

# MAINE STATE LEGISLATURE

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STATE OF MAINE.

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REPORT

OF THE

ATTORNEY-GENERAL

FOR THE TWO YEARS ENDING

NOVEMBER 30, 1910.

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AUGUSTA

KENNEBEC JOURNAL PRINT

1910

require corporations to repeat annually a statement of facts which was already a record in the state department. It will be observed also from the quotation of the statute above given that while the certificate mentioned in section three calls for certain things, yet the certificate in section six only calls for "the change or changes, if any." Some significance also should be attached to the words near the close of section six, "the filing of said certificate or of." These words together with the last four words of section six "the last annual report," show plainly that there are two conditions of time relating to the filing of the certificate mentioned in section six; that is, the certificate mentioned in section six must show the change or changes either (1) made since the filing of said certificate (referring to certificate in section three) or (2) since the last annual report. If the legislature intended that the certificate required by section six should be an annual certificate then it would have been idle to say "since the filing of said certificate." The use of these last quoted words however would seem to indicate that a time more than a year might elapse between the filing of the certificate mentioned in section three and a certificate showing change or changes.

I am constrained to advise you therefore, that when a foreign corporation has made a return of the certificate mentioned in section three of the act, such corporation is not required to make return of the certificate mentioned in section six annually unless there have been annual changes in the particulars mentioned in the certificate of section three.

Respectfully yours,

WARREN C. PHILBROOK,

*Attorney General.*

OFFICE OF THE ATTORNEY GENERAL.

WATERVILLE, MAINE, August 5, 1910.

*Subject:* Railroad Companies; Taxation of; Apportionment of tax to cities and towns.

*Hon Pascal P. Gilmore, Augusta, Maine.*

SIR:—I have the honor to acknowledge the receipt of your favor asking whether in my opinion the refund provided for in

R. S. Chap. 8, Sec. 24, should be allowed to the town of Rumford upon 7,500 shares of stock listed by the Portland & Rumford Falls Ry. Company as follows:

“State Street Trust Company of Boston, Massachusetts, Trustee under and in accordance with the provisions of deed of trust from Rumford Falls Power Company, dated December 1, 1909        7500.”

The section of the statute under consideration, after providing that railroad companies should pay certain taxes to the state, further provides as follows:

“There shall be apportioned and paid by the state from the taxes received under this and the five following sections and under Sec. 31, to the several cities and towns in which, on the first day of April of each year, is held railroad stock of either such operating or operated roads exempted from other taxation, an amount equal to one percent. on the value of such stock on that day, as determined by the board of state assessors.”

The meaning of the word “held” is the first thing for consideration; that this word in this connection is equivalent to an expression of ownership would seem to be in harmony with the views of various state courts, and I cite you to the following:

Witsell v. Charleston, 7 S. C., 88.  
Jackson v. Mumford, (N. Y.) 9 Cow., 254.  
Holland v. Cruft, 69, Mass., 162.  
Smith v. Gains, 39 N. J. Eq., 545.  
State v. Oil Company, 42 W. Va., 80.

If this view of the word is correct, then the next step is to read the statute as if it said “owned” instead of “held,” and we are next to determine where these 7,500 shares of stock are owned. This leads to a careful consideration of the deed of trust given by the Rumford Falls Power Company to the State Street Trust Company. At the date of this instrument, we may safely assume that the Rumford Falls Power Company owned the 7,500 shares of stock under consideration, and if that ownership of the same had continued, then there would be refunded to the town of Rumford a certain portion of the railroad tax, in accordance with the statute under consideration. Does the Rumford Falls Power Company now own those shares? The answer to this question must determine the main question upon which you requested advice. I am well aware that the answer which I shall

give to this question may be challenged by eminent counsel in this state, who are interested in the proposition, but I must give you my views as best I can, and you will be governed by them according as to their reasonableness or otherwise.

The deed of trust referred to was evidently drawn with great care and great skill, but it is in the form ordinarily and customarily used by a corporation giving an instrument to secure the payment of its bonds. It conveys to the State Street Trust Company its real estate and personal property and specifically states on page 10 of the printed form of the trust deed that the following personal property is also conveyed:

"Also seventy-five hundred (7,500) shares of the capital stock of the Portland and Rumford Falls Railway, a railroad corporation organized and existing under the laws of the State of Maine, with its principal office in Portland in the County of Cumberland, and State of Maine, of the par value of one hundred (100) dollars each. Certificates for said seventy-five hundred (7,500) shares have been properly issued in the name of said Trusts and delivered to it to be held under and in accordance with the terms of this indenture."

It has been claimed that these shares of stock were simply deposited with the trust company as a pledge. It seems to me that they go as a part of the mortgaged property, for the words of conveyance in the earlier part of the trust deed *are* words of conveyance and not of pledge, and it will be particularly noticed that the paragraph just quoted, provides that the certificates have not only been issued in the name of the trust company and delivered to it, but are to be "held under and in accordance with the terms of this indenture." I am persuaded, therefore, that the 7,500 shares of stock under consideration passed under the trust deed as a part of the mortgaged property and not as a pledge. The next step in the proposition, then, is to determine who holds the title, or in other words, who owns the stock.

It is familiar law that "the chief distinction between a mortgage and a pledge is, that by a mortgage the general title is transferred to the mortgagee, subject to be revested by performance of the condition; while by a pledge, the pledgor retains the general title in himself, and parts with the possession for a special purpose. By a mortgage, the title is transferred; by a pledge, the possession."

Jones on Chattel Mortgages, 5th Edition, Sec. 4.

Citing the following authorities:

Walker v. Staples, 5 Allen (Mass.), 34.

Conner v. Carpenter, 28 Vt., 237.

Brown v. Bement, 8 Johns, (N. Y.), 96.

Also the following well known cases from our own supreme court:

Eastman v. Avery, 23 Me., 248.

Beeman v. Lawton, 37 Me., 543.

Day v. Swift, 48 Me., 368.

If my views upon the trust deed or mortgage are correct, then these shares of stock, being a part of the property conveyed by the mortgage, are no longer owned in Rumford, the title being passed by the mortgage to the State Street Trust Company, subject to a revestment of that title in the Rumford Falls Power Company when the conditions of the mortgage shall have been performed.

I am therefore constrained to the following summary, viz:—That the shares of stock under consideration were a part of the personal property conveyed by the trust deed of the Rumford Falls Power Company; that this conveyance being a mortgage, the title to those shares is now in the State Street Trust Company of Boston; that no part of the shares being now owned in said Rumford, there should not be any part of the refund paid to the town of Rumford which would be payable in case those shares were owned in Rumford.

Respectfully yours,

WARREN C. PHILBROOK,

*Attorney General.*

OFFICE OF THE ATTORNEY GENERAL.

WATERVILLE, ME., Nov. 22, 1910.

*Subject:* Dexter Loan & Building Association.

*Hon. Pascal P. Gilmore, Augusta, Me.*

SIR:—It appears that there is some difference of opinion as to the amount of tax which should be paid by the Dexter Loan & Building Association under the provisions of Chap. 24, P. L. 1909, and I have been requested to express my views upon the subject.