MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
http://legislature.maine.gov/lawlib

Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

STATE OF MAINE.

REPORT

OF THE

ATTORNEY-GENERAL

FOR THE TWO YEARS ENDING

NOVEMBER 30, 1904.

AUGUSTA
KENNEBEC JOURNAL PRINT
1905

SALE OF WILD LANDS FOR STATE AND COUNTY TAXES.

Want of sufficient description by the Assessors of lands so sold cannot be cured by the State Treasurer by enlarging or amending the description. Duties of State Treasurer, ministerial. Description of land sold must be sufficient to locate it and to distinguish it from all other lands in the State. Initial letters and abbreviations in the description, bad.

Hon. Oramandal Smith, Augusta, Maine:

Dear Sir:—The following questions submitted for my opinion have been fully decided by a continuous line of decisions in this State. I herewith make answer to your questions:—

First. Whether or not as State treasurer, you may, in giving deeds of lands sold for State taxes, enlarge or amend the description of the lands set out in the committal of such taxes to you, for the purpose of more fully and accurately identifying the premises intended to be described in such committal, and thereby make certain that which was before uncertain?

Second. Whether the description of the lands sought to be sold for taxes for the year 1901, as committed to you, was sufficiently certain and adequate to sustain title to them under the tax deeds given to the purchaser?

The duties of the State treasurer in the sale of lands for State taxes are wholly ministerial, and he is bound to adhere to the process and method provided by statute in such case. He cannot enlarge or diminish the process prescribed, neither can he cure a fatal error of the assessors in the description of the lands to be sold, by giving a more accurate and certain description, that will insure a better title than the purchaser would otherwise have acquired.

In Green v. Lunt, 58 Me., 533, the court says: "The collector must obtain his information from the assessment. He has no authority to add to or take from it; nor can the assessors, after the completion of the tax, add to the description so as to make that more certain which was before uncertain. The assessment must be complete in and of itself as much as a deed or contract. Parol proof may be resorted to for the purpose of applying the terms of the description to the face of the earth, but no further.

It connot supply any deficiency in the buts and bounds. These must be ascertained from what is written, and from that alone."

The sale of lands by the State treasurer for State taxes is the last step taken in the process provided to collect such taxes. In a sense, the description of the premises, the valuation, assessment, and collection of the taxes or the sale of such lands for taxes, in case they are not discharged as provided, is a continuous process.

Section 4, chapter 8, R. S. This section provides in general for the valuation of such lands by the board of State assessors.

Section 40, chapter 9. This section provides that the board of State assessors shall make lists of such lands with as many divisions as will secure equitable taxation, conforming as near as convenient to known divisions and separate ownership, and report the same to each successive Legislature.

Section 42. This section provides that when the Legislature assesses such tax, that the State treasurer shall, within a specified time, cause the lists of such assessments to be advertised, etc., etc.

Section 43. This section provides in general, that if such State and county taxes advertised, are not paid with interest within the time limited for redemption, the lands shall be wholly forfeited to the State, and vest therein free of any claims by any former owner.

Section 44. This section provides, that the State treasurer, in case the State taxes on such lands are not paid in due season, shall give notice of sale by publishing a list of the lands to be sold with the amount of unpaid taxes, interest and cost of each parcel.

It is readily seen, therefore, that while the treasurer proceeds under definite statute provisions, to perform his part, yet the assessors must perform their part according to statute provisions, otherwise the acts of the treasurer will be of no effect.

It is therefore apparent, that the State treasurer can neither enlarge, amend or detract from the description of the lands to be sold, from that given by the State assessors. That is, if the State treasurer should enlarge, amend or add to the description of the lands in his deed to the purchaser, it would not give the purchaser any additional rights.

Primarily, the description required to be made of the lands taxed, is to definitely and adequately locate the premises and to give the extent of them, so that the owner may know on what lands he is paying taxes, and enable him to protect himself against excessive valuation and over taxation, and on the other hand that the rights of the State may be protected.

Secondarily, an accurate description is required, so that the notice which is given by the State treasurer for the sale of such lands, by reason of the failure of the owner to discharge the taxes thereon, shall contain such a description of the premises as shall distinguish them from all others in the State, and such as will enable the owner to know that it is his property, that is being advertised for sale.

It is evident, then, that the State treasurer must follow the description given by the assessors, for there is no provision of statute whereby he may substitute a description of his own, or enlarge or amend the description given by the assessors.

If the description given by the assessors is not sufficiently definite to locate the exact premises assessed and taxed, then the acts of the State treasurer in the sale of such property are invalid, and in attempting to make sale under these circumstances, the State conveys no rights whatever to the purchaser.

