agency of the state, whether located at the capitol or not, collecting or receiving public money or money from any source whatsoever, belonging to or for the use of the state, or for the use of any state department or agency, shall pay the same immediately into the state treasury, without any deductions on account of salaries****."

What duty is prescribed on the State Treasurer? None, except by inference, the receipt of the money. Now the theory of this charge, if there is any theory to it, if it is not complete nonsense, is that there was on the Treasurer this burden not only to receive money but to go out into every department and institution of the State and see that it got all the money that department collected, which meant virtual

supervision of the department, at least its receipts and expenditures.

Now can you gentlemen reasonably say, in view of the very nature of the office, in the absence of any directory or mandatory statute to that effect, that the Treasurer of State, a constitutional officer who under these two sections of the Code was made responsible simply for the receipt and bookkeeping of that money, can you say that any correct interpretation of that or any other statute that could be found made it necessary for the Treasurer to go out to our fifty departments and institutions and bother to get all the money? It is nonsense.

And there rests the case of my client. He has been Treasurer of State, and he is an honorable man and an honest man, and I submit in every single thing that he has done so far as these charges are concerned he has not been negligent. It has been loosely said: "Well, his subordinate did wrong, so he ought to be responsible." But that is not law. The Treasurer had some legal duty. What was it? It is not provided by statute. The case I have cited to you makes the bond undeclaratory of his duty. It was the common law duty of the exercise of that degree of care which a reasonably prudent person under the circumstances would exercise, a "bailee" is the precise description of the case which I cited to the attorneys. Now he exercised it in appointing Winship. He was precluded from going any further because of the system of routing millions of checks from his office, which made him rely upon the orderliness and regularity of administration in the Controller's department, a department which could only be controlled by the Governor and Council, a department amenable to no order or direction except that of the Governor and Council.

And you have in the Code further the provision that the auditor shall make a post-audit of all the official affairs of the government, who Mr. Smith, when he came into office, had the right to assume had been doing just that, because every practice here, except the cheating on checks, had been going on for years.

Now the Auditor "If he shall find in the course of his audit evidences of improper transactions, or of incompetence in keeping accounts or handling funds or any other improper practice of financial administration, he shall report the same to the governor immediately." And

those were his duties and that was the check which the Code set up on the Controller and that was the check which Mr. Smith had a right to rely on. And now, because that Controller went crooked, and by his machinations, imposed upon the credibility of this honest, gentlemanly, heroic old man Winship, who is the hero of this tale if there is one, who comes in here before the bar of public opinion and says, "I am the sinner", no ducking or dodging, a gentleman of the old school, if I ever saw one, who admits his fault—and now this knave, presuming upon the gentlemanliness of that old man's nature and his appreciated fear for his power and responsibility, without any complicity on his part, perpetrated a fraud on the State of Maine, I say to you that Mr. Smith is no more responsible for that than I am, because he is only responsible, if at all, for the faithful performance of his duty. And that was not unfaithful; it was not, under the circumstances, I submit, even negligent.

I will not invoke your sympathy for my client or my cause, because you are men of affairs and you know that in this embarrassing plight the statutes must be considered. But a knave got out of control who could be controlled, but not by Mr. Smith. I urge you in the name of justice to hesitate before you break him for the faults of another and I thank you.

The CHAIRMAN: Mr. Brown, you used about fifty minutes of your hour. Do you care for ten minutes in rebuttal?

Mr. BROWN: I do not care for ten minutes, Mr. Speaker. I would just like to have a very few minutes to call attention to a statement made by Mr. Gillin in which I feel sure that you misunderstood a matter which I talked of in my argument.

It was stated to you by defense counsel—and I am sure it wasn't intentional—because I think he misunderstood me, but he stated that I said that the Code could be read by anybody in fifteen minutes. I do not think that I said that. If I did, what I intended to say was that the provisions of the Code relative to the Treasurer's office, in my opinion, can be read in fifteen minutes.

Now the defense is taking the attitude that this investigation is tak-

ing place simply because of the fact that an audit has been made which disclosed the particular state of affairs which do exist. Now should you consider this: That if the audit had not been made the affairs would still be continuing to exist?

