

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

Legislative Record

OF THE

Eighty-Ninth Legislature

OF THE

STATE OF MAINE

1939

KENNEBEC JOURNAL COMPANY
AUGUSTA, MAINE

SENATE

Wednesday, February 15, 1939.

The Senate was called to order by the President.

Prayer by the Reverend LeRoy Congdon of Gardiner.

Journal of yesterday read and approved.

From the House:

"Resolve in Favor of Robert W. Traip Academy." (S. P. 295)

(In the Senate on Feb. 8, referred to the Committee on Education.)

Comes from the House, indefinitely postponed, in non-concurrence.

In the Senate, on motion by Mr. Sanborn of Cumberland, tabled pending consideration.

House Committee Reports

The Committee on Banks and Banking on bill "An Act Changing the Name of 'Eastern Loan Company, Inc.' to 'The M-A-C Plan, Inc. of Maine,' (H. P. 63) (L. D. 28) reported that the same ought to pass.

The Committee on Judiciary on bill "An Act Relating to the Reorganization of Corporations under the National Bankruptcy Act," (H. P. 248) (L. D. 64) reported that the same ought to pass.

The Committee on Motor Vehicles on bill "An Act Repealing the Law Relating to Chauffeurs' Licenses," (H. P. 253) (L. D. 67) reported that the same ought to pass.

The same Committee on bill "An Act Relating to Printing on Operators' Licenses," (H. P. 254) (L. D. 68) reported the same in a new draft (H. P. 1348) (L. D. 533) under the same title, and that it ought to pass.

Which reports were severally read and accepted in concurrence, the bills read once and tomorrow assigned for second reading.

Communication:

Office of the Revisor of Statutes.

To the Honorable Senate of the 89th Legislature:

The following is a list of titles of bills, data for the drafting of which was in the hands of the Revisor of Statutes at 4:00 P. M. Thursday, February 9, 1939.

1. An Act Creating the Maine Re-habilitation Commission. Burns, Aroostook.

2. An Act Creating a Division of Inspection and Collection in the Finance Department. Spear, Cumberland.

3. An Act Relating to Cancer Control. Spear, Cumberland.

4. Resolve, Appropriating Money for Drilling Artesian Wells in the Town of Perry, Kennedy, Hancock.

5. An Act Relating to Snow Removal. Boothby, York.

6. An Act Enlarging the Discretionary Powers of the Liquor Commission. Marden, Kennebec.

7. An Act Imposing a Tax upon the Transfer of Certain Property. Sanborn, Cumberland (by request).

8. Resolve, in Favor of a New Bridge in the Town of Hiram. Osgood, Oxford.

9. An Act Relating to Investments for Trust Funds of the State. Tompkins, Aroostook.

10. An Act Relating to the Use of Head-Lights. Cony, Kennebec.

11. Resolve, in Favor of the Town of Brunswick. Spear, Cumberland.

12. An Act Relating to the State Police. Elliott, Knox.

Respectfully submitted,

SMITH DUNNACK,

Revisor of Statutes.

Which was read and ordered placed on file.

The following bills and resolve were received and on recommendation by the Committee on Reference of Bills were referred to the following committees:

Claims

Mr. Boucher of Androscoggin presented "Resolve in Favor of Paul Cinchereau, of Lewiston." (S. P. 413) Sent down for concurrence.

Judiciary

Mr. Marden of Kennebec presented bill "An Act Relating to Evidence in Criminal Cases." (S. P. 414)

(500 copies ordered printed)

Sent down for concurrence.

Mercantile Affairs and Insurance

Mr. Hill of Cumberland presented bill "An Act Relating to Inspection of Theatres." (S. P. 415)

(500 copies ordered printed)

Sent down for concurrence.

Public Health

Mr. Tompkins of Aroostook presented bill "An Act Defining and

Relating to Narcotic Drugs and to Make Uniform the Law with Reference Thereto." (S. P. 416)

(500 copies ordered printed)

Sent down for concurrence.

Senate Committee Reports

Mr. Tompkins from the Committee on Taxation on bill "An Act Relating to Exemption of Estates from Taxation," (S. P. 64) (L. D. 34) reported that the same ought not to pass.

