

MAINE STATE LEGISLATURE

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STATE OF MAINE.

REPORT

OF THE

ATTORNEY - GENERAL

FOR THE TWO YEARS ENDING

NOVEMBER 30, 1904.

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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 referred 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

preferred stock and said cash values as hereinafter specified, although not fully paid. To protect themselves, Wood, Harmon & Co. agree to have the life of the contractee insured in the Home Life Insurance Co.

The following questions were submitted by Hon. S. W. Carr, Insurance Commissioner, to wit:—

1. Is the contract, which the fiscal agents of the corporation make with the purchaser of the certificates, a contract or life insurance?

2. Has the Home Life Insurance Co., which is authorized to transact business in this State by duly constituted licensed resident agents only in accordance with the provisions of section 79, chapter 49, Revised Statutes, a right to issue to said Realty Company or its agents a policy of life insurance contingent upon the life of a citizen of this State except through the medium of a licensed resident agent in the usual manner?

May, in his work on insurance, 3rd Ed., chapter 1, section 1 gives the following definition of insurance in general terms, to wit:—

“Insurance is a contract whereby one for a consideration undertakes to compensate another if he shall suffer loss.”

This definition, because of its brevity and its comprehensiveness is one which writers have scarcely been able to improve.

If then, we consider the business of said Wood, Harmon and Company in the light of this definition, and find that said corporation in carrying on its business, exercises the same principles and conditions as covered by said definition, and by insurance companies generally, then we may conclude that the business of said company is that of insurance, and if carried on in this State, should become subject to the insurance laws of this State.

The general contract for the purchase of shares in said corporation in which the purchaser is named as the “assured,” taken in connection with the “terms and conditions” set out on the back of the certificate, are conclusive as to the nature of the contract. The “terms and conditions” referred to are made a part of the contract.

In brief, the contract, which is designated as a “bond,” on its face provides for the purchase of shares of the preferred stock of the United Cities Realty Corporation upon the “terms and

conditions" printed on the back of the contract, and which are made a part thereof.

Said "terms and conditions" provide generally as follows:—

First: The "assured" agrees with Wood, Harmon and Company to pay one dollar per share monthly for the period of ten years, until the preferred stock of the United Cities Realty Corporation contracted for has become fully paid.

* * * * *

Third: That, in consideration of the purchase of said stock upon the terms indicated, Wood, Harmon and Company agree to pay the premiums on a policy of insurance issued by the Home Life Insurance Company on the life of the "assured," to wit, the purchaser of stock, if the contract is not allowed to lapse.

Fourth: That should the "assured" die before the maturity of the "bond," no monthly payment thereon having been made at any time thirty days in arrears * * * * then, in that event, Wood, Harmon and Company will deliver to the personal representatives of the "assured," a certificate of the number of shares of preferred stock of the United Cities Realty Corporation contracted for, together with interest as specified.

Fifth: That at the maturity of the "bond" the "assured" will also be entitled to receive in addition to the preferred shares of stock contracted for, an additional cash balance as provided.

Sixth: That should the "assured" default in his monthly payments anytime after two years, then he may surrender his "bond" and receive from Wood, Harmon and Company the number of shares of stock and the amount of cash shown in the "table of surrender values," attached thereto, according to the age of the "assured," on the date of the issuance of the contract.

A careful examination of these provisions shows conclusively:—

1. That the "assured" in paying one dollar per month per share for the period of ten years, until his shares become fully paid, is thereby paying monthly premiums on his contract, the same as an assured pays on his contract with an insurance company, either annually, semi-annually or quarterly. In other words, the monthly payments take the place of the premiums paid in regular life or endowment insurance.

* * * * *

3. The fact that Wood, Harmon and Company agrees to pay the premiums on a policy of insurance issued by the Home Life Insurance Company on the life of the purchaser of the preferred stock has no bearing on the question now under discussion.

Wood, Harmon and Company simply take out a re-insurance of their risk with the Home Life Insurance Company. They do this to protect their contract with the "assured," the same as any insurance company may protect itself against loss by re-insurance with another company.

