

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY-GENERAL

FOR THE TWO YEARS ENDING

NOVEMBER 30, 1914.

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CORONERS.—EXPENSE OF INQUEST AND BURIAL
OF "STRANGER NOT BELONGING TO STATE."

31st December 1914.

Hon. T. F. Callahan, State Auditor, Augusta, Maine.

DEAR SIR: Your letter of the 16th inst, relating to the expenses of the coroner's inquest and the burial of the body under Section 11 of Chapter 140 of the Revised Statutes as amended by Chapter 185 of the Public Laws of 1909, was received. I am not sure that sufficient facts are at my command to enable me to pass upon the question involved in the particular case to which you refer for reasons which will appear later.

The statute as it appears in Revised Statutes, Chapter 140, was in substance enacted in 1821, and in its original form was substantially an adoption of the Massachusetts statute relating to such matters which was first enacted in that State March 7, 1806. I refer to these earlier statutes for the reason that they throw some light upon the meaning of certain words and phrases, a correct view of which is necessary to a proper understanding of this law.

The provisions of Section 11 of Chapter 140, Revised Statutes, previous to the enactment of Chapter 185 of the Laws of 1909, provided in terms that whenever a coroner should certify under oath that to the best of his knowledge and belief the dead body which he had been called to view was that of a "stranger not belonging to the State," the expenses of burial and the inquisition should be paid out of the State Treasury; otherwise the expenses of the inquisition should be paid by the County, and of the burial by the town in which the body was found, which town might recover such expenses of the town to which the deceased belonged. Questions evidently had arisen over what class of persons were included in the terms "stranger" and "stranger not belonging to the State" and in an effort to make it clear the Legislature of 1909 declared that the word stranger meant a person who had "no residence or place of abode in this State" and further declared in substance that it should not include any State pauper residing in the State.

Apparently the Legislature in its amendment of 1909 proceeded under an erroneous view of the meaning of the word

“stranger” as originally used in this statute, so that the statute as now worded presents many strange incongruities.

It is true that the word, stranger, when referring to locality usually means one foreign to that locality, coming from another place or country; but it is also used referred to those outside the family, as one outside the ties of blood or relationship.

Webster's Dictionary,
Bouvier Law Dictionary,
Am. & Eng. Enc. of Law, 2nd, Ed. Vol. 26, P. 1127.

At first blush it might appear that the term was here used with reference to locality, as meaning one who had come here from another state. It is an uncommon term in legislative enactments. Our attention has not been called to its being used in any other statute, but our conclusion is after examining the early statutes, that originally it was intended to refer more particularly to the lack of kinship, or friends and failure of any party to claim the body, and to describe one who by reason of his being without relatives or friends or representatives of his estate to claim his body for burial might be said to be a stranger in the community whether resident or non-resident. There was, in other words, no privity between him and anyone in the State that would impose upon them any obligation legal or otherwise to care for his remains. We are led to this conclusion first because obviously the act refers only to persons whose bodies are unclaimed and are in consequence a public charge, and yet there is no other word in the act to express that condition except the word “stranger” used in the above sense; and also because the original act of Massachusetts coupled the words “stranger” in the only place where it is used with the words “not belonging to the State,” which would seem entirely unnecessary if the word was used in the sense of his being a non-resident of the State, the original act making no provision for the resident stranger, or inhabitant, as was later done.

The original act read as follows:

“That every coroner within the county for which he is appointed, shall, after the return of an inquisition of the jury, upon the view of a dead body of any stranger, not belonging to this commonwealth, bury said body in a decent manner; and the expenses thereof, together with all the expenses of said inquisition and coroner's fees, shall be paid

to such coroner out of the treasury of this commonwealth, an account of such expenses being first examined and allowed by the general court, in the same manner that accounts for state paupers are allowed; and the same certificates shall be required from the selectmen or overseers of the poor of the town where such stranger was found dead, as if the said stranger were taken sick in such town or became unable to support himself.

This Act passed March 7, 1806."

We are confirmed in this view also because it seems to render intelligent certain provisions in the Massachusetts Act of February 1807 in which the original Act of March 1806, was amended and also in the first Act of this State adopted in 1821, which reads as follows:

"Chapter 93, Section 3. Be it further enacted, that every coroner within the county for which he is appointed, shall after the return of an inquisition of the jury from a view of a dead body of any stranger, bury said body in a decent manner, and the expenses thereof, together with all the expenses of said inquisition and the coroner's fees, shall be paid to said coroner out of the treasury of this State, an account of said expenses being first examined and allowed by the legislature in the same manner that accounts for state paupers are allowed; provided the coroner who shall return the inquisition shall certify under oath that the person found dead was a stranger not belonging to this state according to the best of his knowledge and belief; otherwise the expenses of taking up and burial shall be paid to said coroner by the town where such dead body was found and repaid to them by the town to which such stranger belongs, if an inhabitant of this state, and the expenses of said inquisition shall be paid to the coroner by the county in which the inquisition shall be taken.

Approval March 19, 1821."