Which report was read and accepted.

Sent down for concurrence.

Mr. Burns from the Committee on Judiciary on bill "An Act to Amend and Extend the Charter of Kennebec Reservoir Company," (S. P. 182) (L. D. 233) reported that the same ought to pass.

Which report was read and accepted, the bill read once and tomorrow assigned for second reading.

Mr. Spear from the Committee on Salaries and Fees on bill "An Act to Provide Compensation for Indian Representative to the Legislature," (S. P. 172) (L. D. 188) reported the same in a new draft (S. P. 417) under the same title and that it ought to pass.

Mr. Worthen from the Committee on Sea and Shore Fisheries on bill "An Act Relative to Taking Tuna," (S. P. 120) (L. D. 81) reported the same in a new draft (S. P. 418) under the same title and that it ought to pass.

Which reports were severally read and accepted, and the bills laid upon the table for printing under the joint rules.

Five of the seven members of the Recess Committee to "Investigate the feasibility of the enactment into law of requirements for the adoption of blood tests for persons charged with operating motor vehicles when intoxicated or under the influence of liquor or drugs," reported the same in form of bill "An Act Relating to Evidence in Criminal Cases," (S. P. 414)

Which report was referred to the Committee on Judiciary.

Sent down for concurrence.

Passed to Be Engrossed

"Resolve Authorizing the Sale of State's Interest in Certain Lands in

Township No. 3, Range 4." (H. P. 258) (L. D. 70)

Bill "An Act to Ratify and Make Valid the Incorporation of the Maine State Advent Christian Conference," (H. P. 1239) (L. D. 479)

Which resolve and bill were read a second time and passed to be engrossed in concurrence.

Bill "An Act Relative to Game Preserve in Orrington," (S. P. 26) (L. D. 512)

Bill "An Act Relating to the Government Employees' Credit Union of Maine," (S. P. 309) (L. D. 511)

Which bills were severally read a second time and passed to be engrossed.

Sent down for concurrence.

Orders of the Day

On motion by Mr. Osgood of Oxford, the Senate voted to take from the table Order Relating to the Dwyer-Carroll Case (S. P. 247) tabled by that Senator on February 2 pending passage.

Mr. OSGOOD: Mr. President, I now move the indefinite postponement of this order. I have investigated to my own satisfaction that there isn't any need of an order of this kind being passed by the legislature. I feel that most of the constituents in my county are well satisfied with the verdict of the jury. If this case should be opened up similar cases could be opened and this legislature would be flooded with all kinds of orders to investigate other criminal cases. I know that there may be others who would like to speak on this matter, who know more about the legal aspect of the case than I do.

Mr. CONY of Kennebec: Mr. President, as one who has been deeply concerned with this matter I will take the liberty of addressing the Senate for just a moment. In the last analysis it seems to me that this is an undertaking to constitute the legislature of the state of Maine as a court of review to review in some way or other the findings of duly constituted judicial authority. We have, so far as I know, never heard anything questioning the integrity of this jury, or juries, of one of our counties. We have heard nothing of any doubt as to the proper conduct of the case in any way. In other words, the defendant or defendants in this case have had the same rights that any last

one of our citizens has any right to expect under Anglo-Saxon law. If the day has come when the legislative body shall review these matters then, as the Senator from Oxford (Senator Osgood) has already said, the day has come when the door is open to receive into legislative bodies all of those who are disappointed with the verdict of the jury before which they were tried.

I think the chief thing criticized in connection with these cases has been that two men were convicted of the same offence. Well, I think any attorney knows that fifty men can be guilty of the same offense if they participate in it. It is true that in these two cases we are discussing the trials were not in the same term of court or by the same jury but if these men participated then they would be guilty and if the jury so finds—twelve men, of their peers who heard the case, who heard the evidence—then I say that this Senate has nothing to do with it; and even if there were a failure all through the judicial machinery we still have a competent Governor and Council who would have a right, on presentation, to consider these cases, and I have no doubt that justice would be completely served if there were any question.

