

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

SENATE

Wednesday, May 29, 1940.

The Senate was called to order by the President

Prayer by the Reverend Edwin Cunningham of Augusta

Journal of yesterday read and approved.

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

Appropriations and Financial Affairs

Mr. Spear of Cumberland presented the following bills which fall within the Cloture rule:

Bill "An Act Relating to Fees of Wardens of the Department of Sea and Shore Fisheries." (S. P. 736)
(500 copies ordered printed.)

Sent down for concurrence.

Inland Fisheries and Game

Bill "An Act Relating to the State Museum." (S. P. 737)

(500 copies ordered printed.)

Sent down for concurrence.

Library

Bill "An Act Relating to a Maine State Library." (S. P. 738)

(500 copies ordered printed.)

Sent down for concurrence.

Committee Reports

Mr. Hill from the Committee on Judiciary on bill "An Act Relating to Unemployment Compensation," (S. P. 715) (L. D. 1225) 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 Relating to the Term of Office of Various Employees Under the Code," (S. P. 710) (L. D. 1216) reported that the same ought to pass.

Which report was read and accepted, the bill read once and under suspension of the rules given its second reading and passed to be engrossed.

Sent down for concurrence.

The Majority of the Committee on Legal Affairs to which was referred Joint Order instructing the

Legal Affairs Committee to consider and report the advisability of proceeding by Address for the removal of the State Treasurer, (S. P. 713), after requested specifications were filed in accordance with Joint Order (S. P. 724), evidence supporting those specifications was heard at public hearing and was considered; deem it inadvisable to institute proceedings for the removal of Belmont A. Smith, State Treasurer.

(Signed) Senators: Chase of Washington, Morse of Waldo.

Representatives: Dow of Norway, Payson of Portland, Dwinall of Camden, Shesong of Portland, Buzzell of Belfast.

The Minority of the same Committee on the same subject matter ask leave to report "Resolve in Favor of the Adoption of an Address to the Governor and Council for the Removal of Belmont A. Smith, Treasurer of the State of Maine." (S. P. 734)

(Signed) Senator: Marden of Kennebec.

Representatives: Cowan of Portland, Donahue of Biddeford.

Mr. MARDEN of Kennebec: Mr. President, in moving at this time for the acceptance of the Minority Report and in the light of the fact that some of the members of this body were present and some were not present at the hearing yesterday, there are some facts in support of that motion which, with the Senate's permission, I would like to outline.

First, the committee as a group, and to speak personally, would like the Senate to recall the wording of the order under which the hearing of yesterday was authorized and held; that order consisting of the original order, Senate Paper 713, as I recall it, and the subsequent order which specifically authorized a public hearing. The original order under which the committee acted, ordered the committee to consider and report the advisability of proceeding by address to the Governor and Council, and in acting under that order the committee wants this body to understand that it did not act, and does not now, as a prosecuting committee or prosecuting body, but as a committee under which certain evidence was requested and taken out upon which the advisability of proceeding further was to be determined. And in moving acceptance of this minority

report it should be definitely understood that that minority report says that in the minds of that minority it is advisable that a proceeding be instituted which will result in a full and complete hearing before the full legislature, which body was the elective body of the officer in question, and which body the minority feels should be the body to determine whether or not the proceeding goes further than the present stage.

In the resolve accompanying the minority report are set up, according to the proceedings in Maine law, certain specifications upon which the minority feel full and complete hearing should be held. Those are embodied and made a part of the resolve. Among those specifications are included counts, as lawyers say, consistent with the various clauses of the statement of fact presented to the committee yesterday and supported by verbal testimony. The committee, as the report indicates, was not in accord on the reasonable conclusions to be drawn from that evidence. And the division indicates that fact, even as a jury under ordinary circumstances might be divided, and the members signing the majority report had divergent ideas as to what counts should be emphasized. In the report no counts are particularly emphasized.

There is the matter of statutory responsibility of the officer holding the office of state treasurer, which specifically requires him to be responsible for the fidelity of all persons by him entrusted with any of his concerns. His bond reads in the same way. It is contended by Mr. Smith, through counsel, that the change brought about by the code removed that statutory responsibility and that even though the bond so reads the bond in itself would not impose a responsibility beyond that imposed by law.

That admittedly is a legal question upon which persons and courts may differ.

The other counts in the resolution presented follow generally the counts as brought in the mimeographed statement of fact presented to the committee and with which some of you may be familiar.

It is the feeling of the minority, as the speaker said at the beginning and repeats for the purpose of emphasis, that it is not our function or purpose in this report to take the

position of prosecutor. We merely recommend to this body and the legislature that in our humble opinion it is advisable that a full and complete hearing be held by the body at whose hands the office was originally filled, and, Mr. President, I move the acceptance of the minority report.

Mr. SANBORN of Cumberland: Mr. President, I hope that I may find myself able to give intelligent expression to the sentiments I hold. This legislature will be called upon to answer before the bar of public opinion for its acts taken at this session. I say "this legislature" for it is upon this legislature that responsibility rests and not upon any committee. I could wish that a different procedure had been invoked from that which has been adopted. I think we might have made better progress, more satisfactory progress, if the proper resolves had been introduced in the two branches in accordance with the precedence of 1913.

I think the matter might have been simplified. But there has been a hearing before a committee. In the first place, the legislature has not had opportunity to listen and does not particularly know of the charges placed at that hearing except that the members, of course, may have listened in. As I gather it, there was no prosecution attempted and I think perhaps that was proper, that there should be no prosecution attempted before the Legal Affairs Committee. A mere statement on the part of the Attorney General with opportunity then given for competent counsel for the State Treasurer to dull the point of whatever testimony was offered by skillful cross-examination and to make a pretty capable, although to my mind rather specious argument in defense.

