

MAINE STATE LEGISLATURE

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STATE OF MAINE.

REPORT

OF THE

ATTORNEY-GENERAL

FOR THE TWO YEARS ENDING

NOVEMBER 30, 1906.

AUGUSTA
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the governor and council, and, with other reasonable expenses, shall be paid out of the State treasury." This leaves the compensation to be fixed by the governor and council, and with reference to compensation the statute demands no itemizing or oath. The governor and council will of course reach conclusion as to the amount of that compensation from such evidence as may be presented or which they may require.

TAXES. UPON PERSONAL PROPERTY STORED OUTSIDE THE JURISDICTION OF THE STATE.

On February 28th, 1906, an inquiry was submitted to us from the Board of State Assessors as follows:

"Can assessors of a Maine town tax such personal property as potatoes and starch while stored in New Brunswick outside the jurisdiction of the State?"

On March 1st, 1906, opinion was rendered as follows:

"I have your favor of February 28th, enclosing letter of H. W. Levesque, one of the selectmen of Frenchville and asking for opinion upon certain propositions contained therein. You submit only a single question in your letter, namely, "Can assessors of a Maine town tax such personal property as potatoes and starch while stored in New Brunswick outside of the jurisdiction of the State?" An examination of the letter of Mr. Levesque shows that he goes a little farther and asks not only this question, which you have asked, but also asks which town should tax the potatoes and starch, providing they should be taxed at all.

Using the language of Judge Strout in *Farmingdale vs. Berlin Mills Company*, 93 Me., 333, "The general provision of law is that personal property shall be taxed to the owner in the town where he is an inhabitant on the first day of each April. To this general rule the statute makes certain exceptions." Turning now to chapter 9, section 13, clause X, we find among the exceptions "personal property in another state or country on the first day of each April and legally taxed there." Before a final answer can be given to the question, it must be known whether the potatoes and starch in another country, to wit, in the provinces, were legally taxed there on the first day of April. If it was so taxed then it is my opinion that it cannot be taxed in any town in Maine.

On the other hand, if the property is not legally taxed, in the provinces, I am of the opinion that it is liable to taxation in this State and the only question then to be determined is whether it shall be taxed in the town of Frenchville where Mr. Michaud lives, or whether it shall be taxed in the town of St. Agatha. Here again the facts are not fully stated upon which to base an opinion.

I will assume the condition of facts and state my opinion on that assumption. If my assumption of the facts is wrong, then my ruling as to the place of taxation may not be correct. I will assume, therefore, that Mr. Michaud owns no starch factories at all in Frenchville but owns them only in St. Agatha. I will also assume that the potatoes in question are owned by him for the purpose of manufacturing into starch and for no other purpose. Under this assumption, it is my opinion that the starch, and the potatoes which are to be manufactured into starch, are taxable in St. Agatha. You are entitled to my reasons for this view and in support of it, I cite you to R. S., chapter 9, section 13, clause 1, of the revision of 1903. The same provision is found in chapter 6, section 14, clause 1, of the revision of 1883 which reads as follows: "All personal property employed in trade, in the erection of buildings or vessels, or in the mechanic arts, shall be taxed in the town where so employed on the first day of each April; provided, that the owner, his servant, subcontractor or agent, so employing it, occupies any store, shop, mill, wharf, landing place or shipyard therein for the purpose of such employment."

I further cite you to the case already referred to in this opinion, *Farmingdale vs. Berlin Mills Company*. In that case the Berlin Mills Company, a corporation, resided in Portland; it had a mill in Farmingdale and it had logs in Franklin county which were destined for that mill and were in fact sawed and manufactured there. In that case, the court said "The logs were intended for manufacture in that mill and were in fact manufactured there. They had been cut, hauled to the landing and were in transit to the mill and may therefore be fairly considered as employed in the trade or business of that mill on that date within the meaning and purposes of the statute." The date referred to was April first. The court held that the logs were taxable in Farmingdale. This clearly makes the potatoes

intended for manufacture at St. Agatha, taxable in St. Agatha. Under the same reasoning, the starch, which is a manufactured product of the mill would be taxable at St. Agatha, providing, of course, that it was stored in the provinces and not legally taxed in the provinces.

MARRIAGE. COMMISSION TO SOLEMNIZE NOT TO ISSUE TO ALIENS.

In June, 1906, an inquiry was submitted to us from the Governor and Council asking whether commission to solemnize marriages in the State of Maine should be granted to aliens or non-residents of the State.

On June 9th, opinion was rendered as follows:

I am in receipt of the correspondence relating to the request of Rev. J. A. Winfield for a commission to solemnize marriages in Maine, and with request that I express my opinion as to the propriety of issuing such a commission.

It appears from the correspondence that Mr. Winfield is not an American citizen nor even a resident of Maine. This I assume to be an unchallenged fact. The question then is whether an alien and non-resident of the State should be commissioned to solemnize marriages in Maine. In my view of the case the question is easily divisible into two parts.

First, is a minister of the gospel commissioned to solemnize marriages acting in the capacity of a public officer?

Second, may an alien and non-resident hold public office within this State and exercise the functions of that office?

I am not aware that the supreme court of Maine has ever passed upon the first branch of this question, nor am I aware of any act of legislature which controls the situation. One of the New England States, however, for whose court we all have respect, has given a distinct ruling upon the subject in the following unequivocal language:

"A clergyman in the administration of marriage is a public, civil officer." *Goshen vs. Stonington*, 4 Conn. 209, 10 Am. Dec. 121. See also *Bouvier's Dictionary*, Rawles Revision, under "Officer."

As to the second branch of the question: