

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

Ninety-Fourth Legislature

OF THE

STATE OF MAINE

1949

DAILY KENNEBEC JOURNAL
AUGUSTA, MAINE

SENATE

Tuesday, March 29, 1949

The Senate was called to order by the President.

Prayer by the Reverend Wesley U. Riedel of Augusta.

Journal of yesterday read and approved.

House Committee Reports

The Committee on Public Utilities on Bill "An Act Relating to Street Openings by Public Utility Corporations," (H. P. 1529) (L. D. 860) reported the same in a new draft (H. P. 1977) (L. D. 1393) under the same title, and that it ought to pass.

Comes from the House, the new draft passed to be engrossed, as amended by House Amendment "A".

In the Senate the report was read and accepted in concurrence and the bill was given its first reading; House Amendment A was read and adopted in concurrence, and the bill as so amended was tomorrow assigned for second reading.

The Committee on Education on Bill "An Act Relating to Teaching of Importance of Voting in Public Schools," (H. P. 1870) (L. D. 1210) reported that the same ought to pass.

The same Committee on "Resolve to Create an Educational Surplus Property Pool," (H. P. 1953) (L. D. 1326) reported that the same ought to pass.

The Committee on Judiciary on Bill "An Act Relating to the Bangor Theological Seminary," (H. P. 1637) (L. D. 990) reported that the same ought to pass.

The Committee on Legal Affairs on Bill "An Act Authorizing Cities and Towns to Appropriate Moneys for Volunteer Fire Departments," (H. P. 1842) (L. D. 1201) reported that the same ought to pass.

The Committee on Salaries and Fees on Bill "An Act Relating to the Salary of the County Treasurer of Hancock County," (H. P. 1530) (L. D. 861) reported that the same ought to pass.

The same Committee on Bill "An Act Relating to the Salary of the Recorder of the Augusta Municipal Court," (H. P. 1195) (L. D. 620) reported that the same ought to pass.

The same Committee on Bill "An Act Relating to the Salaries of the Judge of Probate and the Register of Probate in Piscataquis County," (H. P. 943) (L. D. 384) reported that the same ought to pass.

The Committee on Temperance on Bill "An Act Relating to Application for Liquor Licenses," (H. P. 1744) (L. D. 1036) reported that the same ought to pass.

The same Committee on Bill "An Act Relating to the Publication of Notices of Application for Liquor Licenses," (H. P. 1747) (L. D. 1039) reported that the same ought to pass.

The same Committee on Bill "An Act Relating to the Revocation of Liquor Licenses," (H. P. 1750) (L. D. 1042) reported that the same ought to pass.

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

The Committee on Judiciary on Bill "An Act Relative to Careless Shooting of Human Beings," (H. P. 1476) (L. D. 887) reported the same in a new draft (H. P. 2014) (L. D. 1396) under the same title, and that it ought to pass.

Which report was severally read and accepted in concurrence, the bill in new draft read once and tomorrow assigned for second reading.

The Committee on Appropriations and Financial Affairs on Bill "An Act Appropriating Moneys for Anticipated Overdrafts in the State Park Commission Due to Insufficient Appropriations," (H. P. 1931) (L. D. 1307) reported that the same ought to pass as amended by Committee Amendment "A."

The same Committee on Bill "An Act Appropriating Moneys for Anticipated Overdrafts in the Department of the Adjutant General

Due to Insufficient Appropriations," (H. P. 1947) (L. D. 1320) reported that the same ought to pass as amended by Committee Amendment "A."

(Which report was read and accepted in concurrence and the bill was read once; on motion by Mr. Slocum of Cumberland, the bill was laid upon the table pending adoption of Committee Amendment A.)

The Committee on Judiciary on Bill "An Act to Establish the Brewer Municipal Court," (H. P. 1636) (L. D. 989) reported that the same ought to pass as amended by Committee Amendment "A."

The Committee on Legal Affairs on Bill "An Act Relating to Annuities for Dependents of Members of Police and Fire Departments of the City of Portland," (H. P. 1698) (L. D. 1021) reported that the same ought to pass as amended by Committee Amendment "A."