It seems to me that this leaves the legislature as a body entirely in the dark. I don't want to be misunderstood. I do not say that I am in favor of the removal of this officer. I am here to say only that I do not know whether he ought to be removed or not, and I don't believe that the members of the legislature know, and I think it is our duty to inform ourselves. I would be the last one to vote for a removal without a full hearing simply for the sake of finding a scapegoat or of attacking an individual. If, after

full hearing, I were satisfied that no cause exists for removal, regardless of public opinion. I would vote against removal. I have no fear of public criticism when that criticism is unfounded but I have a wholesome regard for public criticism when there is a semblance of justification. It seems to me that the proceeding of yesterday was quite analogous to what we would have in a criminal trial if the indictment were read and then the defense were to go on and put in their word. And that is not the way trials are conducted. I firmly believe that in fairness to ourselves, in fairness to the State Treasurer and in fairness to the public we should proceed to have these charges preferred, have competent and zealous counsel employed to prosecute and submit all the evidence there is, give full opportunity to the respondent State Treasurer to adduce all the defense he has and at the end of that period listen to the argument of counsel, and then I would be ready to vote whether to remove or not. As it is I dislike to sidestep a matter as it seems to me we are doing and if we adopt the majority report I think we will be furnishing some pretty abundant and rich soil for the growth of that noxious weed which has just now been termed "whitewash."

Mr. CHAMBERLAIN of Penobscot: Mr. President, I desire to second the motion of the senator from Kennebec, Senator Marden, that the minority report be accepted. I do this without prejudice either for or against the State Treasurer.

The arguments presented to this Body by the Senators from Kennebec and Cumberland really present the whole situation just as it is. Reflections made upon a public officer should be removed by the Body that elected him, not by a committee. While we have great faith in committee reports, still this should come before the whole legislature. If, on the other hand, there be reflections against the officer that are sufficient for removal it should be done not by the committee but by the legislature. I offer these remarks without prejudice.

Mr. CHASE of Washington: Mr. President, in the minds of a majority of the Legal Affairs Committee, the evidence presented was not sufficient to warrant procedure by address against the State Treasurer.

I am sure the members of that committee had no desire to take away from any member of this senate or of this legislature, any of their privileges, but the evidence presented did not convince us and we would hope that the majority report would be accepted.

Mr. CONY of Kennebec: Mr. President, it had not been my intention to take any part in this debate or in this particular question and I presume there is no particular reason why I should. I was not on the committee. I did listen to the evidence yesterday and possibly I am in a more fortunate situation than most of the members of the Senate, in that I am not a candidate for reelection or for election to any office. Therefore, perhaps I can speak with a little more ease than some could.

In spite of that fact I am quite jealous of the welfare of the party to which I belong and I dislike to see instituted here any hasty proceedings which could very easily, as the Senator from Cumberland, Senator Sanborn, has already suggested, place ammunition in the camp of the opposite party.

Now to my mind if this matter receives any application of the word we hear up and down the state, "whitewash," then I say to you that candidates for office next September may be climbing trees to get away from blitzkrieg. I think this should be a thorough proceeding. I am not intimating how I might vote after the proceedings but I want to say that if this senate and the other branch think that the paying out of a hundred and two thousand dollars in cash over the counter isn't something which we should go into, I don't think the electorate of Maine will agree with them very much.

Mr. MORSE of Waldo: Mr. President and members of the Senate, I don't like the term "whitewash" and I don't believe that the majority of that committee is entitled to any such name as being guilty of trying to foist something upon the people which shouldn't have any consideration.

This matter was turned over to our Legal Affairs Committee, as I understand it, for the sole purpose of investigation by us, and after giving careful consideration to it to report to this Body what in our judgment we thought was right. This testimony, all given as recent-

ly as yesterday and at a public hearing, is just as fresh in the minds of all of you as it is to the members of the Legal Affairs Committee. This new resolution which is being offered, as I understand it is nothing more nor less than tossing it back to the legislature again where it started. You have asked us for our examination and our opinion. I assure you, members of this Senate, that you have it and I assure you also that this matter received no cursory examination but was well and thoroughly considered after the hearing was completed.

So I say we have tried to discharge our duties as best we could and if that should not meet the approval of the majority of this Body of course it is for you to say so but I do want to take this opportunity to say that you have the thorough consideration and judgment of this Committee as it has been reported to you.

Mr. BECKETT of Washington: Mr. President, I was not privileged to attend the hearing yesterday to hear the evidence in connection with this committee report. I do remember, however, that the Governor and Council strongly recommended that some sort of action be taken against the Treasurer. I do remember that at that time there was quite a little opinion on the part of members of the legislature that we should assemble immediately and come down here and get at the bottom of this affair.

I do believe that the public feels that the legislature should make a thorough investigation to determine whether or not certain things should or should not be carried out. It is my feeling that the committee is probably right, that possibly they have heard the evidence and submitted their report on that basis. To me, I still have the feeling that we as a legislature should go further. Possibly it was a mistake to leave this with the Committee on Legal Affairs.

I strongly feel that the public expects us to go into this in a little more detail and I feel, as other Senators do, that in this case the acceptance of the Minority Report should prevail.

Mr. HILL of Cumberland: Mr. President, on this matter I take a position that is for me difficult to take, I am about to make some remarks that it is for me personally

difficult to make, and I say personally difficult because for some years I have known Belmont Smith, known him quite well. As a friend, I like Belmont Smith. I know of no more pleasant, no more friendly, no more amiable gentleman than our present treasurer, and yet there comes a time when it appears necessary in the performance of one's duty to take a position irrespective of personal friendship, irrespective of parties and politics.

Grave and serious charges have been made. Let me say here that I would not for one moment cast any aspersion or reflection upon the integrity and honesty of our State Treasurer, Mr. Smith. I believe throughout all the discussion that has thus far taken place there has been no such aspersion or reflection cast by anyone. In this matter which now comes before us for consideration, it is not a question of integrity or honesty. We are not confronted with a question of whether or not any official is to be tried for some offense or anything of that kind. It is simply a question of whether or not that official should be continued in the service of the State.

But yet before we get even to that question, the question immediately confronting us is simply the question of whether or not a full and thorough hearing should be held. I do not believe that any member of this Senate would want to take a position upon the question of removal in advance of such a hearing. Certainly I should not do so. But the question referred to the Legal Affairs Committee was only a preliminary question of whether or not it is advisable to proceed and have a hearing before the whole legislature.