The fact that Wood, Harmon and Company insure their contract against loss does not establish the fact whether or not the contract is one of insurance. Hence, the determining of the question whether or not the contract of Wood, Harmon and Company is a contract of insurance, must be decided by the provisions alone governing such contract.

4. In case of death before the termination of the endowment term, to wit, ten years, the personal representatives of the "assured" receive a certificate of the number of preferred shares of stock contracted for, together with interest as provided.

This comprehends the meaning and purpose of all life insurance. It gives protection in case of death whenever it may occur within the period of ten years. Bearing in mind the definition given by May, it is clearly apparent that this is a provision for indemnity against loss in case of death.

5. At maturity, to wit, after the stipulated payments have been made by the "assured" for the period of ten years, he then becomes entitled not only to the shares of preferred stock contracted for, but in addition thereto, a cash consideration in the way of accumulated interest on monthly installments paid.

This provision takes the place in every respect of endowment payment, as also the payment of accumulated dividends made in case of regular life insurance.

6. This provision provides for a surrender value to the "assured" in case he has paid his annual installment for two full years and is unable to continue them. This surrender value is based on a "table of surrender values" attached to the "bond," and while the provision is very crude, yet it takes the place of and answers to the provision for surrender values in regular life insurance companies.

From the foregoing consideration of the provisions of the "bond" and its "terms and conditions" only one conclusion can be reached, viz. :—That all the essential conditions of regular life and endowment insurance are covered and provided for in the contract, and that said Wood, Harmon and Company in carrying on said business, is doing a life insurance business.

That preferred stock of another company is to be paid in case of death, at the expiration of the contract or on the surrender of the contract, does not affect the situation, since the preferred stock, whether of any value or not, takes the place of the usual cash payments made by regular life insurance companies.

The United Cities Realty Corporation has nothing to do with the insurance contract of Wood, Harmon and Company, and is in no way apparently interested in the insurance side of the business. Wood, Harmon and Company agree, on the consummation of certain conditions, to sell to the "assured" certain shares of preferred stock of the United Cities Realty Corporation without its apparent knowledge or agreement thereto. Said company might agree to sell to the "assured" United States bonds or the securities of any company in the same manner and under the same conditions. Hence, the United Cities Realty Corporation has apparently no part or interest in the insurance contract.

The question might arise as to who or what Wood, Harmon and Company is. There is nothing to show positively whether they are a co-partnership or a corporation. On the "bond" their name appears, "Wood, Harmon and Company," while as the guarantors of the preferred stock of the "United Cities Realty Corporation," they appear as "Wood Harmon Warranty Corporation." How these parties are related, it is not easy to say. In fact, it looks very much as though the "United Cities Realty Corporation," the "Wood, Harmon Warranty Corporation," and "Wood, Harmon and Company" might be one and the same parties.

Such a combination, if such is the case, is not conducive to confidence in the scheme or to prospective advantage financially to the "assured."

The second question may be answered much more briefly than the first.

It would appear from your query that the Home Life Insurance Co. is authorized to transact business in this State, and the question is whether said company has a right to place insurance upon the lives of citizens of this State through any other medium than its regularly constituted and licensed agents in the State.

Said company has no authority to do business in this State except through its regularly constituted and resident agents. It is perfectly plain, then, that said company cannot pursue life insurance business in this State except through such agents, and if it undertakes to do otherwise, there would seem to be good grounds for the revocation of its license.

Just what kind of policy and what obligations the Home Life Insurance Company issues, in insuring the contractees of "Wood, Harmon and Company," we do not know. That a person in this State may contract direct with a foreign company for insurance on his own life cannot be denied, but if the insurance of said contractees of "Wood, Harmon and Company" is taken on regular lines of insurance, except through its regularly constituted agents in this State, the company would, evidently, thereby be exceeding its authority under its license, for said company in doing business is known only through its regularly licensed agents. Not knowing the exact process or kind of insurance referred to in the "terms and conditions" of the "bond," it is only fair to assume that the ordinary methods of life insurance are to be pursued, and therefore, the question asked must be answered in the negative.

Respectfully submitted,

GEORGE M. SEIDERS, Attorney-General.

November 2, 1904.