

MAINE STATE LEGISLATURE

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Public Documents of Maine:

BEING THE

ANNUAL REPORTS

OF THE VARIOUS

PUBLIC OFFICERS AND INSTITUTIONS

FOR THE YEAR

1875.

VOLUME I.

AUGUSTA:

SPRAGUE, OWEN & NASH, PRINTERS TO THE STATE.

1875.

REPORT

OF THE

ATTORNEY GENERAL

OF THE

STATE OF MAINE.

1874.



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It is a well settled principle of law that the stockholders of corporations are to be taxed for the corporate property, in the form of a tax upon the *shares* holden by the individual members, *except* so much of the corporate property as is *specifically* required by statute to be taxed to the corporation; and, in such case, a proper deduction is to be made therefor, from the valuation of the shares.

The only direct and specific authority given to towns by our statute, to tax the property of such corporations—corporations other than manufacturing corporations—applies to real property only. Hence the value of all personal property owned by such corporations is left to be included as a subject of taxation in the value of the shares, and in that form only, is taxable.

The provisions of sec. 19, ch. 6, R. S., are intended to prevent any corporation from escaping taxation altogether, through failure on its part to comply with the requirements of sec. 21, ch. 46, R. S. As to Railroad Corporations, that object is attained by the act 1874, ch. 258, and said sec. 19 as to said corporations is thereby repealed.

It is my opinion, therefore, that the horses and cars of the said Railroad Company are not taxable by the municipal authorities of the city of Portland.

STATE OF MAINE.

ATTORNEY GENERAL'S OFFICE, }
Bangor, June 25, 1874. }

HON. NELSON DINGLEY, JR., *Governor of Maine* :

SIR:—I have the honor to reply to your communication of the 23d instant, requesting my opinion upon the following question :

“ Whether or not the Courts of this State have jurisdiction in the case of Charles Tilton Robbins of Deer Isle, who, on the 24th of May last, is alleged to have inflicted mortal injuries upon Solomon Camp, the mate of the British schooner “Annie B,” said mortal injuries having been inflicted on board of said schooner, when upon the high seas, and said Camp having died of the said injuries within this State ?”

From the question and the facts, as stated, it is clear that Great Britain has jurisdiction of the alleged offence, and as that Government claims jurisdiction and has demanded the extradition of

Robbins, our Government is bound by treaty stipulations to surrender him to that power, unless the offence is also cognizable by the courts, State or national, of this country.

Robbins is a citizen of the United States, and now in the custody of the United States authorities, and if the United States have jurisdiction of the offence with which he is charged, he will not be surrendered for trial to any other jurisdiction, foreign or otherwise.

By the Act of Congress of March 3, 1825, section 4, it is provided that if any person, upon the high seas, &c., "within the admiralty and maritime jurisdiction of the United States, shall commit the crime of murder, or shall wilfully and maliciously strike, stab, wound, poison or shoot at any other person, of which striking, stabbing, wounding, poisoning or shooting such person shall afterwards die upon the land," the offender shall, upon conviction, suffer death.

But the offence with which Robbins is charged was committed upon a *British* deck, and therefore not one "within the admiralty and maritime jurisdiction of the United States;" for it is the character of the vessel and not that of the offender that determines the question of jurisdiction under this statute. (*Imbert's Case*, 4 Washington C. C. 702). The United States, therefore, have no jurisdiction of the case.

Has this State jurisdiction?

If this State has jurisdiction, if the offence charged is justiceable in the courts of this State, the Executive may justly and properly demand that the accused be delivered up for trial in our own courts. He is a citizen of the State, and though charged with a great crime, the law presumes him to be innocent. Simple justice therefore, would seem to demand that he have his trial in his own country, where he can have his witnesses and a jury of his countrymen. Certainly is he entitled to the protection of his own government, to the extent of securing to him a fair trial in the courts of his own State, if those courts have jurisdiction.