I had the good fortune to be present yesterday throughout the whole day at the hearing which took place here in this Senate Chamber. As has already been suggested, it seemed to me perfectly apparent that there was no serious effort made to really bring out the whole facts. I can appreciate the fact that the Attorney General was personally in a very difficult and embarrassing situation, appearing before the committee on that occasion yesterday, and I have no criticism to make of the committee. And yet we all saw, I think, that there was no argument by the attorney general, simply the submission of a memorandum in writing which he read, and

some perfunctory remarks. There was no cross examination by the attorney general. There were, as I recall it, no witnesses called by him and examined by him to bring before that committee the full facts of this case. And the committee, after a hearing of that sort in which the testimony naturally was not under oath, brings in a divided report as to the advisability of consideration of this case by the legislature.

It seems to me, under that situation, as my colleague, the Senator from Cumberland, Senator Sanborn, has already indicated, there should be a full and thorough consideration by this legislature, which after all, cannot by means of any committee divest by itself of its own primary responsibility of what is done in such a situation. It seemed to me yesterday as I listened to the hearing that what is really the whole crux of the problem received no stress nor emphasis whatsoever. That is the question of to what extent is the treasurer responsible for the acts of his deputy and those in the department who are under his supervision. There is a statute which apparently fixes very clearly that responsibility and the bond is described by statute upon that basis. Subordinate employees of the department, including the deputy treasurer, give their bonds, not to the State of Maine, but to the Treasurer of State, indicating the extent to which he would seem to be responsible for the conduct of the office.

Then in the course of the proceedings much was brought out by the counsel for the Treasurer, that the Treasurer himself had no personal knowledge of this or that occurrence. But to what extent might it have been the duty of the Treasurer to have such personal knowledge? Much was brought out to the effect that when various things happened the Treasurer was not present, therefore had no personal knowledge, but to what extent might it have been his duty to have been present and to have had personal knowledge?

It also appeared from the testimony that one branch of the department's activities in which the Treasurer did have personal knowledge and did exercise strict supervision was the investment of the trust funds of the State. And the question was raised by one of the members of the Legal Affairs

committee as to certain investments of those funds and whether or not those investments were not clearly made contrary to the provision of the statute as to what are legal investments for state trust funds.

In the inaugural message of his Excellency, the Governor, we find the statement, "I requested Mr. Smith's resignation, based largely at that moment on what I considered to be his statutory responsibility for the acts of his Deputy in improperly disbursing cash to the extent of over \$32,000." Then follow a series of other charges made against the Treasurer by the Governor of this State, including, just to mention one more item, handling of negotiable securities in a careless manner, offering, as the Governor says, "meager protection to the state."

It is not my purpose, Mr. President, to undertake to review the testimony in detail or enter into these charges because it seems to me it is not the proper time to undertake any full consideration of those facts, but it does seem to me those charges are sufficiently great as not only to warrant but to require serious consideration by this whole legislative body in the manner provided by the Constitution for such cases and in the manner that has been followed in the precedents to which Senator Sanborn has referred, in 1913.

As is the case with the Senator from Kennebec, Senator Cony, I seek no political office and have no political aspiration, and I certainly should feel, after listening to the hearing yesterday, that I would be remiss in my duty to my constituents were I not firmly to take the position that this whole matter should be given a full and thorough and complete hearing before the legislature, and that that hearing should be conducted by someone other than the attorney general or anyone under his direction.

Mr. SPEAR of Cumberland: Mr. President, I think the subject matter in support of adopting the minority report has been very well covered. There is one point perhaps that came to my attention this morning that has not been covered. I heard that yesterday there was nothing lost from the Treasurer's department. This morning it came to my attention something had been. Therefore, I sent to the auditor's office to inquire if there had

been any loss in the Treasurer's office and since I have been in the Senate Chamber, I received a copy of a letter which I will ask if the Secretary will please read.

The Secretary read the following communication:

State of Maine
"STATE DEPARTMENT OF AUDIT
Augusta

May 10, 1940
"MEMO FOR GOVERNOR
BARROWS

Regarding Lost Coupon of \$20

During the council meeting on May 8 you called me for further details to support proposed council order reading as follows:

"Ordered, that the sum of \$20.00 be transferred from the State Contingent Fund to take care of the following outstanding item in the State Treasury Department:

"Highway and Bridge Loan coupon lost under date of December 20, 1939 and which has not at this time been found."

"I was unable at that time to find any person in the Treasury passage of the order was suspended until the next meeting.

"I now find a girl in the Treasury Department, who states that last December or early in January the Treasury Department, following its usual practice, paid one of the local banks for the coupons which they had cashed; that on receipt of the coupons in the Treasurer's office they were checked for number, etc. and found O. K.; but that later when the warrant was made up to reimburse the Treasurer's cash for these coupons, they counted out one coupon \$20 short, and the reimbursing warrant and check therefor was \$20 less than what the Treasurer had paid the bank; that it was always considered this coupon had been lost there in the Treasurer's office, possibly while checking to the coupon book; that this shortage of \$20 was made up by this memorandum slip which was each day counted as cash; and that the council order in question was to clear the Treasurer's cash.

"No evidence of any kind, as far as I know, is available as to just what happened or even as to whether this coupon may have been lost or abstracted and already paid the second time, or, is still outstanding for later presentment. If the coupon has not now been paid the second time and is not in ex-

istence, the State is out no money and its cash and coupon appropriation account are both over stated by the sum of \$20; if the coupon has been cashed the second time, or it still is in existence so that it is liable to come in, the State is or will be out the \$20 irrespective of whether the loss was from carelessness or something else. There is no practical data at hand or obtainable to even indicate the number of the coupon, or check the above in any particular, as far as I know or can find out. My instinct would be to charge the \$20 warrant and check making good the Treasurer's cash direct to the appropriation account for this interest, rather than to the contingent fund, though I may be wrong in this; still another possibility, to hold the Treasurer or his force responsible for the \$20 lost.