The Committee on Salaries and Fees on Bill "An Act to Increase the Salary of the County Treasurer of Penobscot County," (H. P. 310) (L. D. 90) reported that the same ought to pass as amended by Committee Amendment "A" enclosed herewith.

The same Committee on Bill "An Act Relating to Salary of Clerk of Courts in Kennebec County," (H. P. 314) (L. D. 94) reported that the same ought to pass as amended by Committee Amendment "A" enclosed herewith.

The same Committee on Bill "An Act Relating to Salaries and Clerk Hire for Certain Public Offices in Piscataquis County," (H. P. 497) (L. D. 166) reported that the same ought to pass as amended by Committee Amendment "A" enclosed herewith.

The same Committee on Bill "An Act Relating to Salary of Register of Deeds and Clerks in the Office of Register of Deeds, Northern Registry, Aroostook County," (H. P. 952) (L. D. 383) reported that the same ought to pass as amended by Committee Amendment "A" enclosed herewith.

The same Committee on Bill "An Act Relating to Salaries of Judge

and Recorder of the Town of Lincoln Municipal Court," (H. P. 498) (L. D. 167) reported that the same ought to pass as amended by Committee Amendment "A" enclosed herewith.

The Committee on Temperance on Bill "An Act Regulating Sale of Malt and Malt Syrup," (H. P. 1749) (L. D. 1041) reported that the same ought to pass as amended by Committee Amendment "A".

The Committee on Welfare on Bill "An Act Relating to Old Age Assistance," (H. P. 865) (L. D. 332) reported that the same ought to pass as amended by Committee Amendment "A" submitted herewith.

Which reports were severally read and accepted in concurrence, and the bills read once; Committee Amendments "A" were severally read and adopted in concurrence, and the bills as so amended, were tomorrow assigned for second reading.

First Reading of a Printed Bill

Bill "An Act Relating to Employees of Counties, Cities and Towns Entitled to Membership in State Employees Retirement System." (S. P. 636) (L. D. 1399)

Which was read once, and tomorrow assigned for second reading.

Passed to be Engrossed

Bill "An Act Relating to Aid to the Blind." (H. P. 1550) (L. D. 868)

Bill "An Act Relating to Requisites for Old Age Assistance." (H. P. 1552) (L. D. 870)

Bill "An Act Relating to Traffic Control Signals." (H. P. 2011) (L. D. 1394)

Bill "An Act Relating to Procedure on Damages Caused by Location of Highways." (H. P. 2012) (L. D. 1395)

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

Bill "An Act Relating to Clerk Hire in Office of Clerk of Courts in Kennebec County." (H. P. 313) (L. D. 93)

Bill "An Act Relating to Salary of Register of Probate in Kennebec County." (H. P. 1075) (L. D. 481)

Bill "An Act Relating to the Salary of the Sheriff of Lincoln County." (H. P. 1196) (L. D. 590)

Bill "An Act Relating to Inspection of Motor Vehicles." (H. P. 1516) (L. D. 889)

Bill "An Act Relating to the Salary of the Register of Probate of York County." (H. P. 1531) (L. D. 862)

Bill "An Act Relating to the Houlton Municipal Court." (H. P. 1533) (L. D. 864)

Bill "An Act Relating to the Salary of the Recorder of the Waterville Municipal Court." (H. P. 1663) (L. D. 971)

"Resolve for the Laying of the County Taxes for the Years Nineteen Hundred Forty-nine and Nineteen Hundred Fifty." (H. P. 2007) (L. D. 1389)

Which were severally read a second time and passed to be engrossed, as amended, in concurrence.

Bill "An Act Concerning Harbor or River Improvements and Protection of Property Against Floods or Erosion." (S. P. 131) (L. D. 193)

"Resolve Authorizing the Sale of Feeding Station Property in the County of Aroostook." (S. P. 270) (L. D. 443)

"Resolve Regulating Fishing in Snake and Carpenter Ponds in the County of Piscataquis." (S. P. 295) (L. D. 489)

"Resolve Regulating Fishing in Donnell's Pond in the County of Hancock." (S. P. 298) (L. D. 492)

Bill "An Act Relating to Tuberculosis Control." (S. P. 313) (L. D. 506)

"Resolve Regulating Fishing in Pleasant and Mud Lakes in the County of Penobscot." (S. P. 347) (L. D. 573)

Bill "An Act Relating to Hunting of Raccoons." (S. P. 402) (L. D. 740)

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

Sent down for concurrence.

