

MAINE STATE LEGISLATURE

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BEING THE

ANNUAL REPORTS

OF THE VARIOUS

DEPARTMENTS AND INSTITUTIONS

For the Year 1902.

VOLUME I.

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STATE OF MAINE

REPORT

OF THE

ATTORNEY-GENERAL

FOR THE TWO YEARS ENDING

November 30, 1902.

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rates as may be agreed upon. This would give every appearance of a time deposit similar to deposits in a savings bank, not being subject to check in the ordinary course of business.

Section 11 provides that deposits may be withdrawn on demand, etc., provided, that whenever the trustees deem it for the interest of the bank, and shall so order, no money shall be withdrawn except after thirty days notice. This is virtually a savings bank provision, providing against any harmful results from a run on the bank, and taken in connection with the first provision under the words "Rules and Regulations," which provides that "this company will receive deposits in its interest department upon the following terms," would indicate to my mind that deposits so made would be almost identical with those made in the regular savings bank.

I do not understand from the provisions of these rules and regulations that such deposits would be subject to check in the ordinary course of business as deposits in national banks. Such being the case I have no doubt that this class of deposits would be subject to the tax provided in chapter 286, section 1 of the Public Laws of 1901 as time deposits.

Very respectfully,

GEO. M. SEIDERS,

Attorney-General.

SCHOOL LANDS—TITLE—THE OWNER OF THE PROCEEDS THEREOF.

The proceeds of school lands held by towns go to the school fund. When school lands become vested in a town by reason of incorporation, the title thereof is not divested but remains in the town although that portion of the towns in which said lands are located may be set off and erected into a plantation or other municipality, unless in the division of the town special provision is made to convey the title thereof to the plantation or new municipality.

PORTLAND, ME., August 24, 1901.

To His Excellency the Governor of the State of Maine, and the Members of His Executive Council:

Gentlemen:—I herewith have the honor to submit to you my opinion relating to the disbursement of the sum of forty dollars received by Hon. Charles E. Oak, ex-Land Agent, for certain timber sold by him from Perkins plantation, concerning which, in his judgment, some question has arisen as to the proper parties to whom said sum of money should be paid.

STATEMENT OF FACTS.

It appears that Mr. Oak, in his said capacity as Land Agent, made a sale of a small quantity of birch timber growing on school lands located in Perkins plantation, in the year 1893, to one C. F. Blanchard, for the sum of forty dollars; that having some doubt as to the rightful claimant of said sum of forty dollars, whether he should pay it to the State, to the town of Carthage, or to Perkins plantation, he has held the same to the present time.

It appears from the statement of said Oak that said reserved school lands were and are located in Perkins plantation; that these reserved lands come under that class of reserved lands in our own State known as school lands, and it appears, further, from the statement of said Oak, that said school lands originally belonged to the town of Carthage. For these last facts I take the statement of said Oak, since I find nothing in the early laws of the State setting out specifically that said lands were reserved to the town of Carthage. I presume that the records of the land agent's office show conclusively that these reserved lands were located in the original town of Carthage, and that after Perkins plantation was set off from the town of Carthage, said lands fell within the territory of Perkins plantation. My opinion is based upon these facts.

OPINION.

It appears by examination of the Special Laws of 1826 that the town of Carthage was incorporated in that year, although the act of incorporation makes no mention of the school lands; that afterwards, to wit, in the year 1849, Plantation No. 4 was

set off from the town of Carthage and is now known as Perkins plantation. It further appears from the statement of said Oak, that neither the town of Carthage nor Perkins plantation has waived its right to said sum of forty dollars in question.

Such being the case, the decision of this matter rests upon the determination of one point, to wit: the legal title of the reserved lands located in Perkins plantation. If the legal title rested in the old town of Carthage before said plantation was incorporated, then said sum of money should be paid over to the proper officer of the town of Carthage. If, however, the reserved lands from which the timber in question was cut, was, at the time of such cutting, the property of Perkins plantation, then said sum of money should be paid over to the proper officers of said Perkins plantation.