In the Act of 1807 and in the first Maine law of 1821, as will be noticed, the word "stranger" in the first part of the Act is no longer qualified with "not belonging to the State." It is any stranger. And after the view of the body, "the coroner shall bury it decently;" but if a non-resident person is meant, unless he was without means, relatives or friends to take charge of the body, why should the coroner bury it at all? Again even though he be a "stranger," the expenses are not paid by the State unless the coroner certifies that he was "a stranger not belonging to the State;" otherwise, that is, if he was a stranger belonging to the State, a resident stranger, the expenses of burial shall be paid by the town in which the body was found to be repaid by the "town to which such stranger *belonged if an*

inhabitant of the State." If the members of the class included in the term "stranger" as originally used in this statute, are all non-residents, what meaning can the alternative proposition beginning with "otherwise," have, particularly the words "town to which *such stranger belonged if an inhabitant of the state?*"

Obviously a person without means, relatives or friends is contemplated, and only the use of the word "stranger" in this sense allows any rational interpretation of these early statutes or gives them as a whole any practical effect.

Applying this meaning, the statute before the passage of the Act of 1909 was consistent, and we think intelligible. By the amendment of 1909, it is no longer consistent, nor intelligible. To say that a coroner in the case of every person found dead in the state through violence, if he has no residence here, shall bury him at the expense of the State is absurd without distinguishing between prince and pauper; or to provide that otherwise, (that is, if he has a residence here) he shall be buried at the expense of the town in which found, to be recovered of the town to which he belonged is equally without reason. Why should the latter be done, unless there are no relatives or friends or representatives of his estate to claim the body and assume the expense? As the statute now stands there is not a word limiting its application to paupers, or to those lacking friends or relatives except by implication, unless the word "stranger" is still held to have that meaning in addition to the one declared by the legislature.

The word stranger as originally used, in our opinion, is a broader word than pauper. A person might be a pauper, yet friends or relatives be ready to assume the expense of suitable interment; one is only a "stranger" when he has neither an estate, friends or relatives to claim him as theirs in this sense, he may never have been a pauper yet prove to be a "stranger" when dead.

The law as it now stands has no interpretation at all, its provisions that is consistent or practical, and should be amended to accord with its original intent.

This much, however, may be said as bearing upon the case in hand, that the effect of the amendment of 1909 was to provide that only the expenses of the burial of and the inquest upon such persons as are not residents of this State should be

borne by the State, as I am of the opinion that the legislature used the terms "residence" and "place of abode" in the sense of a permanent residence or abode as distinguished from a temporary sojourn or visit; that is, such a residence which if continued would render the person liable to a poll tax, entitle him to vote, or obtain him a pauper settlement. This does not mean necessarily a house with an intent to reside here permanently, but rather a coming in to this State with no definite intent to return from whence one comes. A lack of intent to move or return, rather than a definite intent of remaining indefinitely, is all that is necessary to establish a residence such as this statute contemplates.

Cyc. Vol. 34, P. 1647;
Parsonsfield v. Perkins, 2 Maine 414.
Warren v. Thurston, 43 Maine 418;
Church v. Rowell, 49 Maine 37.
Wilbraham v. Ludlow, 99 Mass. 590,
Palmer v. Hampden, 182 Mass. 513.

To put it another way, a person here for a visit or temporarily here for employment, notwithstanding he might have a "place of abode" or a "residence" in its broadest sense, if there was still the definite intent to return when his temporary purpose was accomplished, would in my opinion, still be a non-resident and a "stranger" within the meaning of the statute as it now stands.

As to the case in question of Kasem Souleyman, it will now be apparent, I think why it may not be possible to determine his case upon the facts at hand. Was he here in Maine with no definite purpose of returning or going elsewhere? He may not have formed a fixed definite purpose to remain here indefinitely, or at least, it is not susceptible of proof; but had he ever and did he still have any intent to return from whence he came,—not a vague indefinite purpose to sometime return to his native country, but a purpose at some reasonably definite time to return? If so, he never became a resident of this State in my opinion; if on the other hand, he had no definite intent to leave this State, the fact that he was a laborer seeking work where he found it would not prevent him becoming a resident.

Wilbraham v. Ludlow, 99 Mass. 590.
Parsonsfield v. Perkins, 2 Maine 414.

Such evidence on this question as the inquest discloses would, I think, indicate that he had no purpose of leaving this State at any definite time, and that, if he had remained in Biddeford until April 1st, 1914, he might have been liable to a poll tax in that city. However, the facts are not full upon that point and the coroner has, I assume certified that to the best of his knowledge and belief, he was a "stranger not belonging to the State." Further inquiry with this point in view might settle this question beyond peradventure. From my present information, I should rule that he had a residence in Biddeford within the meaning of this statute, and, therefore, was not a "stranger" within the meaning of this statute as amended.

Another difficulty will arise in the event that it is held that the expense does not fall upon the State and that is, where the expense of burial will finally fall; but that I do not think is at present a state problem. The statute places it in the first instance on the town in which the body is found, that town may, so the statute says, recover of the town to which the person belonged. I am of the opinion, from my examination of the early statutes, that this phrase "town to which he belonged" refers to the town in which he had a pauper settlement.

Eden v. Southwest Harbor, 108 Maine 493, and earlier Maine cases therein cited.

This, however, is not clear, as the word, belong, is used in the same act in the sense of resident and it does not necessarily follow that the expenditures incurred under this act are pauper supplies. This question may later arise as to whether they are pauper supplies for which the town paying is entitled to reimbursement from the State, but that question is not yet raised and may be left for future settlement.

Very sincerely,

SCOTT WILSON,

Attorney General.