"Resolve Providing for Certain Construction at the Northern Maine Sanatorium." (S. P. 285) (L. D. 486)

Bill "An Act Relating to the Caribou Municipal Court." (S. P. 464) (L. D. 919)

Which were severally read a second time and passed to be engrossed, as amended.

Sent down for concurrence.

Orders of the Day

Mr. Ela of Somerset was granted unanimous consent to address the Senate.

Mr. ELA : Mr. President, I am about to take from the table the 18th tabled and unassigned matter. This is a divided report from the Judiciary Committee on An Act Relating to Certain Procedures in Inheritance Tax Law. The House chairman and I are alone on the minority "Ought Not to Pass" report. The majority "Ought to Pass" report is in a new draft.

If I should make the motion, which is customary, the bill which would be under discussion would be the first draft. If the Senator from Oxford, Senator Cobb, who is sponsor of the bill, should make the motion to accept the majority "Ought to Pass" report, the new draft would be under discussion. I think it proper that the new draft be the one under discussion and for that reason I intend to let Senator Cobb make the original motion and shall, of course, oppose it at the proper time. With that explanation I move we take from the table the 18th tabled and unassigned matter.

Thereupon, the Senate voted to take from the table, Senate Report from the Committee on Judiciary on Bill, An Act Relating to Certain Procedures in Inheritance Tax Law, (S. P. 273) (L. D. 446) Majority Report "Ought to Pass in New Draft" under same title (S. P. 625) (L. D. 1368) Minority Report "Ought Not to Pass," tabled by Mr. Ela of Somerset on March 16th pending consideration of either report.

Mr. COBB of Oxford: Mr. President, I move the Majority Report "Ought to Pass" be accepted.

Mr. ELA of Somerset: Mr. President, Bill, An Act Relating to Certain Procedures in Inheritance Tax Law is L. D. 1368. I think if the Senators will turn to L. D. 1368 it will help them follow the comment on the bill.

I had assumed the Senator from Oxford, Senator Cobb, would like to present his viewpoint on the bill first, but inasmuch as he has not seen fit to do so, I will try to explain the reason for this bill.

The law relating to inheritance tax procedure, in brief, is this: After the probate court has appointed an executor or administrator or representative of an estate, he or she is supposed, within a short period of time, to file with the tax commissioner of the State, an inventory of that estate. Then within 15 months of the date of death the representative of the estate should pay the tax or if it isn't possible to do that he or she should ask for an extension, and that is so stated in the law, and the tax commissioner invariably grants said extension. If the tax commissioner should not grant a proper extension of time that is a proper matter of appeal under the present law. If the representative of the estate neglects or refuses to file with the commissioner the information for which the commissioner should have asked, or at least does ask twice, then the commissioner shall determine the tax according to the greatest amount possible under the information which he has at hand. In other words, if the administrator does not file the list of deductions, the deductions are not allowable.

A certain attorney in a certain county who failed, after two notices, to file this information then had the tax determined by the tax assessor on the gross estate. The tax amounted to some \$500. He, 12 days later, filed a list of deductions, namely in the matter of charges against the estate by a housekeeper, as I understand it, which nearly ate up the gross estate. As you can see, this made a considerable difference in the tax, some \$400. The

sponsor of the bill for some reason — Senator Cobb introduced it — felt he had a just grievance, and he introduced this legislation. The fault was entirely on the representative of the estate who failed to do that which he should have done, and in brief, the remedy of his bill is changed by a new draft by the majority of the Judiciary Committee. In Section 28 of the bill it says, "At any time within 90 days from the date of such certification, the state tax assessor may, at the request, or with the consent of the persons by whom the tax as payable, alter such certification. When an alteration is made or refused, the state tax assessor shall notify the persons by whom the tax is payable, and an appeal as provided by section 30 may be taken within 90 days thereafter."

In brief, what it does is this: If the state tax assessor does not see fit to change the certification the penalty is not changed. It is merely postponed for 90 days. Then in Section 30, on the next page, comes the remedy. It crosses out these words, which have been law since 1933, as I understand it, and has worked well: "and if the court adjudges that the tax or any part thereof was wrongly determined, it shall order an abatement of such part thereof as was determined without authority of law."

This tax, which is a tax on estates, is in effect, an excise tax and any tax assessor must have certain definite rules of procedure to go by. They are laid down in the law, very explicit and very clear, and in the bill as now written there is a chance of appeal if the tax assessor has determined the tax not according to the statute. There is plenty of appeal there now. What the sponsor of the bill attempts to do is to take his remedy which he started over in section 28 and bring it over into section 30, the petition for abatement. In other words, that part which the assessor certified, as set forth in section 28 he may appeal and get it referred back to the probate court, which court then

will adjudge the rights of the parties de novo, all over again, afresh, not on the facts that the state tax assessor had, but on new facts which may be brought in. He shall render then an opinion, not based on the law but on such "premises as justice and equity require."

Now, the purpose was to review this determination which was arrived at without benefit of deductions over in section 28, but what the sponsor of the bill has done, he has opened up the whole law, wide open, not merely section 28 but the whole chapter. He can open up valuations, anything that has gone on previously in the law, and this, in my opinion, is thoroughly bad law. It will surely delay payment of the tax. It will encourage representatives of estates to sit idly by and let the 15 month period expire so that they may, with design, throw the determination back into the probate courts.

For good cause quite a number of years ago the legislature determined that one agency, the state tax assessor's office, should manage and control and determine these taxes. Now, I grant you that it may seem a little harsh to penalize some beneficiary for the omissions of the administrators, but even so the beneficiary has recourse to law if the administrator has been negligent in his duty.

So Mr. President, those are a few of the reasons why I hope that the motion of the Senator from Oxford, Senator Cobb, does not prevail.

Mr. BARNES of Aroostook: Mr. President and members of the Senate, I arise to defend the report of eight out of ten members of the Judiciary Committee. If this were a question of taking any tax that rightfully belonged to the State of Maine away from the State I would be one of the first to rise in support of my worthy colleague's stand on this matter. It often happens that legislation is proposed to us because of some instance that comes up that looks like an injustice. Of course, the matter of taxes, and particularly inheritance taxes—when you

deal with them you are dealing with confiscation, legal confiscation. It has seemed to those in charge here in Augusta in years past to be proper and I find no fault with inheritance taxes. It yields a large source of revenue to the State of Maine and one we certainly would not want to do away with.

This new bill as it comes out in new draft doesn't have any effect upon the final payment of taxes, plus interest, in the State of Maine. It is true in this particular case the tax, on its face, because of failure in making the proper return was something over \$500 and should have been only \$90. There is a resolve in this legislature to reimburse the estate for overpayment of this particular tax.

It seemed to the great majority of the members of the Judiciary Committee that in the future it might prevent such resolves coming before the legislature if the state tax assessor were permitted—if you look at the wording of the new draft it says the state tax assessor "may", not "shall", refigure the tax on the actual facts.

As I understand it, at the hearing the state tax assessor was not opposed to this piece of legislation and I conceive readily that had this new draft been law at the time this came up there would not be a resolve before this legislature because the facts would have been brought out and the tax assessed at roughly \$90 instead of over \$500. This bill gives permission to the state tax assessor to review the facts, in his good judgment, if there has been negligence on the part of the administrator. You have heard that lawyers fall into two classes, the well fed and fat and the lean and hungry. Whether they are well fed and fat or lean and hungry they are also human and every once in a while an administrator, a lawyer acting for the estate, may for reasons perfectly proper neglect to file within the time limit. I grant you the state tax assessor's office has always been liberal in granting extensions but in case there has been a lapse it seems to me a wise law

to permit the state tax assessor to refigure the tax and not enforce the beneficiary to go to the legislature and present a resolve.