"This entire matter brings to my mind the question of the handling, payment and cancellation of maturing bond coupons by the Treasurer's Department and the records thereof; and leads me to second very strongly Ernst & Ernst' recommendation in this regard, and to further suggest that much greater care in handling these and the records thereof be taken than has, as I understand, been true since Mr. Owen left the Treasury.

"This entire matter will be given much study by our Department in the future.

(Signed) William D. Hayes,
State Auditor."

Mr. SPEAR: Mr. President, I do not feel unfriendly to anyone, neither am I accusing anyone of wilful wrongdoing. The committee have brought in a divided report, and have not agreed, which is their privilege, and it seems to me a full and complete hearing has not been had, such as the public want. This little item referred to shows that something has been discovered that was not presented yesterday and there may be other things that have not been brought out. There are many other things I know of, but I do not want to take up the time now. There will be an opportunity later to speak of them, and I will move that when the vote is taken on the adoption of the minority report, it be taken by the yeas and nays.

The PRESIDENT: The question

before the Senate is on the motion of the Senator from Kennebec, Senator Marden, that the Minority Report of the Committee be accepted, that report being, "Resolve in Favor of the Adoption of an Address to the Governor and Council for the Removal of Belmont A. Smith, Treasurer of the State of Maine," and the Senator from Cumberland, Senator Spear, has moved that when the vote is taken it be taken by the Yeas and Nays.

Before ordering a Yea and Nay vote the assent of one-fifth of the members present is required. Those in favor of a Yea and Nay vote will rise and stand until counted.

More than one-fifth of the members present obviously having risen the Yeas and Nays are ordered.

The Secretary called the roll.

YEA: Beckett, Boothby, Boucher, Burns, Chamberlain, Chase of Piscataquis, Cony, Dorr, Dow, Elliot, Findlen, Friend, Harkins, Hill, Kennedy, Laughlin, Lewis, Littlefield, Marden, Owen, Sanborn, Spear, Thatcher, Tompkins, Wentworth, Worthen—26.

NAY: Chase of Washington. Graves, Morse—3.

Twenty-six having voted in the affirmative and three opposed, the Minority Report was accepted.

Thereupon the Resolve was given its first reading.

Mr. SANBORN of Cumberland: Mr. President, I notice in the reading of the Resolve that while the time for a hearing is fixed no place is designated and it occurs to me that it might be well before final passage of the Resolve that an amendment be made fixing the Hall of the House of Representatives, for instance, as the place; and in order that that matter may have some consideration I move that the Resolve be laid upon the table.

The motion prevailed and the Resolve was laid upon the table pending assignment for second reading.

First Reading of Printed Bills

(Out of order and under suspension of the rules.)

"Resolve in Favor of the City of Lewiston." (S. P. 726) (L. D. 1228)

"Resolve in Favor of Bates College." (S. P. 727) (L. D. 1229)

Which resolves were severally read once and under suspension of

the rules, read a second time and passed to be engrossed.

Sent down for concurrence.

Committee Report

Mr. Beckett from the Committee on Motor Vehicles on bill "An Act Amending the Law Relating to Guaranty to Titles of Motor Vehicles," (S. P. 719) (L. D. 1227) reported that the same ought not to pass as cared for by other legislation.

Mr. BECKETT of Washington: Mr. President and Members of the Senate, as the only member of this legislature credited by the Press as having spoken in favor of the "title law" at the regular session I feel that a few remarks on the repeal of this Act might not be out of order at this time. To make myself clear I will state that I have willingly gone along with the Committee on a unanimous repeal report because the mandate of the people of Maine is clear and so acknowledge by the inclusion of a repeal plank in the platform of both political parties.

The present law, as you know, was created for the primary purpose of protection to the individual car owner. It came about because the State of Maine was fast becoming a dumping ground for stolen cars, and because a quantity of "flood cars" were being unloaded in Maine just previous to the convening of the Eighty-ninth Legislature. Bills had been drawn at the instigation of law enforcing departments of the state and the Motor Vehicle Committee was confronted with a "title law" bill, a "cross-index file" bill, and a so called "dealers" bill all of which had more or less bearing on each other.

During study of the several bills members of the committee learned that thirty odd states had "title" laws and after looking over the laws of such states as Illinois, Michigan, Ohio, and Pennsylvania, a composite bill based mainly on the Ohio law was drawn up and presented to this legislature for consideration. The initial cost of setting up the machinery to carry out such a law was too much for the Motor Vehicle Department to bear so revenue was sought for that purpose. It was learned that the fee

for title in most states was \$2.00 or more, so half of that, or a fee of \$1.00 was set up in the Maine law. I might say here that the cost of setting up such a system as the Maine law calls for is about \$60,000 that the job requires the work of eleven clerks and the cost per year is about \$15,000. To be more or less exact the department cost up to May 1, 1940 has been about \$48,000 and a revenue of \$206,000 has been collected up to that same period. I will admit that it was more or less generally known that the bill would bring in more revenue than was needed to administer the law, and that that knowledge assisted in the passage of the bill without opposition, but I take issue with the person who states that the Maine law was designed as a revenue producing measure. It was truly designed as protection to the public. It was expected, however, by the committee that a simple system of application would be adopted and it is regrettable that the complex make up of the bill, together with outside factors, such as the necessity of including poll tax receipts, caused annoyance for the motoring public. Since the simplification of the application the quantity and force of opposition has died down materially in my opinion.

At the public hearing yesterday afternoon, spokesmen for different branches of the automobile industry in Maine, such as the automobile associations, finance companies, and used car dealers, expressed the opinion that a "title law" had much merit. Further, a suggestion was made that a committee be set up consisting of legislators and laymen to study title laws in general with the hope that an adequate bill could be introduced at a later date in the Maine Legislature. To these gentlemen I would like to say that personally I hope they will get together with the present Legislature Recess Committee on Motor Vehicle Legislation now set up and prepare a simplified bill with some of the known objections to the present bill eliminated. I have seen evidence of public sentiment slowly swinging toward endorsement of a simplified title law—possibly in the very near future the public will again speak and for a favorable demand a well prepared piece of legislation should be available.

