

MAINE STATE LEGISLATURE

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STATE OF MAINE.

REPORT

OF THE

ATTORNEY-GENERAL

FOR THE TWO YEARS ENDING

NOVEMBER 30, 1910.

AUGUSTA

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County Commissioners 83 Me. 282; Attorney General v. Newell et alii 85 Me. 246, where the court speaking through Whitehouse J. says:

"It is a well settled rule that mandamus extends to all cases of neglect to perform an official duty clearly imposed by law when there is no other adequate remedy;" Inhabitants of Brunswick v. City of Bath, 90 Me. 479; in this case the defendants contended that the petitioner had a complete and adequate remedy at law either by indictment or by petition to the county commissioners but the court speaking through the late Chief Justice Peters says: "Such a legal remedy as either of the uncertain modes suggested would be unsuitable and unsatisfactory. This court has said that mandamus will be granted if it be doubtful if there be another effectual remedy, or if the court does not clearly see its way to one. * * * Generally when ministerial duties are clearly defined and legally established mandamus will be upheld to enforce them;" Adams v. Ulmer 91 Me. 47; Keefe v. Donnell 92 Me. 151; Hamlin, Attorney General v. Higgins et alii 102 Me. 510.

Examination of these several cases and applications of the principles of mandamus therein contained seem to make the proposition perfectly plain that this is the remedy to be applied to the case which you present.

Respectfully yours,

WARREN C. PHILBROOK,

Attorney General.

OFFICE OF THE ATTORNEY GENERAL.

WATERVILLE, MAINE, Dec. 18, 1909.

Subject: Taxation of personal property of non-residents.

Hon. George Pottle, Augusta, Me.

SIR:—I have your favor enclosing the following statement of facts and inquiry:—

"John Doe, an inhabitant of the town of "A," purchases the standing timber on a parcel of land in the town of "B." He moves a portable mill upon the land for the purpose of sawing the logs when cut.

On April 1st the mill, some logs, and sawed lumber are found there by the assessors of the town of "B."

In your opinion, would this personal property be subject to taxation in the town of "A" under the provisions of section 12, chapter 9, Revised Statutes, or in the town of "B" under clause I of section 13, or clause III."

You call my attention to three distinct provisions of law for taxation of personal property. The general provision of statute relative to taxation of personal property is that it shall be assessed to the owner in the town where he is an inhabitant on the first day of each April. To this general rule is made some exceptions and by your second and third questions you call my attention to two of those exceptions. If your questions do not fall within the provision of either of those exceptions then the property which you describe must be taxed in the town of "A" where the owner is an inhabitant on the first day of April.

The first exception has reference to "personal property employed in trade, in the erection of buildings or vessels, or in the mechanic arts. * * * provided that the owner, his servant, sub-contractor or agent so employing it occupies any store, store house, shop, mill, wharf, landing place or shipyard therein for the purpose of such employment." Your question and statement of facts do not disclose whether the mill, logs and sawed lumber were employed in trade or in the mechanic arts. Unless they were so employed, then of course the property would be taxed in the town where the owner was an inhabitant on the first day of April. But even if they were employ'd in trade or in the mechanic arts then we meet with the proviso as to the occupancy by the owner, his servant, sub-contractor or agent of some shop, store, mill, etc. From a portion of your letter not quoted in this reply, I suspect that the real object of your inquiry relates to the portable saw mill and whether it is such a structure as to be occupied within the meaning of the statute. If this be your real question the task of answering is easy since our Supreme Court, in a very recent case not yet published but which will appear upon page 54 of Volume 105 of the Maine Reports under the title *Norway v. Willis*, has determined this exact issue. In the *Norway* case the inhabitants of that town brought an action of debt against the defendant to recover a tax assessed by the plaintiff town on a portable steam saw mill owned by the

defendant who was a non-resident of Norway. There was no question that the portable saw mill was set up in the plaintiff town on land not owned by the defendant and was in the plaintiff town on the first day of April of the year in which the tax was assessed. Mr. Justice Bird in behalf of the court said, that this mill is not a structure the occupancy of which met the intent of the proviso in R. S. Chap. 9, Sec. 13, Par. I. Upon the authority of this case to which we are now referring, I must advise you that the portable saw mill, logs and lumber were not taxable in the town of "B" where they were found on the 1st day of April but would be taxable in the town of "A" where the owner was an inhabitant.

Your third provision of statute to which you call my attention is R. S. Chap. 9, Sec. 13, Par. III. In your statement of fact you refer to the owner as an individual but Par. III refers only to property belonging to a corporation, hence that provision would have no application to your question.

To be specific, therefore, it is my opinion that the portable saw mill, logs and sawed lumber under the statement of fact contained in your letter would be taxable in the town of "A" where the owner was an inhabitant on the first day of April and not in the town of "B" where it was found on that date.

Respectfully yours,

WARREN C. PHILBROOK,

Attorney General.

OFFICE OF THE ATTORNEY GENERAL.

WATERVILLE, MAINE, July 28, 1910.

Subject: Investment of Deposits in Savings Banks.
R. S. Chap. 48, Sec. 23, Sub. Division 5, as
amended by Chap. 11, P. L. 1909.

HON. W. B. SKELTON, Augusta, Maine.

SIR:—I have the honor to acknowledge receipt of your favor of July 23rd with statement of fact and request for advice; the statement of fact being as follows:

"A corporation organized under the laws of the State of Maine, for the purpose of doing business in the State of Maine, owns real estate in this State on which it issues first mortgage