The second part of the bill, Section 30, permits appeal if the administrator feels aggrieved by the determination of the state tax assessor. We will say, for instance, if the assessor grants a review of the matter which is unreasonable for some reason, this allows the administrator or executor a right of appeal to the courts to determine what the tax should have been. When my worthy colleague, Senator Ela, says it throws the door wide open I fail to follow him in his reasoning. It throws it only wide enough for the courts to review the facts upon which the tax was based and determine whether the tax assessor was right or the administrator was right.

It has been said that all property in a county passes through the probate court once in 13 years. You can throw lawyers out of the picture but think of the people in Maine who are affected by this transfer that takes place every so often.

When considering this bill you can say whether or not it is wise for the tax assessor to review this determination if the administrator of an estate has failed to file the necessary information within the time limit and he has had to assess the tax without the information which he should have—he has no choice under the law—you can say whether it is wise for this bill to be passed and he be given an opportunity to review the situation and assess the tax properly, or if the beneficiary should be doomed to pay the tax and then have to come to the legislature later and put in a resolve to get back the tax which doesn't rightfully belong to the State of Maine.

If this law is passed and measures are taken, in the final analysis the State of Maine will get exactly the tax due plus interest and the beneficiaries will not have to be penalized and will not have to come to the legislature later on

to make a claim. That is our position. It is not the most important bill before this legislative session by far but it seems to me this new draft is fair and just. It appealed to eight out of ten of the members of the committee as reasonable. I hope the motion of the Senator from Oxford, Senator Cobb, to accept the new draft, will prevail. I hope it will be accepted by you Senators here today.

Mr. COBB of Oxford: Mr. President and members of the Senate, one of the advantages of not being a lawyer is to have very able members of the Senate present a case as the case should be presented. I was interested in reading this detail that was sent to me by Judge Hastings when I asked for the detail on the case. I was interested to see one paragraph which I will read. The details of the case are all here and are available to any member of the Senate who wishes to see them.

“Our courts hold that in the absence of statute prohibiting them, Probate procedure should be on the grounds of the broadest equity, *Ela vs. Ela*, 84 Maine 429, cited and approved in 107 Maine 493, and 117 Maine 186. Under the statute as it now is our courts say they are prohibited from applying this rule. The result is that the decision of the State Tax Assessor is final, with no right of appeal from it to the courts at all.

“This gives an opportunity for bureaucracy at its worst, and with no redress through the courts.”

I would judge from reading that the opponent of this bill the worthy Senator from Somerset must have a family history in this case in which he is pretty well informed as to the details. As a matter of fact, as a novice I very kindly and generously gave him this whole material to work from so that he could prepare his case. I also gave it to one or two other Senators.

Mr. HASKELL of Penobscot: Mr. President, I am sure there is no member of the Senate who knows less of the merits and demerits of this bill than I know. I am also

quite sure that in our State Tax Assessor Ernest Johnson, we have a man who in no way attempts to lobby bills. That has been my experience in having him at a number of committee hearings and also executive sessions, so as soon as this debate started I asked one of the pages to take a note out to the telephone and ask Ernest Johnson what his recommendation was that my own vote on this bill should be. I had not intended to put that reply into the record but since it has been intimated that the State Tax Assessor gave some favor to the bill, then for what it is worth with respect to your own conclusions I will say that Mr. Johnson's note when it came back as to suggest that I vote with the minority report and against the motion now before the Senate.

Mr. SLOCUM of Cumberland: Mr. President I rise for a point of information. I have not before me my Revised Statutes but it would appear from the arguments of the Senator from Somerset and the Senator from Aroostook, that the penalty at present runs against the beneficiary of an estate rather than against a negligent executor. That does not seem equitable. It would seem that if an executor who has been appointed is negligent that the beneficiary should not be doomed to loss of benefits that are rightfully due. I wonder whether in the statutes there are penalties that may run against a negligent executor. Possibly if that were included by amendment it would prevent these cases from rising. Not having my Revised Statutes, I rise to ask whether any member of this honorable Body can inform me. I feel that a beneficiary should be given every opportunity to receive equitable treatment and if through no fault of the beneficiary they lose benefits that should accrue to them, something should be done, and from the arguments presented so far it would seem that this is an attempt to assist in the equitable distribution of an estate in regard to the interest of the beneficiary.

