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State's share in income from unlocated public lots

SYLLABUS:

In certain unorganized townships in which the public lot has not been located and from which the "grass and timber rights," so-called, have been sold, the State has a common and undivided interest in the entire township and, as such, is entitled to its proportionate share of common income, including rental from certain cottage lots and campsites.

FACTS:

The owner of a township in the unorganized territory, from which a public lot was reserved pursuant to Title 30 M.R.S.A. § 4151 (or its statutory predecessors), but in which the public lot has not been "located" or set off, is earning income from the township (i) by leasing to third persons, on an annual renewable basis, cottage lots on the township and (ii) by renting to third persons, on an overnight basis, temporary camping sites. In both cases, the income is accruing to the landowner essentially for the use and enjoyment by the lessees and campers of the surface of the township and not for the use of substantial improvements erected by the landowner. Pursuant to Chapter 196 of the Public Laws of 1850, the State sold the right to cut and carry away the grass and timber from the public lot in the subject township, such right to continue until the incorporation of the township or its organization for plantation purposes.

QUESTION:

Is the State entitled to share in any of the income accruing to the landowner as a result of the above described leasing of cottage lots and campsites?

ANSWER:

Yes.

REASONING:

Since the tendency in the common law is to import an intention in favor of a tenancy in common whenever the expressions in a conveyance or the acts of the parties to a conveyance permit such a construction, a tenancy in common springs up or exists whenever an estate in real property is owned concurrently by two or more persons under a conveyance or under circumstances which do not either expressly or by necessary implication call for some other form of cotenancy.

The State is, therefore, a tenant in common with the owner of the township by virtue of the reservation of an unlocated public lot from the original conveyance of the township by the State. Several cases have actually referred to and treated the relationship between the State and the owners of townships from which public lots have been reserved but not located as being that of tenants in common. Mace v. Land and Lumber Co., 112 Me. 420 (1914); Hammond v. Morrell, 33 Me. 300 (1851). The State's proportionate common and undivided interest in the subject township would be represented by a fraction of which the denominator would be the number of acres in the township and the numerator would be the number of acres reserved for public uses.

The income received by the landowner from the sources described hereinabove is common income and each tenant in common is entitled to his proportionate share of the common income from the commonly owned property. No part of the State's right to share in that type of income was conveyed by the State when the State conveyed the right to cut and carry away the grass and timber from the State's common and undivided interest in the township. A tenant in common who receives from a third person more than his proportionate share of the rents or profits from the common property must account to his cotenants in proportion to their respective shares for the excess received by him. Accordingly, the State is entitled to receive its proportionate share of the rental and camping income in the situation described hereinabove.

We would point out that in some instances, depending on the particular situation, the State may be responsible, as a tenant in common seeking to share in common income, for the discharge of common liabilities and for expenses to protect and maintain the common property. We further point out that by virtue of Title 12 M.R.S.A. § 504 and for most purposes pertinent to this opinion, the Forest Commissioner is responsible for the supervision, control and administration of the public reserved lots.

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