

MAINE STATE LEGISLATURE

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February 5, 1940

Honorable Frank H. Holley
State Tax Assessor
State House
Augusta, Maine

Mr. Holley:

You recently asked from this office an opinion as to whether the 6-year general statutes of limitations ran against an action of debt brought by a tax collector of a town or city, for the collection of overdue taxes.

Section 3 of chapter 13 of the Revised Statutes, provides for a lien to secure the payment of all taxes legally assessed on real estate, as defined in this section, which shall take precedence of all other claims on said real estate and interest, and shall continue in force until said taxes are paid. Section 23 of chapter 14, outlines a method for the enforcement of this lien and provides that any officer to whom a tax has been committed for collection, may, after eight months from the date of commitment to him of said tax, give to the person against whom said tax was assessed, notice demanding payment of the tax within ten days. If said tax is not paid within ten days after service of said notice, the officer can bring an action of debt within one year after the date of commitment to him of said tax. Section 23 further sets forth the method of claiming the lien in the declaration attached to the writ on which service is made. It is, therefore, in effect a statute of limitations of one year, if the lien provided by section 3 of chapter 13 is sought to be enforced.

Two provisions for bringing an action of debt for the collection of taxes, other than to enforce the lien above mentioned, are provided by sections 27 and 24 of chapter 14. Section 27 provides that a collector of taxes, or his executor or administrator, may, after demand for payment, sue in his own name. Section 24 provides for an action to be brought in the name of the city or of the inhabitants of a town, on direction of the mayor and treasurer of a city; selectmen of a town; or assessor of a plantation.

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There is in this State, no special statute providing for the limitation of actions brought under these two sections. In the case of *Inhabitants of Topsham v. Blondell*, reported in 88 Maine, page 158, an action of debt was brought in the name of the inhabitants of the town under the requisite written direction, to recover for the taxes on the poll and personal property of the defendant. The defendant pleaded the general statute of limitations. The court said that the common law of England declared that time does not run against the king, and this exception of the sovereign from the statute of limitations has been adopted in this country as applicable to the State, but it has not been adopted in this country as applied to municipal corporations. The court further said that when the Legislature of 1876 created the remedy of an action of debt for taxes, it thereby gave the town its choice of remedies and if the town elected to use the new remedy, it accepted with all the general rules of pleading, practice and limitations which pertain to the action of debt, and that the court held that this particular action was within the statute of limitations and must be brought within six years.

This particular case, which has not been over-ruled or changed by statute, was an action for the collection of poll and personal property taxes, but there is nothing in the decision limiting it to such personal property taxes and intimating that there would be any different rule in the case of an action of debt for taxes on real estate.

It is our opinion, therefore, that an action of debt brought by a town or by a tax collector under either of the sections above mentioned, is barred by the 6-year statute of limitations, if such defense is interposed by the person against whom the suit is brought.

Very truly yours,

Francis W. Bartlett
Attorney General

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