Mr. BARNES of Aroostook: Mr. President, there is no doubt in my mind that the beneficiary who has been damaged by the negligent acts of an executor will have a right of recovery against the executor for it.

Mr. NOYES of Hancock: Mr. President the residents of Hancock County probably pay the largest inheritance taxes of any county in the state. We are dealing now with an inheritance tax which yields from a million to two million dollars a year. Last year it was something over a million and three hundred thousand dollars. If I understand the present procedure on the part of the Tax Assessor, it is his intent to follow the law and collect these inheritance taxes when they are due.

This bill that we have before us is simply a delay in that collection. I don't know of any other tax that is so administered and like the Senator from Aroostook being unable to follow the Senator from Somerset in his reasoning, I am unable to follow the Senator from Aroostook. There is provision in the law today, and I am not a lawyer and as the Senator from Penobscot says, I don't know much about inheritance taxes but if the State Tax Assessor makes an assessment of an inheritance tax which is contrary to law or any part of which is contrary to law, the party who is unjustly penalized has the right of appeal, and this bill would give not only the right of appeal but it would give to the judges of probate in our several counties, each one, a right to adjust the inheritance tax anew. In other words, it seems to me you have a situation that instead of having the State Tax Assessor determine the tax according to law, you have 16 different judges determining it in 16 different manners which in their opinion is according to justice and equity. For those reasons I support the contention of the Senator from Somerset and hope that the motion to accept the majority report will fail.

Mr. WARD of Penobscot: Mr. President, personally I have had no

difficulty whatsoever with the State Tax Department with relation to these matters. The matter of appeal has been brought up here more than once and I think the Senators should have clearly in mind just how far this appeal does go. If you would assume a case where the appraised value of an estate is, say, \$30,000 and there is a widow and if the executor or administrator, who may or may not be that widow, fails to file the statement of debts within the prescribed length of time, then the law says it shall be the duty of the State Tax Assessor to assess the tax on \$30,000 less ten. The executor or administrator then appeals and the court finds that because the statement of debt has been delayed and was not filed on time that the State Tax Assessor has assessed the tax according to law and consequently there is nothing that can be done on appeal under our present law even though in that particular case, you assume there were legitimate bills against the estate that may have totaled twenty thousand dollars or more.

Mr. BARNES of Aroostook: Mr. President, I just rise for one word of explanation about this matter. When an estate is probated, within a certain length of time an inventory has to be filed and the estate has to be appraised. We will say the inventory totaled ten thousand dollars. After that, the administrator or executor has to pay three classes of bill against the estate. Funeral expenses and expenses of last illness, debts of the deceased—that is the second class—and third, the expenses of administration.

Now what happens in case there is neglect, and I repeat we are all human and if there is anyone in this Senate who has never made a mistake, I would like to have him stand up and be counted. If the executor fails to send in the second statement, that is, as to what he has paid for funeral expenses and expenses of administration plus debts of the deceased and plus cost of administration and failed to subtract those from the ten thousand

dollars, the State Tax Assessor assesses the tax on the whole ten thousand dollars. It wasn't the intent and purpose of the Inheritance Tax Law that an estate should be taxed in that manner. Those expenses should be taken out first. This bill simply permits the State Tax Assessor to adjust the tax if there has been some negligence or error.

There are two forms. First, a copy of the inventory is filed with the State Tax Assessor and then the statement of debt and liabilities that have been paid and he assesses the tax on the inventory unless the second statement has been filed, and if there has been neglect and it has not been filed then he assesses the tax on the gross estate. This permits him to refigure the tax and find out the real tax that is due and I am somewhat amazed at the information that was sent to my colleague from the State Tax Assessor. He did not oppose the bill at the hearing and has never breathed a word about it since. Now, my colleague, the Senator from Hancock says that it shall be determined by 16 different judges of 16 different counties. It used to be that they always determined it until a few years ago, when by statute we permitted the tax assessor to do it.