Those charged with the power of divesting individuals of their property rights in pursuance to provisions of law must comply strictly with such provisions, and when such person making a deed of real estate under such conditions, recites authority for so doing, as he ought to do, and the recital proves materially untrue, the conveyance becomes ineffectual and void, unless he has other authority so to do. Smith v. Bodfish, 27 Me. 294; Tolman v. Hobbs et als., 68 Me. 316; Skowhegan Savings Bank v. Parsons et al., 86 Me. 514; Phillips v. Phillips, 40 Me. 161; Brown v. Veazie, 25 Me. 359.

"The State treasurer cannot exempt any portion of the township, except the reserved land, from its liability for the tax, unless owned by individuals, who had paid their proportions of the tax; and, regularly, it should appear, in order to authorize the sale of the residue, by the recitals in the deed, who had so paid previously to the sale, and the amount paid by each, and the quantity of land, on which each payment had been made. If, therefore, the tax intended to authorize the sale was the

amount named in the record, and that sum had been reduced after the advertisement, and before the sale, by payments made by various part owners of the township, it should have been so set forth in the deed or have been proved." Smith v. Bodfish, 27 Me. 295.

As to your second question, it is more difficult to make a full and definite answer, since to do so would require an examination of the books of the State assessors to learn definitely the description of every tract or parcel of land sold for taxes for the year 1901, and to pass on the tax deeds given therefor, which in the end would accomplish nothing. However, the court has in various cases passed on questions of description relating to the sale of wild lands for State taxes which are decisive in the premises.

The description of lands sold for taxes must be plain and accurate, so that the tax-payer may understand the premises taxed, and the purchaser at the sale may be able to find them from the description given.

Adams v. Larrabee, 46 Me. 516; Blackwell on Tax Titles, 2d Ed. 123.

In Adams v. Larrabee, the lands were described as follows: "S. W. ¼, Range 4, No. 6 North of the Bingham purchase;" also "¾ Range 4, No. 6 North of the Bingham purchase."

The court held that the description was insufficient, and says: "If the assessment had been made upon the whole township in solido, designating the number and range, it would have been good. In such case each owner could have computed the amount due from him." It seems impossible from this description for their owner to ascertain whether his part was in the one-fourth or in the three-fourths, and, therefore, he could not ascertain the amount of his tax.

Griffin v. Creppin, 60 Me. 270.

This is a case where in Hancock county a tract of land was sold for State taxes. The lands were described as follows: "No. 8 S. D. 4,197 acres," with the additional data required.

Here the court held that the description was too vague to pass any title; that "No. 8 S. D. gives no satisfactory information." The court says: "What does S. D. mean? The advertisement gives no indication of the meaning of the letters. That must be sought elsewhere. Certain number of acres are to be sold.

Are they to be sold in common or in severalty? The language does not describe any particular portion of the township. If the sale is to be of a specified number of acres, where are they situated; in the eastern or western, in the northern or southern part of the town, or in the center?"

The court further says: "A part of the description of the premises conveyed may be rejected on account of its falsity, if after its rejection, there is enough left to show clearly what the owner intended to convey. But in sales for non-payment of taxes, there is no intention of the owner to convey anything. In such cases, therefore, no question of intention can arise. The description must accurately describe the land assessed and the land sold."

The description of the lands sold in this case was held fatally defective.

Moulton v. Egery, 75 Me. 485.

In this case, where a State tax deed was introduced to establish the title of the plaintiff, the deed ran as follows: "The following described parcel of land so forfeited, situate in the county of Piscataquis, viz.: 11,607 acres, No. 8, Rg. 9, N. W. P. Elliottsville."

The court says: "It is admitted that the township, if it is sufficiently designated, contains more than 20,000 acres. It nowhere appears whether the 11,607 acres, the forfeiture of which is claimed, was held in common with other owners of the township or in severalty."

There was nothing in the description of the lands sold to locate the same in any part of the township whatsoever, or whether held in common or in severalty. Evidently, from an examination of the case, it was sought to be established by the plaintiff that the lands sold were those which were formerly owned by one R. D. Hill, and upon which he had formerly paid taxes, but that there was nothing in the description of the lands as assessed or sold by the State treasurer describing them as the lands which were formerly owned by R. D. Hill.

The court in this case held that the description of the land sold was " 'not sufficient to pass title to any particular parcel or interest in land or to enable the plaintiff to maintain his action.' "

It further appears that the court, from the expression, to wit: " 'It is admitted that the township, *if it is sufficiently desig-*

nated,'" had some question whether the description of the township was ample and sufficient, although this point is not particularly raised or debated.

Skowhegan Savings Bank v. Parsons et al., 86 Me. 514.

In this case, which was an action of trespass "'the defendants justified under two deeds of the locus from the State treasurer upon a sale for the non-payment of taxes to Oliver Moulton, one of the defendants.'"