It appears by chapter 254 of the Special Laws of 1824, in the latter part of section 1, as follows:

“And in all cases where lands have been granted or reserved for the use of schools in any town within this State, the fee in which lands is not already otherwise vested, the same shall be and is hereby declared to be vested in the inhabitants of such town, for the use and support of schools therein forever.”

It appears, also, in the Special Laws of 1824, chapter 280, section 8, as follows:

“And there shall be reserved in every township suitable for settlement one thousand acres of land, to average in quality and situation with the other land in such township, to be appropriated to such public use, for the exclusive benefit of such town, as the Legislature may hereafter direct.”

In these two sections cited we find the foundation for the setting aside of reserved lands in various townships, and these sections were re-enacted from time to time in the Public Laws and Revised Statutes, and in fact our present statutes follow out the same idea.

It will be seen from the first citation made, and from the fact that this section was re-enacted afterward, that the title to the reserved lands absolutely vested in the town of Carthage; or in other words, the title vested when the town became incorporated. And in section 8 we find the authority for setting aside such reserved lands. These two sections were enacted just prior

to the incorporation of the town of Carthage and I have no doubt that they were in full force when the town was incorporated.

In the division of towns by the legislative act of our own State, which principle also comes down to us from the mother state of Massachusetts, it is the rule in such legislative divisions that if the town property is not divided, but remains unmentioned, then the title to all such property continues in the old or original town. On the other hand, the Legislature from the earliest times in Massachusetts and Maine, has usually made equitable division of the town property between the old corporation and the new. Such being the case, if the legislative act of division makes no division of the town property, then all of the town property remains the property of the old corporation as well as its obligations to pay its debts.

It appears, from an examination of the Special Laws of 1849, that when Perkins plantation was set off from the town of Carthage no division of the town property was made. The bare boundaries of the plantation were outlined and the further requirement made that the residents of said plantation should pay the taxes then assessed upon them, and nothing more. Hence it will be seen that there was no division of the town property of Carthage when Perkins plantation was set off.

In Connecticut it is declared to be a well settled question of law that when part of the inhabitants of a territory of an old town are erected into a new corporation, the old town retains all of the property, rights and privileges formerly belonging to it, and is subject to all of its former duties and liabilities. *Hartford Bridge vs. East Hartford*, 16 Conn. 149-171.

So in Massachusetts it has been held that if a new corporation is created out of the territory of an old corporation, or if part of its inhabitants or territory is annexed to another corporation, unless some provision is made in the act respecting the property and existing liabilities of the old corporation, the latter, to wit, the old corporation, shall be entitled to all the property and be solely answerable for all the liabilities.

Windham v. Portland, 4 Mass. 338.

Hampshire v. Franklin, 16 Mass. 86.

Harrison v. Bridgton, 16 Mass. 16.

Dillon on Municipal Corporations, Vol. 1, 128.

The same doctrine holds in this State, following that of Massachusetts.

North Yarmouth v. Skillins, 45 Me. 133-142.

It is conclusive, then, that the reserved lands located in Perkins plantation are the property of the town of Carthage and that in any sales of timber therefrom the proceeds thereof belong to the town of Carthage.

By provision of chapter 510 of the Special Laws of 1831, approved March 28, section 9, it is set out that "the Land Agent be and hereby is authorized and directed to take care of public lands which have been and shall hereafter be reserved for public use in the several townships in this State until the fee shall vest in the town or otherwise, according to the force and effect of the grant, and reserve the same from pillage and trespass."

It appears from this section, taken in connection with the former section 1 of chapter 254 cited, that when Carthage was erected into a town the fee to the reserved lands absolutely vested in the town of Carthage and thereafter the Land Agent had no authority whatever in relation to the sale of said lands or the timber thereon. Such being the case it would appear that said sum of forty dollars does not belong to the State and that the ex-Land Agent has no authority whatever for paying the same over to the State.

The sale has been made and the money received for this timber. Beyond question the ex-Land Agent should pay the same to the proper officers of the town of Carthage, who should receipt to him for the same as trustees of the school fund for the town of Carthage.

Respectfully submitted,

GEO. M. SEIDERS,

Attorney-General.