This case has had its publicity aspect and its appeal to emotionalism and it is full of advertising of an undesirable kind. The state of Maine in recent years always has proved itself a conservative state, at the ballot box, in its courts and in its legislative halls.

I hope that this matter may end here and now and that the motion of the Senator from Oxford (Senator Osgood) will prevail.

Mr. SANBORN of Cumberland: Mr. President, I doubt not that the action of the Senate upon this order may be readily forecast but it is well known, I think, that there is in the minds of the public something of a state of misunderstanding and confusion, and for the purpose of enabling the members of this body who may not be legally trained, to answer inquiries and make explanations as to the reason for the action of the Senate in this matter I am going to crave the indulgence of the Senate for just a brief word supplementing the able exposition that has already been made by the Senator from Kennebec, Senator Cony.

To my mind there are two com-

elling reasons why this order should be indefinitely postponed. The first has been referred to by the Senator (Senator Cony), namely, that it does not lie within the province of a legislative body to undertake to review or supervise the conduct of a coordinate branch of the government, the judicial. But equally compelling is, I think, the fact, which ought to be made perfectly plain, that no injustice has been done in these cases. As has been pointed out, every lawyer knows that two men may be found guilty of the same crime. To illustrate what I mean: If, by chance, my colleague on my left, Senator Hill, and myself were to go out intending to do violence to some person and finding him in a secluded spot I were to pass to my colleague a bludgeon asking him to wait and hand it to me when I was ready for it and I were to engage the victim in conversation, divert his attention and call for the bludgeon and my colleague were to pass it to me and with it I would deal a fatal blow, on indictment and proof of these facts he and I might both be convicted of the murder. So much for that.

Now as to the trial; it did by chance fall within my observation, or come within my purview, to observe and know quite a bit of the preparation and prosecution of this rather notable case. It should be borne in mind—and here is a point concerning which there is some misunderstanding—it should be borne in mind that it is primarily the duty of a county attorney to prosecute all criminal cases within his jurisdiction. It so happened in this case that Francis Carroll had been a client for some of the county attorneys in Oxford County and for that reason the county attorney felt himself disqualified to undertake the prosecution. It seemed incongruous that he should be asked to do so and accordingly arrangements were made for another attorney, Mr. Ingalls, to assist, to take the place of the county attorney. Now, since the attorney general was engaged with civil matters, the multitudinous affairs connected with his office, he yielded to Mr. Ingalls the task of making the preparation and it was but natural that the one who had personally made the preparation, conducted the investigation, should take a leading part in the

prosecution of the trial, thus involving no reflection upon either the county attorney or the attorney general.

Now something has been said, I don't know by whom or to what extent but the language has been repeated more or less, that Carroll was railroaded. I suggest to this honorable Body that that carries with it an imputation of misconduct on the part of everyone connected with that trial from the prosecuting officers, through the sheriff's department, the jury, to the presiding justice himself; a reflection that I submit ought not to be tolerated, to go unchallenged. Please bear in mind that every respondent has the right to have all questions arising in the conduct of his trial where errors are supposed to have been made, reviewed by the Supreme Court, and it is to my mind a matter of great significance that throughout this entire trial, which was ably tried, no question was reserved by exception or otherwise for the consideration of the Supreme Court. That means, if it means anything, that the attorney for the respondent was satisfied that all the legal rights of his client had been preserved. If he had felt otherwise he had the right to go up on the case.

This, it seems to me should amply dispose of the proposition that Mr. Carroll was railroaded. I know of no trial which I have either witnessed or read about in the annals of the State of Maine which has been more thoroughly prosecuted than was this one, no trial at which there has been a more complete disclosure of every fact bearing upon or having a legal connection with the crime under investigation, than this one. And a jury of twelve men—if they happened to be in this case all men—I am not certain—a jury of twelve after listening to the evidence, hearing the arguments of counsel and the instructions of the presiding justice, returned a verdict of guilty. This, it seems to me, should clearly dispose of the question of railroadings.

Furthermore, I am informed on credible authority that the attorney for the defendant in that case on more than one occasion during and following the trial expressed himself as thoroughly satisfied of the guilt of his client. That, if it be true—and I believe it to be true—that alone

should be sufficient reason for the indefinite postponement of this order and I trust that this Body will so act.