The position has also been taken that the Controller under the set-up of the Code had extreme powers, that he had the greatest powers that could be conceived in the State of Maine practically, that is in regard to the handling of the different departments connected with the State House. For instance, it provided the particular documents, vouchers, and so forth that should be used by each department and they had to use them. There were other regulations which it prescribed relative to the functioning of these departments. And the question is asked of you, for instance: Under the control that the Controller had over all these different departments what could the Highway Department do? What could that department do? And I say to you, under the Code as it exists, could the Highway Department turn its own funds into the treasury or is the Highway Department to be excused when it turns its particular funds over to the office of the Bureau of Accounts and Control and those are carried into the Treasurer's office?

Now the point is made that the Treasurer's office had no duties in connection with the cash transactions of this State, so far as money coming in to it was concerned other than to sit there in that office and take what money came in, because the statute reads that the treasury office shall receive the cash from all the other departments, and the position is taken by the defense that it had no other obligations. And, if I understood Mr. Gillin's argument correctly, he says that the proponents take the position that the duty is on the Treasurer to go around to every department and collect from them every cent that they have taken in. Now I do not say the proponents take that position, but the proponents might take this position: The law requiring the Treasurer to receive all the money from the various state agencies and departments, if it knows that the department turning in cash to it is turning in cash that did not originate in that department—for instance, if it knows that it is getting Highway Department funds for deposit through the Controller's office,

is it supposed to take them and do nothing more, or is to be expected to make some attempt to correct the situation? Now that is for your consideration.

Now the position has been taken here also that if there is any dereliction of duty whatsoever it is in connection with the Controller's office, and the Governor having jurisdiction in the matter could readily see that all of the laws in the Code relative to the Controller's office were enforced, because that is his duty; and if I understand the argument correctly, the point is made that if His Excellency had done that, that this trouble might not have arisen. Now if that is true, if that is a correct premise on which to proceed, would it follow from that that if the defense seeks to charge His Excellency with not enforcing the Code, the regulation under the Code in regard to the departments of this State, would you expect the Treasurer to enforce the regulations under this Code which pertain to his own office? Now that is for your consideration.

The point is made, and I think that I would probably agree with it, that the Treasurer of this State is required to use reasonable care. Now if the Treasurer of the State, as he says, never read the regulations in the Code relative to his own office, if he did not attempt to learn what the permanent trust fund was when he handled those particular portfolios, has he exercised reasonable care? That is for your consideration. And the point was made in the argument by the defense counsel, "Now let us look at this thing like reasonable men on this protested check business." These checks went back to the department from which they came and they made all reasonable attempt to collect them. So we come right back to this proposition which I formerly mentioned: Are you going to tie to the proposition that you are going to regard the Treasury Department functions in accordance with the regulations? If you are, it might be an answer to that argument as to what the Treasurer's office should do with these protested checks.

Well, they could establish the purpose prescribed in the Code which says that they shall be either turned over or reported to the Finance Commissioner for collection. That would be one way which could be used.

In closing, let me say this to you: You have got the general picture of the evidence which has been submitted relative to these charges. Now if I understand it correctly a Treasurer will need to be appointed in January and in view of what has developed here would you feel justified in reappointing Mr. Smith? If you would your duty is clear, and if you would not, of course your duty is still clear. Do you feel, to use a good old Yankee term, do you feel that he is steadfast? Do you feel that he is the kind of a rock that you would like to tie to when it comes to the handling of public money?

Now I know you will give this your careful consideration and that you will think over what has been mentioned to you by counsel. And I feel certain that you will decide this case on the evidence submitted and that regardless of what your decision may be it will be based upon the impression that has been made upon you here from the evidence that has gone in.

I thank you.

The SPEAKER: Before this Convention is finally dissolved I, as one of your co-chairmen on behalf of the presiding officers, wish to extend our appreciation of the constant and faithful attendance and attention that the members of this Convention have given to every session through three long days of tedious legal testimony. It is our feeling that your attention has been that which the people of your State expect of you. The roll has been called before every session, the few absentees that appeared in the calling of the roll usually appeared within a few seconds after the roll was completed or had been excused by formal action of the proper branch.