Section 3, chapter 131 of the Revised Statutes reads as follows:

"If a mortal wound, or other violence or injury is inflicted, or poison administered, on the high seas, or without this State, whereby death ensues within this State, such offence may be tried in the county where the death ensues; and if such an act is done within and death ensues without this State, such offence may be tried in the county where the act was done, as if the death had there ensued."

This statute has been in force in this State since the Separation, and was derived from a Massachusetts Statute enacted in 1795, which reads as follows :

“ When any person hereafter shall be feloniously stricken, poisoned or injured, on the high seas and without the limits of this Commonwealth, and die of the same stroke, poisoning or injury in any county thereof, that then an indictment thereof, found by the Grand Jury of the county where the death shall happen, before the Justices of the Supreme Judicial Court there held, shall be good and effectual in law as if the stroke had been given or the poisoning or injury done in the same county where the party shall die.”

By another section of this act of 1795, it is provided that when the mortal injuries are inflicted in one county and death ensues in another, the offender may be tried in either county ; which section was the original of our Statute, section 2, chapter 131.

These two provisions proceed upon the same general principle, that when a man commits a criminal act of the nature described, in one county or country, he may be held liable for its *continuous* operation in another county or country. Upon the same principle it is held, at Common Law, that when goods are stolen in one jurisdiction and carried by the thief into another jurisdiction, he may be tried in either. The unlawful carrying of the goods being deemed a continuous unlawful taking.

The Statute in question has stood through all revisions, and though it has never received judicial construction by the Courts of this State, its intent and meaning cannot be doubtful. It was, obviously, the intention of the Legislature to bring to justice the murderers of those who die within the State, without regard to the place where the mortal injuries were inflicted ; in all cases, when they were inflicted without this State.

In a case arising under the provision, that when the mortal stroke was given in one county, the offender might be tried in the county where the death happens, Chief-Justice Parker, in giving the opinion of the full Court of Massachusetts (2 Pick. 588), says :

“ Murder is a complex term, denoting several facts of which the *death* of the party is one of the most essential. The mortal stroke, the administering the poison, does not constitute the crime unless the sufferer dies thereof, within a year and a day.”

This language applies with equal force to the question under consideration. There was no murder, at all, committed on board

the "Annie B," until the death of Camp, and then it was murder under *our* laws and within *our* jurisdiction; for the offender is deemed to have committed murder where the death ensued by a *continuance* of the mortal blows inflicted by him. It is my opinion, therefore, that the offence with which Robbins stands charged, falls within the intent and meaning of our statute; that it is cognizable by the courts of this State, and that in case the General Government shall not grant the request of Great Britain for his extradition, it will be the duty of the officers of the law to bring him to trial before the proper tribunal, in the country where the death ensued.

As to the second question submitted, it is my opinion that pending the settlement of the question of extradition, there is no authority by which this State can intervene to take Robbins out of the hands of the United States marshal who now has him in custody for the alleged offence.

The third question submitted, as to the duty of the prosecuting officers of this State in the premises, in case Robbins should not be extradited, is sufficiently answered in what has been said in connection with the first question.

STATE OF MAINE.

ATTORNEY GENERAL'S OFFICE, }
Bangor, July 13, 1874. }

Hon. S. C. HATCH, *Treasurer of State* :

DEAR SIR:—In the matter of the West Waterville tax case, referred to me for my opinion, I have the honor to submit my conclusions :

First, That the assessment of \$2,858.72, required by the act of February 12, 1874, is the Tax of 1873, "chargeable (to use the language of the act.) to the town of West Waterville by the act of February 26, 1873, entitled 'an act to incorporate the town of West Waterville;'" and that the same should be assessed upon the polls and estates of 1873.

Second, That the warrant of the Treasurer of April 7, 1874, is sufficient in law. The authority of the Treasurer to issue the warrant is conferred by said act of February 12. He cannot