I move the acceptance of the

report of the Committee "Ought Not to Pass."

The motion prevailed.
Sent down for concurrence.

Additional House Papers, out of order and under suspension of the rules:

Joint Orders

ORDERED, the Senate concurring, that the Joint Select Committee to Study State Departments forthwith summon the Honorable Fulton Redman, to present himself before said Committee, and impart to it, fully and completely, the information that he so blatantly boasts that he possesses concerning the Auburn Robbery and other Vital State Matters. (H. P. 2265)

Which was read and passed in concurrence.

ORDERED, the Senate concurring, that the Superintendent of Public Buildings be directed to make available and suitably equip the Legal Affairs Room, so-called, for the use of the Joint Select Committee appointed to study state departments. (H. P. 2264)

Which was read and passed in concurrence.

Passed to Be Engrossed

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

Sent down for concurrence.

On motion by Mr. Spear of Cumberland,

Recessed for one-half hour.

After Recess

The Senate was called to order by the President.

Orders of the Day

On motion by Mr. Sanborn of Cumberland, the Senate voted to take from the table Resolve in Favor of the Adoption of an Address to the Governor and Council for the Removal of Belmont A. Smith, Treasurer of the State of Maine (S. P. 734) tabled by that Senator earlier in today's session pending assignment for second reading.

Mr. SANBORN: Mr. President, as the result of a conference it has been found to be unnecessary to

make the amendment which I suggested earlier in the day since an order is being prepared, which will be seasonably introduced, covering that point and certain other indicated matters. I therefore move that the rules be suspended and the resolve given its second reading.

The motion prevailed and the resolve was given its second reading under suspension of the rules and passed to be engrossed.

Thereupon, on motion by Mr. Spear of Cumberland, the resolve was ordered transmitted to the House forthwith.

Mr. TOMPKINS of Aroostook: Mr. President, I would like the privilege of speaking briefly to the Senate, out of order and under suspension of the rules on a matter not before the Senate with regard to two items in the report of the auditors who have been examining into the financial condition of the State of Maine.

The PRESIDENT: The Senator from Aroostook, Senator Tompkins, asks unanimous consent to address the Senate on the matter of the audit. There being no objection, the Senator may proceed.

Mr. TOMPKINS: Mr. President and members of the Senate, if you have your audit with you, I call your attention to Pages 42 and 43. On Page 42, Appropriation Balance June 30, 1937 on Page 43 the third column from the last, counting from the right, Appropriation Balances June 30, 1939. Instead of 1939 it should be 1938. Under Disbursements, under Highway, which is the fifth department from the bottom of the list on the bottom of Page 42, you will find in the column marked Disbursements, the sum of \$1,786,067.72. Do you all find the item? On Page 43 it would be the second column, Page 43, reading from the left, marked Disbursements. It is the fifth item from the bottom of that column under Highway where it says Disbursements, \$1,786,067.72. That should be \$11,786,067.72. They are both typographical errors. The totals are correct.

I just wanted to call your attention to that fact so you would be cognizant of it in case anybody mentions it.

On motion by Mr. Spear of Cumberland

Recessed until two o'clock, Eastern Daylight Saving Time.

After Recess

The Senate was called to order by the President.

Mr. WORTHEN of Penobscot: Mr. President, out of order and under suspension of the rules I would like to make an announcement. It is with much regret that I wish to announce to the members of the Senate the death of a former member, Dr. William R. L. Hathaway of Milo. Now, Mr. President, I would like to present an order out of order, and move its passage.

The PRESIDENT: The Senate hears the message with deep regret. The Secretary will read the order:—

Order

ORDERED, that the Secretary of the Senate be directed to send a floral tribute to the home of a former member of this Body, Dr. William R. L. Hathaway whose untimely passing is deeply regretted by this Body.

The order received a passage.

Additional House Papers, out of order and under suspension of the rules:

House Committee Reports

The Committee on Judiciary on bill "An Act Enlarging the Powers and Duties of the State Auditor," (H. P. 2256) (L. D. 1218) reported that the same be referred to the 90th Legislature.

Which report was read and accepted in concurrence.

The same Committee on bill "An Act Amending the Farm Lands Loan Act," (H. P. 2255) (L. D. 1217) reported that the same ought to pass.

Which report was read and accepted, in concurrence, the bill read once, under suspension of the rules read a second time and passed to be engrossed in concurrence.

"Resolve Creating the Committee for the Organization of Maine Defense." (H. P. 2266)

Which was referred to the Committee on Military Affairs in concurrence.

Senate Committee Reports (Out of Order)

Report "A" of the Committee on Judiciary on Bill "An Act Amending the Unemployment Compensation Law Relating to Employer Liability and Coverage," (S. P. 717) (L. D. 1222) reported that the same ought to pass as amended by Committee Amendment "A."

(Signed)

Senators: Laughlin of Cumberland Hill of Cumberland

Representatives: Varney of Berwick
Bird of Rockland
Hinckley of South Portland
Grua of Livermore Falls
McGlaflin of Portland
Batchelder of Parsonsfield

Report "B" of the same Committee on the same subject matter reported the same in a new draft (S. P. 739) under the same title, and that it ought to pass.

(Signed)

Senators: Burns of Aroostook

Representative: Weatherbee of Lincoln

Miss LAUGHLIN of Cumberland: Mr. President, I move the acceptance of the majority report of the committee, Report A.

The PRESIDENT: The Senator from Cumberland, Senator Laughlin, moves acceptance of Report A of the Committee, "Ought to Pass As Amended by Committee Amendment A." Is this the pleasure of the Senate?

Mr. CHAMBERLAIN of Penobscot: Mr. President, I don't know as I quite understand that Senator Laughlin's motion was to accept the majority report. It was to accept merely Amendment A.

Miss LAUGHLIN: Report A. It is not a Majority and Minority Report for the reasons I explained. It is an A and B report. I move to accept Report A, which is, of course the majority report.

The PRESIDENT: The question before the Senate is on the acceptance of Report A. Is it the pleasure of the Senate that Report A, "Ought to Pass as Amended by Committee Amendment A" be accepted?