As I was the attorney member of your co-presiding officers it fell to my lot to preside over what for anyone was a most unpleasant task and I can and do appreciate the difficulties which the lay members of this convention must have had at times with the interpretation of rules of evidence. But it was my duty as I saw it to carry out the orders under which this Convention was convened. I have done so as impartially and fairly to both parties as I knew how. Again let me express my appreciation of your faithful attention.

Mr. BROWN: Mr. Speaker, I would like to ask this question.

There are three checks in the exhibit which were given to me upon my assurance that they would be returned to the source from which I got them because they undoubtedly will be necessary in the Grand Jury investigation. Now, would you know what arrangements I could make to be sure that these checks would be so handled?

The **CHAIRMAN**: The Chair understands that all exhibits are in the custody of the Secretary of the Convention who is also the Secretary of the Senate and that the exhibits will remain in his custody until needed by any proper body at which time the presiding officers with the cooperation of the Secretary of the Senate will see that they are delivered to the proper place.

The **PRESIDENT OF THE SENATE**: The purpose for which this Convention was formed having now been completed, I declare the Convention dissolved.

Thereupon, the Senate retired, amid the applause of the House, the members rising.

In the House

The House was called to order by the Speaker.

The **SPEAKER**: The House was proceeding on the report of a committee out of order. The Clerk will read the report.

From the Senate:

Report of the Committee on Mines and Mining reporting "Ought to pass" on Bill "An Act to Encourage Development of Maine's Resources" (S. P. 733) (L. D. 1239)

Comes from the Senate, report read and accepted and the Bill passed to be engrossed.

In the House, report read and accepted in concurrence and the Bill had its two several readings, and under suspension of the rules, was given its third reading and was passed to be engrossed in concurrence.

Passed to be Enacted

(Emergency Measure)

(Out of Order)

An Act to Incorporate the Town of Bridgewater School District (H. P. 2267) (L. D. 1240)

The **SPEAKER**: This being an emergency measure, it requires for its passage the affirmative vote of two-thirds of the entire elected membership of the House. As many

as are in favor of the passage of this Bill to be enacted will rise and stand in their places until counted and the Monitors will make and return the count.

A division being had,

One hundred and twenty voting in the affirmative and none in the negative, 120 being more than two-thirds of the entire elected membership of the House, the Bill was passed to be enacted and sent to the Senate.

On motion by Mr. Varney of Berwick,

Recessed until 6.45 this evening, Eastern Standard Time.

After Recess—7.33 P. M.

Called to order by the Speaker.

Paper from the Senate, out of order and under suspension of the rules:

From the Senate:

Report of the Committee on Library reporting "Ought to pass" on Bill "An Act relating to a Maine State Library" (S. P. 738) (L. D. 1234)

Comes from the Senate, report read and accepted and the Bill passed to be engrossed.

In the House, report read and accepted in concurrence and the Bill had its two several readings, and under suspension of the rules, was given its third reading and was passed to be engrossed in concurrence.

Passed to be Enacted

(Out of Order)

An Act relating to the Auditing of the Accounts of the State Liquor Commission (S. P. 708) (L. D. 1214)

Mr. **STILPHEN** of Dresden: Mr. Speaker, I move to take from the table the communication relative to issuing of highway bonds.

The **SPEAKER**: The gentleman from Dresden, Mr. Stilphen, moves that the House now take from the table communication from His Excellency, the Governor, accompanied by a communication of the State Budget Officer, tabled by that same gentleman.

The motion prevailed; and on further motion by the same gentleman, the communication was ordered placed on file and sent up for concurrence.

The SPEAKER: The House may be at ease and remain within sound of the gong.

House at Ease

10:00 P. M.

Called to order by the Speaker.

Out of order and under suspension of the rules, Mr. Varney of Berwick, presented the following Order:

ORDERED, the Senate concurring, that the State Controller be directed to pay the fee and expenses of W. C. Scott Brown, Esq., Attorney for the presentation of the evidence in the Belmont Smith Address Proceedings, on voucher approved by the Joint Committee on Judiciary, and charge the same to the appropriation for the legislative department.

The Order received passage and was sent up for concurrence.

On motion by Mr. McGlaulin, out of order and under suspension of the rules, it was

ORDERED, that Mr. McGlaulin of Portland, be excused from attendance tomorrow because of his attendance at Law Court; also that Mr. Stevens of Jonesport be excused from attendance.

