MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY-GENERAL

FOR THE TWO YEARS ENDING

NOVEMBER 30, 1918

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In the same case the Court quoting in support of its position decisions from Wisconsin, Minnesota and United States Supreme Court said:

"Double taxation is never to be presumed. Justice requires that the burden of the government shall as far as practicable be paid upon all; and if property is taxed once in one way it would ordinarily be wrong to tax it again in another way."

Maine has ruled above that the legislature after taxing savings banks exempted the deposits from taxation because to do otherwise would create double taxation. The Court could not render this decision unless they considered the Maine tax on savings banks one that so far as double taxation was concerned taxed deposits. This being true and in view of the great weight that our Courts would give a New Hampshire decision construing a New Hampshire law, it is our opinion that our Courts would consider the New Hampshire law taxing savings banks as one that *"legally taxed"* deposits, and that the deposit of a Maine citizen in a New Hampshire savings bank is exempt from taxation in this State because it is "personal property in another state or country on the first day of each April and *legally taxed there*", as provided in Chapter 10, Section 14, paragraph 10.

Yours very truly,

GUY H. STURGIS,

Attorney General.

WORKMEN'S COMPENSATION—COMPUTATION OF AVERAGE WEEKLY WAGE

2nd April, 1917.

Industrial Accident Commission, Augusta, Maine.

GENTLEMEN:

Re: Ralph Bragdon, Inj. 6/15/16, *Claimant*

vs.

Old Town Woolen Company

and

Employers' Liability Assur. Corp.,

Respondents.

In answer to your inquiry as to how the average weekly wage should be figured and the amount so obtained in the matter of

injury to Ralph Bragdon employed by the Old Town Woolen Company, I will say that in my opinion the same rule should be applied as was promulgated in opinion of Cornish, Justice, in Ida J. Hight vs. York Manufacturing Company.

Paragraph 9 of Section 1 of the Workmen's Compensation Act provides:

"Average weekly wages, earnings or salary, of an injured employee shall be computed as follows:

(a)) If the injured employee has worked in the same employment in which he was working at the time of the accident, whether for the same employer or not, during substantially the whole of the year immediately preceding his injury, his 'average weekly wages' shall be three hundred times the average daily wages, earnings or salary which he has earned in such employment during the days when so employed and working the number of hours constituting a full working day in such employment, divided by fifty-two."

Section 14 provides:

"While the incapacity for work resulting from the injury is total, the employer shall pay the injured employee a weekly compensation equal to one-half his average weekly wages, earnings or salary, but not more than ten dollars nor less than four dollars a week."

Assuming that Mr. Bragdon has been engaged in the same employment for the Old Town Woolen Company for more than a year preceding the injury; that he received $9.75 per week for his labor; that fifty-eight hours constituted a week's work and that during each week he worked nights only being employed eleven and three-fourths hours on each four nights and eleven hours on the fifth night, the only question at issue is whether the weekly wage, viz.: $9.75 should be divided by the actual number of nights during which Mr. Bragdon worked or should be divided by the number of working days or nights in a week.

I will call your attention to the language of Mr. Justice Cornish in Hight vs. York Manufacturing Company, wherein he says:

"Mr. Hight received a week's wages for a week's work, and he did a week's work for a week's wages. Fifty-eight hours constituted a week's work in that employment and he could and did work no longer than that in any one week. Had the hours been apportioned equally among the six working days, each day would have had nine and two-thirds working hours. That is in reality 'the number of hours constituting a full working day in that employment.' Had this been the custom no one would question that

the total amount of the week's wages should be divided by six in order to ascertain the average daily wages. The fact that for the sake of mutual convenience or for any other reason the hours were so apportioned that for five days the employee worked more than nine and two-thirds hours, to wit, ten and one-half hours, and on the sixth day worked less, to wit, five and one-half hours, should not change the rule. The number might vary every day in the week but if the total was fifty-eight the average which is the mean between extremes should be calculated by dividing by six. The varying hours in no way affect the earning capacity or the actual earnings of the employee. He receives the same amount as if the hours were equally divided and his average daily wages are unaffected thereby.''

I would call your attention also to the illustration of Counsel for the defendant in Hight vs. York Manufacturing Company adopted as an illustration by Justice Cornish:

''Suppose a locomotive engineer, whose weekly wages are twenty-four dollars per week, or four dollars per day, has his work so assigned that his actual labor is crowded within four long-houred days. The other two days he rests.''

Justice Cornish comments upon this illustration and says that to compute such an engineer's compensation by dividing his weekly wage of $24., by four, the number of days he actually works, would make the engineer's daily wage $6. instead of $4. and multiplying that sum, namely, $6. by three hundred and dividing by fifty-two would fix the engineer's average weekly wage at $34.42 an excess of more than $10. per week over actual earnings and that such a result is within neither the letter nor the spirit of the statute.

If we should divide Mr. Bragdon's weekly wage of $9.75 by five, the number of nights he actually worked, multiply the result by three hundred and divide by fifty-two, we would fix his average weekly wage at $11.25 an excess of $1.50 per week over his actual earnings and Justice Cornish says such a ruling is "within neither the letter nor the spirit of the statute."

I can see no reason why the fact that Mr. Bragdon was employed nights instead of days should in any way change the rule. Assuming that fifty-eight hours constituted a week's work for Mr. Bragdon, had the hours been apportioned equally among six nights of the week, each night would have had nine and two-thirds working hours and beyond question the total amount of the week's wages should, in such case, be divided by six in order to ascertain the average daily wages.

We must assume that by mutual agreement the hours of labor of Mr. Bragdon were arranged so that for four nights he worked eleven and three-fourths hours and for one night eleven hours. The total hours of labor in the week were fifty-eight. The fact that the number of nights of labor were lessened and the number of hours per night were increased does not, under the ruling of Justice Cornish, change the rule. Mr. Bragdon was paid for fifty-eight hours and there is nothing in the facts presented to me to indicate that he received a different wage per week on account of the fact that he worked nights and only five nights and varying hours per night than he would have received had his hours of labor been distributed over six days of nine and two-thirds hours each or six days of varying hours of labor but totaling fifty-eight hours altogether.

In short, I will say that it is my opinion that Mr. Bragdon's weekly wages of $9.75 should be divided by six giving $1.625; multiplied by three hundred giving $487.50; divided by fifty-two giving $9.375; then one-half thereof is $4.687 the amount of compensation per week to which Mr. Bragdon is entitled.

Yours very truly,

GUY H. STURGIS,

Attorney General.

MOTOR VEHICLES—REVOCATION OF OPERATOR'S LICENSE FOR CONVICTION OF CRIME IN NEW HAMPSHIRE.

21st August, 1918.

Hon. Frank W. Ball, Secretary of State, Augusta, Maine.

DEAR SIR: I have your letter of August 2d, asking whether you have authority to revoke the license of a citizen in Maine to operate a motor vehicle, after such citizen has been convicted of driving an automobile while under the influence of intoxicating liquor, by a court in the State of New Hampshire. Chapter 213, Section 3, Public Laws of 1917, provides:—

"If any motor vehicle is so driven in a reckless manner or by a person apparently under the influence of intoxicating liquor, it shall be the duty of every officer who is charged with enforcing the laws of the state, and of every citizen thereof, to report the same to the secretary of state, at once, giving the number on the number plates of the vehicle, the state regis-