

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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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.

Prior to the passage of the act in question, R. S. Chap. 8, Section 57 provided that every loan and building association should make a return relating to, and pay a tax upon, monthly capital dues paid in by its share holders during certain periods. Chap. 24, P. L. 1909, amended said section 57 and provided that each loan and building association should make a return semi-annually on the last secular days of April and October of its "assets and liabilities in detail, of the net amount of its investments other than in loans to individuals or corporations on real estate and on shares of the association, during the six months ending on each of said days," (last secular days of April and October). Said chapter 24 also provided that "a further tax of one-half of one per cent on the average amount *so returned* of the investments of such associations other than in loans to individuals and corporations on real estate and on shares of the association" should be paid to the state treasurer. The difference in views seems to center about these propositions; (1) when did the first period of time occur in which the tax should be assessed under these last named provisions; (2) did the legislature intend that loan and building associations, under the amendment now under discussion, should pay a tax of one-half of one per cent semi-annually, or did it intend that the one-half of one per cent should be an annual tax.

Two principles of construction are easily available. First, that since the adoption of the referendum no act of the legislature becomes effective until ninety days after the adjournment thereof unless the act in question be an emergency act; second, as enunciated by our court in *East Livermore v. Banking Co.* 103 Me. at p. 424, "it is elementary that no tax can be imposed without express statutory authority, that such authority is to be construed strictly *against* the state" etc. Other principles of construction applicable to this discussion are not as plainly available but may possibly be invoked in such a way as to throw some light upon this question.

Chapter 24, P. L. 1909, was not an emergency act and therefore did not become effective until July 3d, 1909. R. S. Chap. 8, Sec. 57 continued to be in full effect in its unamended form until July 3, 1909. The new act required that returns should be made to the State Board of Assessors on or before the second Monday of May and of November and related to the six months

period terminating on the last secular days of April and October: Should any accounting be made of the period of time between the third of July when the amendment took effect and the last day of the following October, that being a period of less than six months, or should the first return be made in May, 1910, and relate to the six months existing between October, 1909, and April, 1910, in other words should the time between July, 1909, and October, 1909, being a fractional part of six months be reckoned and a pro rata tax imposed? A similar condition might arise where a loan and building association was organized between the last days of April and the last days of October and the query might be raised whether such loan and building associations must pay a pro rata tax for the period of time between its organization and the last days of October following, such time being a fractional part of six months. If the legislature had intended that the fractional part of six months should bear a pro rata tax the act might easily have said so and, bearing in mind the second principle of construction above stated, I am inclined to the opinion that there is no certain authority for assessing a pro rata tax between July 3, when the act took effect, and the last days of the following October when the six months period would begin to run toward the next April.

We next examine the proposition as to whether after October 1909 the loan and building association is to pay one-half of one per cent semi-annually, or one-half of one per cent as an annual tax. Here again, the legislature was unfortunately less clear than we could desire but it is our duty to examine the language carefully and critically and see whether the intention of the legislature may be ascertained and, if that can be done, such intention must be authority until another session of that body deems it wise to modify the existing law.

We notice then quite carefully the last six or seven lines of chapter 24 under discussion and observe that the treasurer of the loan and building association is required to pay to the treasurer of state a tax of one-half of one per cent *a year* on the amount of the *monthly capital dues* returned. Notice that this is one-fourth of one per cent *a year* but, after a comma, the act proceeds to say that there shall be a further tax of one-half of one per cent on the average amount *so returned* of the investments of such associations other than in loans etc. What is meant by

the words "so returned?" What are their significance? The average amount "so returned" is the amount returned every six months or semi-annually. If the tax was only to be annually upon this average amount, why should not the legislature have said "one-half of one per cent *a year*" as it *did* say when referring to the tax on the monthly capital dues. The fact that the legislature did *not* say so but used other phraseology is significant. The fact also that the tax of one-half of one per cent, as clearly differentiated from the other tax is declared to be payable on the average amount "*so returned,*" which is a semi-annual *return* seems to present to my mind a somewhat strong argument that the legislature intended that the tax on the *average amount so returned*, etc., was to be a tax payable *every six months* thus making a *total of annual* tax of *one per cent*. As we have said, we are striving to understand the intention of the legislature and we are also endeavoring to keep in mind the principle that this act is to be construed strictly against the state, and yet it seems as if the legislature in this instance *had* expressed its intention with sufficient clearness to be understood. It has distinctly stated that the tax on the *capital dues* is one-fourth of one per cent *a year*, and when it attempts to state the tax upon the "average amount so returned" it abandons the expression showing annual or yearly taxation and refers to the returns which are made *every six months*. It did *not* say that it was a further tax of one-half of one per cent *a year* on the average amount so returned etc, and I am therefore of the opinion that the plain meaning of the entire section when all parts are considered together is:

(1). No tax should be assessed for that period of time running between the third of July and the last day of October both in the year 1909;

(2). That each loan and building association, until the legislature may otherwise order by amendment, should pay one-half of one per cent semi-annually or a total of one per cent per annum on the average amount returned of the investments of such associations other than in loans to individuals and corporations on real estate and on shares of the association.

Respectfully yours,

WARREN C. PHILBROOK,

Attorney General.