The SPEAKER: Is it the pleasure of the House to take up out of order additional papers from the Senate?

From the Senate:

Address to the Governor requesting the removal from office of Belmont A. Smith, Treasurer of the State of Maine (S P. 748)

Read by the Clerk.

(The full text of this address will be found in the Senate proceedings for June 6th)

The SPEAKER: This Address comes from the Senate, in that body failed of passage and sent to the House. The question before the House is on the adoption of the Address.

Mr. McGLAULIN of Portland: Mr. Speaker, I would like the privilege, while addressing you, to face the House.

The SPEAKER: The gentleman has permission.

Mr. McGLAULIN: Mr. Speaker and members of the House, the members of this body are supposed to possess at least ordinary intelligence and probably average intelligence.

We are sent here with the expectation that we will use some common sense and good judgment.

A very important matter has arisen for our consideration, and we should give this matter consideration without bias, without prejudice and without influence of political hysteria. Now I venture to say that many members of this body were unable to follow the proceedings that went on here in this House, partially because you could not hear and partially because, not being trained lawyers, you might not be able to follow the drift. I, being a lawyer and being fortunate enough to occupy one of the front seats, have been able to follow this matter pretty closely. Therefore, I wish to ask your indulgence while I briefly discuss the matters that are contained in this Resolution.

I will do as the lawyers did this afternoon, take up briefly the various charges that are made against Belmont Smith. The first charge is that he failed to collect taxes against those banks chiefly in 1933. It has already been pointed out to you that that collection was the duty of his predecessors, that regardless of whether it was his duty to collect or not, these banks were in the hands of a Receiver, and that no suit could be brought without the consent of the Court and the Court is very loath to allow its Receivers to be sued. But apart from all that, I have taken the trouble to investigate the Statute and I want to call your attention to the fact that on Page 101 of the Revised Statutes of Maine it says this in effect: That in addition to other matters of collecting taxes, if they are not paid within thirty days, the State Treasurer may proceed to collect them. I emphasize the word "may". It does not say that he shall and, when the statute says may, it leaves it up to the judgment of that officer to use his judgment on that matter. Therefore Belmont Smith violated no law when he failed to collect those taxes.

Now the second point was that he failed to use proper diligence in the collection of certain protested checks. It was well pointed out this afternoon that he had not failed in his diligence, but I want you to consider just for a moment that supposing he had. It seems that some of the members of this House and Senate have become exceedingly law abiding citizens. I

want to ask you how many there are in this House who have never violated any law. How many of us have violated the automobile law, the stop signal law, the fast driving law? How many of us have failed to violate city ordinances? How many fishermen are there in this House who have not sometime or other in their life put a trout that was a quarter of an inch short into his basket. I want to say that if you turned out every member of this House that ever violated a law or a statute, there wouldn't be, the women excepted, there wouldn't be any men in this Legislature to pass on this matter. And yet because of some trivial, what you consider to be some trivial violation of law, some of you are ready to condemn him.

I recently drove up on Congress Street in a place where busses were supposed to stand, and the policeman came along and told me to move because I was violating a statute, and I said to that policeman: "It is all right to try to enforce the law when any harm is being done, but when as I am doing now, stopping here a few minutes and doing no harm and there is no bus here, I consider it the duty of an officer to use judgment and common sense." I refused to move and he did not move me.

Now I come to the third point, that he did not reinvest certain permanent trust funds, and you condemn, some of you, Belmont Smith without knowing what a permanent trust fund was, when the Attorney General of the State himself did not know and when, according to the evidence that took place in this room, Mr. Cowan, an expert on the subject, had to go back to some charter of 1820 to find out for himself his conclusion of what that particular permanent trust fund was. If there was any violation in that respect, it should have been up to the Attorney General to call his attention to it, and the fact that the Bank Examiner and the Attorney General were both in doubt on this subject, showed that there was no intentional violation on that point.

The fourth count of the charge is that he failed to supervise the acts of his Deputy so that various things happened. One is that he did not keep carbon copies of the books of receipts. Second that they cashed five checks that he did not know

about, three, that he cashed ten other checks, and (d) that he cashed some interdepartmental checks.