Mr. CHAMBERLAIN of Penobscot: Mr. President, there is another angle to this case that I believe should appeal to the members of the Senate and that is the publicity given to criminal matters. There are a large number of people in this country who deplore the great publicity that criminals receive, that people read and under the law of suggestion are very apt to be influenced by. It is an unworthy thing to place on the front page of the papers great publicity in regard to criminal matters.

I trust that the motion to indefinitely postpone will prevail.

Mr. BURNS of Aroostook: Mr. President, when this order was introduced I realized that it undertook to establish a precedent which would be very far reaching and, together with other members of the Senate, I proceeded to make further inquiries in regard to this crime.

From my investigation and from what I have read, and taking into consideration the province of the legislature, an order of this character has no place before us. One of the firmest beliefs of our forefathers, those who drafted our constitution, was that the three departments of government should remain separate; the legislative, the judicial, and the executive branches of our government. Now, this order has to do with something which is essentially a matter that relates to the judiciary and there is nothing the people of the United States or the people of the state of Maine can become more alarmed against than any encroachment on the judiciary system. We saw that a short time ago when an effort was made to pack the Supreme Court and never within several decades has there been such an uprising or rebellion on the part of the people to strike down any such effort to interfere with the judicial department of our government.

The executive branch of our government has to do with passing upon pardons. The counsel for Mr. Carroll says in his newspaper statement that the only tribunal where he can ask relief is the legislature, the general court of the state, and we all know, laymen as well as lawyers, that that is not so, that he has

access to the properly constituted tribunal, to pass upon this case, and that is, he can apply by petition to the Governor and executive council and receive a fair hearing and if an injustice has been done the Governor and Council will remedy it. But he knows as well as I do that this Governor and this executive council will give him small chance of acquiring his objective—and I am not implying that they would not receive a fair and impartial hearing because they would. But to us who have studied this case there seemed to be no ground for doubt, no ground for reasonable doubt, but that both of these men have been justly convicted. They have had a fair and impartial trial. The jury did their duty. And the presiding judge, I am sure, accorded these men all the protection which the law gives them.

We are here to pass laws, not to interfere with the judicial or executive branch of our government. Suppose that we should act favorably on this order and have a committee hearing. What law are we going to enact that would alleviate this situation? Any act of the legislature to interfere with the progress of the administration of justice in this case would be unconstitutional. For the life of me, I cannot conceive of one possible constitutional ground that could be argued to uphold any law which this legislature might enact following a committee hearing on which the committee would report certain legislation as "Ought to Pass." And this is establishing a precedent which cannot be interpreted in any other way than an encroachment on the powers of our judiciary and the executive branch.

In the final analysis these two men participated in the commission of the heinous offense, the circumstances of which offended the good people of the state of Maine and the county of Oxford and it is about time that we lock this skeleton in the closet and keep it there and take satisfaction in the thought that a judge and jury performed their duty and brought in a verdict of guilty and arranged for the commitment of these two men guilty of this offense. They should consider themselves fortunate that they weren't tried in Massachusetts or New York State where capital punishment would have been the result

and they both would have been by this time executed.

Mr. MORSE of Waldo: Mr. President, I yield to no one in my respect for the judiciary of this state. As I see this question that matter is not at all involved. Two juries have had certain evidence presented to them and they have arrived at conclusions which when put together show that they are entirely inconsistent and wrong. On account of the furor—and perhaps I may almost say hysteria—that has resulted since I presented this order, I feel that I should say just a few words to make my position clear. It is of little moment to me personally whether this order receives a passage or not but we do have a very strange atmosphere here.

I wish to state that I presented this order in absolutely good faith and I wish also to state that since its presentation not only have I been misrepresented and vilified but I have been publicly insulted for having introduced it. Now my position is simply this, that the serving of life sentences by these two men, convicted at separate trials of the murder of the same person, is absolutely wrong and that there is no parallel in the situation in the state of Maine nor, so far as I have learned, in the United States. It is my contention that as I feel one of these men is suffering a grievous wrong, and I may say in passing that I don't understand how any member of this Senate can look at it otherwise, almost any measure within the bounds of reason ought to be resorted to to have this wrong righted.