Report A was accepted and the bill was given its first reading.

Miss LAUGHLIN: Mr. President, I now move to amend the bill by striking out "Sub-division S" of Section 1 of the bill. I will explain about that. It relates to casual labor. I will say that the committee unanimously reported in favor of striking out this section. This was supposed to be presented as a Committee Report but afterwards two members of the committee wanted to sign a different report so this amendment comes in, and I might say it is supported by all the members who signed the majority report.

This bill is really, in effect, making the Maine law conform with the Federal law but two members, because it is in the minority report, want to present, I understand, a new draft, so the other report would be "Ought to Pass in a New Draft," but the bill as it is proposed and as we have adopted by Report A is partly to conform with the Federal Law, so that amendment is not an individual amendment but was one favored by those who signed Report A which we have just adopted.

The PRESIDENT: The Senator from Cumberland, Senator Laughlin moves the adoption of Committee Amendment A.

The Secretary read the amendment:

"Committee Amendment A to Senate Paper 717, Legislative Document 1222, An Act Amending the Unemployment Compensation Law Relating to Employer Liability and Coverage. That the bill be amended by striking out Subsection S in Section 12.

Miss LAUGHLIN: Mr. President, perhaps I should proceed further before striking that out. That is one thing that is different from the Federal law but the majority of the committee were in favor of striking it out. The fact is that under the present Federal law casual labor is someone employed for three days. They have to pay into the fund just the same. This amendment was in the original bill here and was to change that so they would not have to pay on casual labor. Personally I prefer to leave it in but the majority does not. That is the only change from completely complying with the provisions of the Federal law.

The PRESIDENT: The question before the Senate is on the adoption of Committee Amendment A. Is it the pleasure of the Senate that

Committee Amendment A be adopted?

Thereupon, Committee Amendment A was adopted.

Mr. CHAMBERLAIN: Mr. President, as I understand it, the Majority Report has been accepted.

The PRESIDENT: The Senator is correct; Report A.

Miss LAUGHLIN: Report A is the majority report signed by eight members.

Mr. CHAMBERLAIN: Mr. President, there are very few members of the legislature who really understand and can interpret the Unemployment Insurance Act. It is very complicated, hard to apply it and the only thing that we are certain of is that industry has to pay considerable money, oftentimes to the detriment of the industry that pays. Conforming with the federal act which has been changed, the pith of the bill is in Paragraph 1 of Section 1 which probably you all have read. There are parts in this legislative document 1222 that as far as making it conformative to the federal law are unnecessary and do not belong there on that account. Senator Burns, as I understand, who presented the minority report is not present and it seems to me it would be a great deal better to lay the whole matter on the table for a short time, and I so move.

Thereupon, the bill was laid upon the table pending assignment for second reading.

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

Bill "An Act to Incorporate the Town of Bridgewater School District." (H. P. 2267)

Which was received by unanimous consent and referred to the Committee on Legal Affairs in concurrence.

Mr. SANBORN of Cumberland: Mr. President, may I inquire through the Chair whether the Resolve in favor of an address to the Governor in the matter of the State Treasurer is in the possession of the Senate?

The PRESIDENT: The Chair would inform the Senator that the Resolve is in the possession of the Senate.

Mr. SANBORN: Mr. President, by way of explaining certain motions that I propose to offer I beg leave to say to the Senate that this Re-

solve, this measure, inadvertently took the form of a Resolve. Now, if we stop to think we all know that a Resolve requires reading in the House and passage to be engrossed in each body and its submission to the Governor for his approval and yet if we stop to think the subject matter of this measure does not require the approval of the Governor. It is a matter which contemplates an address to the Governor. In other words it should have taken the form of a Joint Resolution which merely requires adoption by the two branches. Therefore the measure has been redrafted in the form of a resolution which I have in my hand and I will say that it has been carefully compared and is phrased word for word with the resolve which passed this morning, and I will move, Mr. President, that we now reconsider the vote whereby the resolve was ordered sent to the House.

The motion to reconsider prevailed; and on further motion by the same Senator the Senate voted to reconsider its action taken earlier in today's session whereby the Resolve was passed to be engrossed.

Mr. SANBORN: Mr. President, I now move that the resolve be indefinitely postponed, and as I said, this is only for the purpose of clearing the way for introducing the Joint Resolution to the same effect.

The motion to indefinitely postpone prevailed.

Thereupon, Mr. Sanborn of Cumberland presented a Joint Resolution and moved its adoption: "Joint Resolution in Favor of Adoption of an Address to the Governor and Council for the Removal of Belmont A. Smith."

The Resolution was adopted; and on further motion by the same Senator was ordered transmitted forthwith to the House.

Mr. SANBORN: Mr. President, I now beg leave to offer an Order and I would say by way of explanation that the Order provides rules of procedure at the time of the hearing in the Joint Convention, in case such is held, and I would also say that it has been made to conform as nearly as circumstances will admit to the rules of order which were adopted in the case of an address to the Governor in 1913. That, as many of you know, was reviewed by the Courts and the procedure was upheld.

The PRESIDENT: The Senator from Cumberland, Senator Sanborn, presents an order and moves its passage.

The Secretary read the order:

ORDERED, the House concurring, that the following rules of procedure be observed at the hearing proposed by a Joint Resolution of the two branches of the Legislature upon the alleged causes of removal in the case of Belmont A. Smith, Treasurer of State:

First: For the purpose of granting a joint hearing agreeable to a vote of the two branches of the Legislature, they will meet in Joint Convention in the Hall of the House of Representatives on Tuesday, the fourth day of June, A. D., 1940 at nine o'clock in the forenoon, E. S. T.

Second: The President of the Senate shall preside in Convention and in his absence or with his consent, the Speaker of the House may preside. Both, when present, shall hear and determine the questions of admissibility of testimony and other questions of law that may arise, and their judgment given by the one presiding, or by the other, at his request, shall be final and not subject to appeal.

Third: The presentation of the testimony in support of the charges shall be made by such counsel as may be designated by the Joint Standing Committee on Judiciary, and the Treasurer may be heard by himself and by counsel and witnesses.