The description in one of the deeds was: "9,098 acres in 2 R. 2 W. K. R. Highland." In the other deed: "12,093 acres in 2 R. 2 W. K. R."

Here the court says: "Where is this land? What do these figures and initials mean? There is nothing in the case to explain their meaning. Such description is insufficient to convey title."

The court further says that the land is described in the writ as "'a certain parcel of land situated in township numbered two in the second range west of Kennebec river, in Bingham's Kennebec purchase,'" with description by metes and bounds, "'containing about 5,000 acres. If the land described in the treasurer's deeds to Moulton were conceded to be in township 2, it by no means will be assumed, without evidence, that the plaintiff's 5,000 acres are included in the 9,098 acres in one deed, or in the 12,093 acres in the other deed.'"

It would seem that the court might have gone even further, and have inquired as to the locus of these two parcels of land. Whether they were held in common or in severalty. In what part of the township they were held, and what boundaries they had, if they were held in severalty?

There are other material points in the case, but those which I have mentioned particularly interest us.

The court held the description herein to be fatally defective as well might have been expected.

Section 40, chapter 9, R. S., hereinbefore referred to, carrys out the foregoing suggestions as to the description of the property.

It provides as follows: "The board of State assessors shall make lists thereof, with as many divisions as will secure equitable taxation, conforming as near as convenient to known divisions and separate ownership." * * *

Among the conclusions that may be drawn from the statutes and the foregoing cases cited, the following are pertinent to the second query.

1. The township should be accurately described in the assessment, in the notice of sale and in the tax deed. Letters are not sufficient for that purpose, except when the township is named by letter, and, perhaps, in the use of the letters "W. E. L. S.," meaning west from the east line of the State, but in this last instance where these words are vital to the description, it would seem to be better and safer to make use of the words which the letters are supposed to represent. The letters, if they mean anything at all, may be construed as West, East, Line, State, which, without the necessary prepositions, mean nothing. The prepositions must be read in to give any meaning to them. The intent cannot be considered, for nothing is left to intent in the case of the disposing of lands by tax sales.

2. When such a township is assessed alike per acre throughout, and is held in severalty or in common and undivided, it may be taxed in solido.

(A) In case such township is held in severalty, either by an individual, copartnership or corporation, the description in the assessment should set out that it is so held, and if the data can be had, it is advantageous to set out by whom held. However, the name of the owner is not vitally material to a valid assessment.

(B) In case such township is held in common and undivided, the description in the assessment should give not only the whole number of taxable acres in the township, and the fact that the premises are held in common and undivided, but, also, the fractional interest also of each owner therein, and accordingly the number of acres held by each owner. The advantage of so doing is obvious. The State treasurer can, by elimination, as the several owners pay their taxes, accurately discover the delinquent owner, and can set forth in his notice of sale, not only the number of acres to be sold and the fractional part of the township or of the whole block of land assessed, but he can also insert in his deed the name and fractional interest of such delinquent owner as well as the acreage.

3. The foregoing conclusions, A and B, may be applied to any portion or tract of a township, if such portion is taxed

equally per acre, and the township, and portion or tract thereof, are accurately described.

4. It also follows from the foregoing, that lands sold in severalty should be described by some metes and bounds, or by some name and location, which will enable the purchaser to locate the premises by the description given in the deed, which description must be taken from that given in the assessment.

Adams v. Larrabee, 46 Me. 516.

Recitals in tax deeds taken by themselves are not evidence of the facts, as is plainly shown by the foregoing discussion.

Phillips v. Sherman, 61 Me. 551; Libby v. Mayberry, 80 Me. 138.

The foregoing discussion and a reference to the cases cited, when applied to the tax sales for the year 1901, show conclusively that a large portion of such sales were absolutely void on the ground of inadequate and insufficient description of the premises assessed and sold.

October 3, 1904.

LIFE INSURANCE.

The contract of Wood, Harmon & Co. hereinafter referred to, is a contract of life insurance. The Home Life Insurance Co. hereinafter refered to, has no authority to insure the life of a contractee of Wood, Harmon &. Co., who is a resident of this State, except through their resident agents in the usual manner.

STATEMENT OF FACTS.

Wood, Harmon & Co., a copartnership, or corporation of New York, agree with parties in this State, called the assured, to sell them the preferred stock of the United Cities Realty Corporation of New York, on the conditions and obligations specified in their bond and contract, on the payment of monthly installments therefor, for the period of ten years, till the full face value of said preferred stock becomes paid. Then said stock is to be delivered to the assured, and in addition thereto a certain amount of cash to be adjusted at the time of payment. In case of the death of the assured within said period of ten years, the representatives, or beneficiaries of said assured are to receive said