I don't mind government by bureaucracy particularly, but I think in each of these cases, for example the Judge of Probate in Hancock County who knows as much about the residents of that county as anyone would probably be better able to assess a tax than the head of a Bureau in Augusta.

As I said, this is not a particularly important measure but it does seem to me that the State Tax Assessor should be permitted—and the statute says "may" not "must", to refigure the tax if there has been negligence, and if he is arbitrary, it seems to me the right of appeal should lie with the probate court and the case adjudged on its merits.

Mr. NOYES of Hancock: Mr. President, the Senator from Aroos-

took brought up a point I neglected to mention. The judges of probate did handle this at one time and if my memory serves me correctly, it wasn't too many weeks ago that we had a hearing on a bill before the Taxation Committee in which we agreed that it was better business for the state to write off some twenty two thousand dollars due from inheritance taxes, due to the fact that they had gone so long it would cost more to collect them than the inheritance tax would return to the states, and it was my belief that that was a result of the old method of handling the matter under the judges of probate.

Mr. ELA of Somerset: Mr. President, my recollection of the position of the State Tax Assessor differs from Senator Barnes'. It was my recollection that when the State Tax Assessor appeared there, he did oppose the bill. Surely that is where we got all the information from which we got the divided report. Nobody else appeared against it as I recall.

As regards any particular interest in the bill, the decision in the case of Ela vs Ela was mentioned. I never heard of them. I never saw that many Elas together before. Anyway they are very scarce. I am very sure that if this deduction had been filed prior to the fifteen month period it would have been scrutinized very carefully by the State Tax Assessor's office. There is a great deal of doubt in my mind—perhaps this is not pertinent to the debate—but in my mind at least there is a good deal of doubt whether or not this would have been passed ever, by the State Tax Assessor. So it is not something which the state never would have received before in whole if it had been filed in time.

Other states have similar rigid tax laws. If you didn't have some dead line with some stiffness in it, these things would drag on and on and they do in states that don't have those deadlines. As the Senator from Hancock said, we just wrote off in this session some that have been dragging along for years, and if all the people who have to

administer these estates know they have to get these reports in, they will get them in. They have two notices, one shortly after they have been appointed stating in bold type "If the statement of deduction is not received and no reason is given for its absence, the inheritance tax will be determined on the basis of gross estate." And that same notice is sent again a short time before the fifteen month period elapses. There may be another remedy for this trouble but if there is, this is not the remedy. With this remedy you have not only taken care of the trouble which is here complained of but you have opened up, as I said before, the administration of the entire inheritance tax law under Section 30. You have thrown it back and anybody who want it back can put it right back into the sixteen counties under the sixteen judges of probate.

I certainly hope the motion will not prevail.

Mr. COBB of Oxford: Mr. President, I am exceedingly puzzled over this debate when out of a committee of ten, eight able men felt that this was wise legislation. Two able men found objection of some sort about the details. For instance, Mr. Johnson, the State Tax Assessor is a fine gentleman and I think we all know him and like him and there is no question in the mind of any member, I am sure, as to his integrity or his cooperativeness. He is bound by the present law to do exactly what the present law says. He has no leeway in the matter. Whatever he may like to do, he has no choice.

The State Tax Assessor in his written statement of facts filed before the Claims Committee submitted by him personally at a hearing on the claim for refund of tax filed by Myrtle Keafe, beneficiary in the Meserve estate, stated that there were some 40 cases similar to the Meserve inheritance tax where tax had been assessed by him under the existing statute on the gross estate.

Does this legislature wish to continue a law which permits of such action on the part of one of its

bureaus against the citizens of this state or the estates of non-residents owning property in this state subject to tax? It seems to me the whole debate is centering around whether it is a closed issue if for some reason a lawyer or person settling an estate makes either by carelessness or error or whatever the cause may be, there is no source under the present statute of appeal to the court.