It seems to me that a carefully chosen committee composed of members of the Senate and House who are entirely disinterested and absolutely impartial might very safely be entrusted with making a preliminary examination of all the material at hand, in the hope that the committee may make a finding and report the same together with recommendations looking to the possible enactment of suitable legislation or the assembling of such a preponderance of evidence in favor of one or the other of these men as might at least be of assistance to the Governor and Council in the granting of a pardon.

Nobody has ever heard the word "railroading" from me. I have never taken that attitude at all. I am saying just these few words in ex-

planation of the presentation of this order by me. I thank you.

The **PRESIDENT**: Is the Senate ready for the question? The question is on the motion of the Senator from Oxford, Senator Osgood, that the order be indefinitely postponed. Is it the pleasure of the Senate that the order be indefinitely postponed? It is a vote.

Mr. **MORSE**: Doubted.

The **PRESIDENT**: The vote is doubted and the Chair will ask for a division.

A division of the Senate was had.

Twenty-seven having voted in the affirmative and one opposed, the motion to indefinitely postpone prevailed.

Sent down for concurrence.

On motion by Mr. Sanborn of Cumberland, the Senate voted to take from the table Resolve in Favor of Robert W. Traip Academy (S. P. 295) tabled by that Senator earlier in today's session pending consideration; and on further motion by the same Senator the Senate voted to recede and concur with the House in the indefinite postponement of the resolve.

Mr. **SANBORN** of Cumberland: Mr. President, I ask leave to offer a word in relation to Senate Paper 396, entitled "Bill, An Act Relative to Mile Ton Tax on Interstate Carriers." This matter, through some unexplainable failure of coordination, was introduced bearing my name, but inadvertently, and for the purpose of asking leave to withdraw I now move that the Senate reconsider its vote whereby yesterday it voted to refer to the Committee on Public Utilities.

Thereupon, the Senate voted to reconsider its action of yesterday whereby the bill was referred to the Committee on Public Utilities.

Mr. **SANBORN**: Mr. President, I now ask leave to withdraw the bill.

Leave to withdraw was granted.

Sent down for concurrence.

Emergency Measure

(Out of Order)

Out of order and under suspension of the rules:

Bill "An Act Relating to the Investigation of Fires by the Insurance Commissioner." (H. P. 1444)

Which bill being an emergency measure and having received the

affirmative vote of 26 members of the Senate, and none opposed was passed to be enacted.

Emergency Measure

(Out of Order)

Bill "An Act Relating to Taxation of Insurance Companies." (H. P. 1445)

Which bill being an emergency measure and having received the affirmative vote of 26 members of the Senate, and none opposed was passed to be enacted.

From the House, out of order and under suspension of the rules:

Bill "An Act to Grant a New Charter to the City of Lewiston." (S. P. 55) (L. D. 27)

(In the Senate on February 14, passed to be engrossed as amended by Senate Amendments "A" and "B".)

Comes from the House, report accepted, Senate Amendments "A" and "B" read and adopted in concurrence, House Amendment "A" read and adopted, and the bill passed to be engrossed as amended by Senate Amendments "A" and "B" and by House Amendment "A" in non-concurrence.

In the Senate, on motion by Mr. Spear of Cumberland tabled pending consideration.

On motion by Mr. Spear of Cumberland the Senate voted to take from the table bill, An Act to Grant a New Charter to the City of Lewiston (S. P. 55) (L. D. 27) just previously tabled by that Senator pending consideration; and on further motion by the same Senator, the Senate voted to reconsider its action taken yesterday whereby the bill as amended by Senate Amendment A and Senate Amendment B was passed to be engrossed.

Thereupon, on further motion by the same Senator, House Amendment A was read and adopted in concurrence and the bill as amended by Senate Amendment A, Senate Amendment B, and House Amendment A was passed to be engrossed in concurrence.

The **PRESIDENT**: Is there any further business to come before the Senate?

On motion by Mr. Dorr of Oxford Adjourned until tomorrow morning at ten o'clock.