Fourth: The Secretary of the Senate shall issue due subpoenas for the summoning of such witnesses as may be requested either by counsel for the proponents or for the Treasurer, and the same rules of evidence shall govern as in the trial of civil actions in the Superior Court. All depositions shall be taken forthwith, but no depositions shall be admitted unless it is shown that both parties had opportunity to be present and participate in its taking and that the deponent is unable to be present at the hearing. The presiding officers shall decide all questions of the admissibility of evidence, procedure, practice and pleading, and from decisions given, in the manner provided in Rule Second, there shall be no appeal.

Fifth: No debate whatever shall be admitted in the Convention.

Sixth: No motion shall be admitted or entertained except to take a recess to a time certain or to dissolve the convention when such motion shall be decided without debate.

Seventh: No person shall be admitted to the floor of the House except members of the convention, counsel, witnesses, reporters of the press and the officers of both branches, except by order of the President of the Senate or Speaker of the House.

Eighth: Upon the convening of each session of the convention, the roll of both branches of the legislature shall be called, and no member of the convention shall leave the Hall during a session without permission from the presiding officer.

Ninth: BE IT FURTHERED ORDERED, that a copy of this order be attested by the President of the Senate, and be served on Belmont A. Smith, by such person as the President of the Senate shall appoint for that purpose who shall make such service upon his personal affidavit without delay.

Thereupon, the Order received passage; and on further motion by the same Senator was ordered transmitted to the House forthwith.

Mr. SPEAR of Cumberland: Mr. President, earlier in the session I tabled a document from Ernst and Ernst. Is that in the possession of the Senate?

The PRESIDENT: The Chair would inform the Senator that the document is in the possession of the Senate.

Mr. SPEAR: Mr. President, I move that it be taken from the table.

The PRESIDENT: The Senator from Cumberland, Senator Spear, moves that this document with accompanying papers be taken from the table. Is this the pleasure of the Senate?

The motion to take from the table prevailed.

Mr. SPEAR: Mr. President, I now move that this be sent to the House forthwith in order that they may have it with the other documents for their consideration.

The motion prevailed.

On motion by Mr. Spear of Cumberland

Recessed to the sound of the gavel.

After Recess

The Senate was called to order by the President.

Order

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

ORDERED, the House concurring, that when the Senate and House adjourn, they adjourn to meet on Tuesday, June 4, 1940 at 8:30 A. M. Eastern Standard Time. (S. P. 742)

Sent down for concurrence.

Subsequently the foregoing order was returned from the House, having been read and passed in concurrence.

Order

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

ORDERED, the House concurring, that the Superintendent of Public Buildings be directed to make available and suitably equip Room 102 of the State House, for the use of the Senate Reporter and his staff during the present special session, beginning with Tuesday, June 4, 1940, (S. F. 743)

Sent down for concurrence.

Paper from the House referred in concurrence.

From the House:

The Committee on Motor Vehicles on bill An Act Repealing the Law Requiring Guaranty of Titles of Motor Vehicles," (H. P. 2257) (L. D. 1219) reported that the same ought to pass.

Comes from the House, report read and accepted, and the bill passed to be engrossed as amended by House Amendment "A".

In the Senate House Amendment A was read and adopted in concurrence.

Mr. TOMPKINS of Aroostook: Mr. President, I offer Senate Amendment A and move its adoption.

The Secretary read Senate Amendment A:—

"Senate Amendment A to Legislative Document 1219, bill An Act Repealing the Law Requiring Guaranty of Titles of Motor Vehicles. Amend said bill by striking out from Section 3, the following sentence: 'The Secretary of State shall maintain a file of said applications arranged alphabetically according to the name of the applicant and in addition thereto shall maintain a file arranged under the name of

each make of motor vehicle with the manufacturers' engine and serial numbers.'"

Mr. TOMPKINS: Mr. President, that completes the entire repeal of this bill. I move its passage.

Mr. BECKETT of Washington: Mr. President, I spoke one day on the Motor Vehicle Law. I hate to take the time of the Senate again but I seriously think it would be a big mistake on the part of the Senate to adopt the amendment as proposed by Senator Tompkins. That same amendment was proposed in the House this morning, I believe, and we have no amendment coming along from that body.

As far as the cross index file system retained in the repeal of the law is concerned I would like to state here that if the file is eliminated for both alphabetical control and motor and serial numbers control of registration, we will have absolutely nothing in the Secretary of State's office. We will be throwing away sixty thousand dollars worth of money put into the building of this system. I agree with the repeal of the Title law but I think we should be sensible about it and retain what is available for money expended. You probably have not taken the trouble to investigate the file system that has been set up for the handling of this law, but if you have you will find that down there a card has been injected into the file for every motor vehicle registered in the State alphabetically and by motor and serial numbers. You probably don't know that we receive the reports of stolen cars from 42 states in the Union and that from those reports of stolen cars the Department in its cross index file lists each stolen car by make and motor vehicle number and they place that card in the file alphabetically as far as the make of the cars is concerned and numerically as far as the motor and serial numbers are concerned. These lists of stolen cars are in the files. If that particular car shows up in the Maine Registrations it is immediately spotted by the clerk filing away the applications, and by the retaining of that cross index file we have afforded some protection to the car owner who possibly might receive a stolen car.

The cost, as I say, of maintaining the entire file including the cross index file in the Title Law is in the neighborhood of fifteen thousand dollars a year. As I understand it

the force has been maintained by approximately twenty. Now the permanent force is about ten. Twenty have been employed because the Department has been terribly behind and they have just now reached a point where all of the titles have been listed and these reports from of State are becoming of value to us here.

With the elimination of the title law we can eliminate all of the extra help with the exception of possibly four or five clerks. In other words for an annual expenditure of approximately five thousand dollars we can retain the value of the cross index file and afford some little protection to the car owners in the State and salvage to a certain extent the initial outlay of some fifty or sixty thousand dollars.