Now I have taken the trouble to figure out the total number of those checks that were cashed for Mr. Runnells by Mr. Winship in the three and one-half years that Mr. Smith was in office, and I find that there were thirty-eight and in that time, according to the testimony given in this House, there were some four and one-half million checks cashed. In other words, as I figure, that averages, taking the thirty-eight, that figures once in forty-nine days one of these checks was cashed, which would mean that if Belmont Smith did as some men now seem to expect him, he would have gone into Mr. Winship's office every morning or every evening, I will say in the afternoon, and say to Mr. Winship, "Have you cashed any checks today that you should not?" And Mr. Winship would say, "No, none that I am aware of." So Mr. Smith says, "It is my duty to see and we will go over these checks." And so they go over four thousand checks that afternoon and they find no harm. They find no check that wasn't proper, and if you went from one period to the other for the whole forty-nine days, I find they would have had to examine 176,000 of those checks before they would discover one discrepancy.

Now an executive doesn't do business that way. He chooses competent clerks and he expects those clerks to take care of the details and it is not his job and not his province to go into those details at all unless in some way his attention is called to some irregularity. The evidence is that Mr. Smith's attention was never called to any irregularity until last March.

Now on this particular matter, I want to further call your attention to this fact, that apparently Belmont Smith was under bonds to the extent of \$150,000. Now some of you will argue that he was responsible for what his employees did. Let us suppose for a moment that he is, which, of course, he is not, if he has no supervision of what they are doing, and he could not have in this case under any sensible view. If, as a result of the wrongful acts of his deputy, the State lost money—I mean by that a culpably wrongful act—then the State has redress in this bond, and if that is the case

here, then the State is fully protected by the bond. and the State has no ground whatever on that score for removing Mr. Smith, when it is admitted by everybody that he has done no intentional wrong.

I come now to the fifth charge: That he put too much money in some of the banks. Now it is not claimed by anybody that the State of Maine ever lost a cent by that method, if perchance at some time or other he did put more than twenty-five per cent in some bank; but the evidence shows that there is no proof that he did any such thing, because where that over-deposit is found in most cases, and, as far as I know, in all cases, it was a perfectly legal transaction.

And the sixth clause states that he neglected his duty in not requiring all State funds to be paid directly to him. I want to show to you the utter absurdity of that claim. The State Treasurer is supposed to receive the money. Let me give you this illustration: Let us suppose that I owe Mr. Erswell one hundred dollars. It is my duty to pay Mr. Erswell that \$100. But, instead of taking it to him myself, I give it to Mr. Stilphen and ask him to give it to Mr. Erswell. Now I ask you what under Heaven would Mr. Erswell care whether I gave him the money or whether Mr. Stilphen gave him the money, if he got the money?

Now all that Mr. Smith was concerned with was to get the money that was sent in. Are you going to ask him to go around to the different departments and ask them if they have got any money that belongs to him, when it is their duty to turn the money over and all in the world that the law requires is that he shall receive the money, and it is up to those different departments to see that he does receive it?

Now thus, briefly, I have gone over these points, and I can only say in conclusion on that matter that we have had in this House much ado about nothing.

Mr. Speaker and members of this House: You have heard the story of Pontius Pilate. Pontius Pilate, on one occasion, was asked to examine Jesus Christ, and one of the charges they had against him was that he had violated the law because he allowed people to do good on the Sabbath day, and the Pharisees said that was wicked and wrong. Pontius Pilate acting as the Legislature of that time, examined him,

and he said, "I find no fault in him". But Pontius Pilate was a politician, and the mob said, "Crucify him". And Pontius Pilate turned him over to the mob, to his eternal damnation and condemnation, because he didn't have sense enough to stand by his principles and fight for the right, but he yielded to the mob hysteria. And I find in this very House men who, without rhyme or reason, say "Turn him out" and they do not use any judgment on the matter at all. I hope that the members of this House are fair enough and will use sound judgment enough to vote "No" on this resolution.

Mr. HINCKLEY of South Portland: Mr. Speaker, I had hoped that we might save some time in this matter tonight. We have heard three days of evidence in this case, and we have heard it ably summed up by the counsel on the two sides. I therefore move the previous question.

The SPEAKER: The gentleman from South Portland, Mr. Hinckley, moves the previous question. In order for the Chair to entertain the motion for the previous question requires the consent of one-third of the members present. All those in favor of the Chair entertaining the motion for the previous question at this time will rise and stand in their places until counted and the Monitors will make and return the count.