Now it is true that in the case cited, Myrtle Keafe probably should sue the lawyer and by probably paying most of what she hopes to get back in a settlement of the tax to our friends the lawyers, she might get a little something back, but it seems to me to be only justice, as the case has been reviewed that the probate court should have the privilege of protecting its citizens.

The PRESIDENT: The question before the Senate is on the motion of the Senator from Oxford, Senator Cobb, that the Majority Report "Ought to Pass in New Draft" be accepted.

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

A division of the Senate was had.

Eight having voted in the affirmative and seventeen opposed, the motion to accept the Majority Report did not prevail.

Thereupon, on motion by Mr. Ela of Somerset, the Minority Report "Ought Not to Pass" was accepted. Sent down for concurrence.

On motion by Mr. Brewer of Aroostook, the Senate voted to take from the table Emergency Measure, Resolve Providing Funds to Augment Institutional Appropriations (S. P. 418) (L. D. 775) tabled by that Senator on March 18 pending final passage.

Mr. BREWER of Aroostook: Mr. President and members of the Senate, I tabled this bill on March 18 because it involved an appropriation and as I read the bill it did not seem to be very important so far as the time element went, at that time, but in the meantime I find that it is very important.

The original bill called for \$65,000 and was amended by the Appropriations Committee to \$50,000. Of this \$22,000 goes to the State Insane Hospital over here, and I find that Dr. Sleeper is not at the end of his resources. This \$22,000 is practically all for personal services. He has found a young doctor, a psychiatrist, and I think they are about as scarce as hen's teeth, and he does have to certify to the Personnel Board that he has the money to pay the man's salary, which he does not have at the present time. I also found out that when he appeared before the Appropriations Committee, he had 23 wards that at some time in the day were not covered by attendants. Now he has 30. Nobody has been let go but there have been 17 vacancies and he has made no effort to fill those vacancies. I feel that it is very important that he have this money to carry him out to the end of the year. Therefore I move for its final passage.

This measure being an emergency measure, a division of the Senate was had.

Twenty-five having voted in the affirmative and none opposed, the resolve received final passage.

On motion by Mr. Allen of Cumberland, the Senate voted to take from the table Bill, An Act Relating to Fees of Deputy Sheriffs (S. P. 121) (L. D. 142) tabled by that Senator on March 10th pending passage to be enacted; and on further motion by the same Senator, the Senate voted to reconsider its action whereby the bill was passed to be engrossed.

Mr. Allen presented Senate Amendment "A" and moved its adoption:

"Senate Amendment 'A' to S. P. 121, L. D. 142, Bill, An Act Relating to Fees of Deputy Sheriffs. Amend said bill by adding at the end of that part designated 'XXXVII' before the period thereof, the following underlined words: 'except that deputy sheriffs who are considered regularly employed and full time deputies shall receive \$7 a day for

services rendered under the provisions of this subsection'. Further amend said bill by adding at the end of that part designated 'XXXVIII' before the period thereof, the following underlined words: 'except that deputy sheriffs who are considered regularly employed and full time deputies shall receive \$7 a day for services rendered under the provisions of this subsection'."

Mr. ALLEN: Mr. President and members of the Senate, I note the absence of Senator Baker of Kennebec who put this bill in, which would raise the fees of deputy sheriffs from seven to eight dollars a day. Before the session this morning I discussed this amendment with him and he said that he had no objection to it.

The problem we face in Cumberland County, we have 14 deputies who are paid 365 days, and last year paid 366 days in the year. Senator Baker's idea, I understand,

in putting this bill in. I am heartily in agreement with his reasoning that deputy sheriffs who work only 20 or 30 days a year should get \$8.00 a day. We have a problem in Cumberland County. How many operate as we do, I do not know, but the problem of paying an extra dollar a day for all the deputies in Cumberland County is a real problem, and probably is in other counties. We discussed it in our delegation meeting and that is the reason I tabled the bill last week. I trust the Senate will see fit to adopt this amendment.

Senate Amendment "A" was adopted and the bill as so amended was passed to be engrossed, in non-concurrence.

Sent down for concurrence.

On motion by Mr. Goodwin of York

Adjourned until tomorrow morning at ten o'clock.