I feel strongly that it would be a serious mistake on the part of the Senate to adopt the amendment which would do away entirely with the cross index file and I feel that the temper of the people as expressed by the hearing held yesterday would indicate that they—and by “they” I mean not only car owners but those interested in the automotive industry such as dealers, finance companies, automobile associations—I feel that they would think we were acting unwisely if we threw this thing out the window in hasty consideration and I for one sincerely hope that the amendment proposed by the Senator from Aroostook (Senator Tompkins) will not be adopted.

Mr. ELLIOT of Knox: Mr. President, during the noon recess today I went down to the State Police office and there had a conversation with the Chief of the State Police in an attempt to find out just how much this cross reference file meant to their department, and they informed me there that the recovery of thirty cars since last July can be directly attributed to the cross reference file which is in operation in the Secretary of State's Department at this time.

Now I want to call the attention of the Senate to the fact that the retaining of the cross reference file would not inconvenience applicants for registration to any extent whatsoever, to say nothing of the fact that the adoption of the amendment proposed would be practically a mandate to the Secretary of State that the Legislature of Maine does

not desire that he retain in his office the cross reference file.

I am sorry that the cross reference was included in the original title bill, because I do not believe it should have been. I personally am in favor of the indefinite postponement of the amendment as proposed.

The PRESIDENT: The question before the Senate is on the motion of the Senator from Knox, Senator Elliot, for the indefinite postponement of Senate Amendment A.

Mr. TOMPKINS: Mr. President, when the vote is taken, I ask for a division.

The PRESIDENT: And the Senator from Aroostook, Senator Tompkins, asks for a division.

A division of the Senate was had. Fourteen having voted in the affirmative and ten opposed, Senate Amendment “A” was indefinitely postponed.

Thereupon, under suspension of the rules the bill was given its second reading and passed to be engrossed as amended by House Amendment A in concurrence.

Orders of the Day

On motion by Mr. Spear of Cumberland, the Senate voted to take from the table Memorandum from the State Budget Officer in reference to the Federal Aid Highway Program, tabled by that Senator yesterday pending consideration.

Mr. SPEAR: Mr. President, I now yield to the Senator from Somerset, Senator Friend.

Mr. FRIEND of Somerset: Mr. President, as this communication has much material in it of great importance to highways I would ask, and I move, that the communication again be read.

The Secretary read the communication.

Thereupon, on further motion by the same Senator the accompanying Memorandum was read.

Mr. FRIEND: Mr. President, this information boils down to the fact that there is for the fiscal year 1940 approximately one million, three hundred and twenty-five thousand dollars available from the federal department which has to be met dollar for dollar by the State for State Highway construction. Now the funds available for that purpose on the part of the state to match federal funds are lacking to the extent of four hundred thousand dol-

lars to take advantage of the full one million, three hundred and twenty-five thousand from the Federal government available. Now the only way that the state can take advantage of the full amount available is by providing this four hundred thousand dollars and the only way that can be provided is by re-issuing four hundred thousand dollars worth of these re-issuable bonds that were issued prior to 1925 and have since matured, there being about two million, seven hundred and fifty thousand dollars of such bonds. It being necessary to have only four hundred thousand dollars of these bonds in the fiscal year 1940 to take full advantage of Federal money, if the legislature does not see fit, and it only requires legislative action to re-issue this four hundred thousand dollars of bonds unlike the last bond issue a constitutional amendment requiring a majority vote of the people, in case the legislature did not feel favorable toward the reissue of four hundred thousand dollars in this special session, this extra federal money which would not be matched at the special session did we not produce the four hundred thousand, would still be available for the next regular session to match. So we would not lose it but if we matched it at this special session we would be getting four hundred thousand dollars from the Federal Government besides the four hundred thousand of re-issuable bonds which would make a Highway program this coming summer until fall of eight hundred thousand dollars larger, an eight hundred thousand dollar increase over what it would be for state highway construction in the state of Maine.

Personally, I think it would be good business for the State to re-issue these bonds, four hundred thousand dollars. As the law is now but one million of bonds can be issued a year. The state is limited in that. Because of that we are not able to take full advantage of the Federal money available. If we re-issue this four hundred thousand it will make an amount of one million, four hundred thousand that we will be issuing in bonds for the fiscal year 1940. During that same fiscal year whether we issue any bonds or not one million, seven hundred and seventy-five thousand dollars of old highway bonds will become mature and will be retired,

so if we go into this increased highway program we still will be reducing the state indebtedness as far as highways are concerned by three hundred and fifty thousand dollars plus over eight hundred thousand dollars in interest.

I understand that this communication is also directed to the House. I also understand that the communication has not come before the House as yet. If I am correct in this I wish that it might come before the House this afternoon so that if sentiment should crystallize over the weekend before we meet next week that a bill can be introduced into this legislature calling for the re-issuance of four hundred thousand dollars so that we can take full advantage in the 1940 fiscal year of what federal aid money for state highway construction is available.

The PRESIDENT: Does the Senator make a motion?

Mr. FRIEND: I think the only motion, Mr. President, would be to place the communication on file. I don't know whether that is necessary at this time where the communication also is directed to the House.

The PRESIDENT: A motion to transmit it to the House forthwith would be in order.

Mr. FRIEND: I move then, Mr. President, that the communication be sent forthwith to the House.

The motion prevailed.

Additional House Papers, out of order and under suspension of the rules:

Communication from the Governor transmitting original copy of Complete Report of Ernst & Ernst for the fiscal years ending June 30, 1938, and June 30, 1939. (S. P. 711)

(In Senate on May 29, ordered sent to the House.)

Comes from the House, referred to Joint Select Committee for the Study of State Departments.

In the Senate referred to the Joint Select Committee for the Study of State Departments in concurrence.

Communication from the Governor transmitting report covering further observations of Ernst and Ernst. (S. P. 712)

(In Senate on May 29, ordered sent to the House.)

Comes from the House, referred

to Joint Select Committee for the Study of State Departments.

In the Senate, referred to the Joint Select Committee for the Study of State Departments in concurrence.

On motion by Mr. Spear of Cumberland,

Adjourned until Tuesday, June 4, at 8:30 o'clock, Eastern Standard Time, in accordance with the joint adjournment order.