A division was had.

The SPEAKER: Obviously more than one-third of the members having arisen, the previous question is ordered. The question now before the House is shall the main question be put now? All those in favor of the main question being put now will say aye; those opposed no.

A viva voce vote being taken, the main question was ordered.

Mr. BATES of Patten: Mr. Speaker, when the vote is taken, I ask that it be taken by the yeas and nays.

The SPEAKER: The gentleman from Patten, Mr. Bates, asks that when the vote is taken it be taken by the yeas and nays. The vote will be taken by the yeas and nays at the request of one-fifth of the members present. All those in favor of the vote being taken by the yeas and nays will rise and stand in their places until counted, and the Monitors will make and return the count.

A division was had.

The SPEAKER: Obviously more than one-fifth of the members having arisen, the vote will be taken by the yeas and nays.

Mr. COWAN of Portland: Mr. Speaker—

The SPEAKER: For what purpose does the gentleman rise?

Mr. COWAN: To ask, Mr. Speaker, in view of what occurred yesterday, that I might have the opinion of the members of this House as to whether or not they wish me to vote. If they say yes, I will vote, but it might save embarrassment if I do not.

The SPEAKER: The Chair understands that the gentleman requests to be excused from voting. All those in favor of the gentleman being excused will say aye; those opposed no.

A viva voce vote being taken, Mr. Cowan was excused from voting.

The SPEAKER: The Chair will remind the members of the rule covering voting when the roll call is being taken.

The question before the House is on the adoption of the Address to the Governor. Is the House ready for the question? All those in favor of the adoption of the Address to the Governor will answer yes when their name is called; those opposed to the adoption of the Address will answer no. The Clerk will call the roll.

YEA—Arzonico, Ayotte, Belanger, Bird, Bolduc, Brown, Caribou, Brown, Eagle Lake, Burbank, Chandler, Cook, Crockett, Donahue, Dorrance, Douglass, Ellis, Fowles, Good, Goss, Grue, Hall, Hanold, Hawes, Hildreth, Hinckley, Hinman, Holden, Holman, Jewett, Labbee, LaFleur, Lambert, Leveque, Mahon, McNamara, Mercier, Meserve,

Miller, Murchie, Norwood, Paul, Plummer, Poulin, Waterville; Pratt, Race, Robbins, Robie, Robinson, S. Portland; Slosberg, Smith, Thomaston; Snow, Dover-Foxcroft; Starrett, Stillphen, Sylvia, Violette, Williams.

NAY—Bacon, Batchelder, Bates, Bragdon, Brown, Corinna; Bubar, Burgess, Limestone; Butler, Buzzell, Churchill, Cleaves, Clough, Cushing, Davis, DeBeck, Dennison, Dorsey, Dow, Eliot; Dow, Norway; Downs, Dwinal, Eddy, Emery, Erswell, Farwell, Fernald, Haskell, Hodgkins, Howes, Hussey, Jordan, Larrabee, Latno, Luro, MacNichol, Marshall, Maxim, McGillicuddy, McGlauffin, Melanson, Merrifield, Mills, Noyes, Palmeter, Payson, Peakes, Pelletier, Preble, Richardson, Robinson, Bingham; Robinson, Peru; Shesong, Sleeper, Smith, Westbrook; Snow, Hermon; Stacy, Tardif, Thompson, Townsend, Varney, Walker, Wallace, Weed, Weatherbee, Welch, Whitney, Winter, Worth, Young, Acton.

ABSENT—Babin, Barter, Dean, Dow, Kennebunkport; Everett, Fogg, Ford, Keene, Lord, Otto, Pike, Lubec; Porell, Poulin, Rumford; Ramsdell, Stevens, Winslow.

EXCUSED—Cowan.

Yes, 55; No, 69; Absent, 16; Excused, 1.

The SPEAKER: Fifty-five having voted in the affirmative, sixty-nine in the negative, one excused and sixteen absent, the Address has failed of adoption.

The SPEAKER: Is there any further business to come before the House at this time?

On motion by Mr. Varney of Berwick,

Adjourned until nine o'clock tomorrow morning, Eastern Standard Time.