

MAINE STATE LEGISLATURE

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SEVENTY-NINTH LEGISLATURE

HOUSE

NO. 299

House of Representatives, Feb. 28, 1919.

Reported by Mr. Clifford from Committee on Claims and ordered printed under joint rules.

CLYDE R. CHAPMAN, Clerk.

Presented by Mr. Allen of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD ONE THOUSAND
NINE HUNDRED AND NINETEEN

RESOLVE, Appropriating Money for the Payment to Delano Mill Co. of Portland for Material Furnished in the Construction of Stevens Cottage, at Skowhegan, for the Reformatory for Women.

Resolved: That the sum of eleven hundred and twenty
2 dollars and ninety-seven cents be, and hereby is, appropriated
3 to pay Delano Mill Co. of Portland for material furnished
4 in the construction of Stevens Cottage at Skowhegan for
5 the Reformatory for Women.

STATEMENT OF FACTS

In 1916 and 1917, George H. Wilbur & Son of Bangor were under contract with the State of Maine to construct Stevens Cottage at Skowhegan for the Reformatory for Women.

By May 31, 1917, the Delano Mill Co. of Portland under a sub-contract with George H. Wilbur & Son had furnished material that went into the construction of Stevens Cottage amounting to \$2964, on which it received payment by June 1st, 1917, of \$1250, and allowed a freight bill of \$93.03. This left a balance due of \$1620.97, no part of which has ever been paid.

The chairman of the board of trustees of the Reformatory, Mr. Clyde Smith, was aware of the fact that Delano Mill Co. was furnishing the material, and on April 7th, 1917, when this company was endeavoring to secure itself in the payment for this material, and at a time when only part had been delivered, the chairman of the board wrote the Delano Mill Co. suggesting that it obtain an order from Wilbur & Son, and added that "as there is money due these people you would be taking no chances." Relying largely upon this assurance the material was shipped, and thereafter repeated efforts were made to get the money due, both through Wilbur & Son, and through the Reformatory trustees. On October 4th, 1917, Mr. Smith wrote Delano Mill Co.: "We are this day writing George H. Wilbur & Son regarding your account and you can be sure that money due them will be held if it is possible for us to do it until your account is settled."

On October 9th, 1917, Delano Mill Co. obtained from George H. Wilbur & Son, a note for \$500 and an order on the trustees of the Reformatory for Women authorizing the payment to it of \$1120.97. This was approved by Chairman Smith and forwarded to the State Auditor.

Before payment of the order the matter was referred to the Attorney General, because it had developed that the State had a claim against George H. Wilbur & Son for an alleged breach of contract in laying a floor for the State Insane Asylum at Augusta in 1914, an entirely different job.

While these matters were still unsettled, Wilbur & Son

went into bankruptcy, and Delano Mill Co. have received nothing for the \$1620.97 worth of material that went into the construction of this state building, although at the time the order was given and approved and received by the State Auditor, the State was indebted to George H. Wilbur & Son in the sum of \$2314.40, and had not this money been held up by the Attorney General, the \$1120.97 would have been paid to Delano Mill Co. long before the bankruptcy of Wilbur & Son. Had Stevens Cottage been erected for any individual, corporation, town or county in this state, the Delano Mill Co. could have protected itself by a mechanic's lien, and come in ahead of any possible claims against Wilbur & Son on some other job. In other words, had the state applied to itself the same rules of conduct that it by law applied to all others, the Delano Mill Co. would have been protected.

The Delano Mill Co. has furnished material that entered a state institution, relying upon assurances from the chairman of the board of trustees, an agent for the state, who in good faith believed that the company was taking no chances in furnishing such material and have received no payment for the same; and the failure to so receive payment was due not to any fault or neglect on the part of Delano Mill Co., but apparently to the failure of the management of another institution, to see that the work on another job was properly done before it authorized payment to the contractor for the superintendent of that job should have seen to it at that time that the floor was properly laid.

The Delano Mill Co. was justified in expecting that the money which was appropriated for the construction of Stevens Cottage would be applied for that purpose; and had that been done, the material furnished would have been paid for.

The State of Maine, having failed to protect this sub-contractor on a state job, should make good the loss to the extent of the above named order by this special appropriation.