

141 Me. 442  
Supreme Judicial Court of Maine.

OPINION OF JUSTICES.

April 10, 1945.

Proceeding in the matter of the application of the House of Representatives for an opinion of the Justices of the Supreme Judicial Court concerning the constitutionality of a bill entitled 'An Act to Abolish Taxation of Intangibles.'

Opinion given.

West Headnotes (6)

[1] **Taxation**

🔑 **Power of Legislature in General**

371 Taxation  
371III Property Taxes  
371III(A) In General  
371k2073 Power of Legislature in General  
(Formerly 371k25)

The full power over taxation is vested in the Legislature including power of determining upon what kind and classes of property taxes shall be imposed, and what shall be exempt from taxation and is limited only by the positive requirements and prohibitions of the Constitution. Const. Amend. art. 36.

[1 Cases that cite this headnote](#)

[2] **Constitutional Law**

🔑 **Plainly Unconstitutional**

92 Constitutional Law  
92VI Enforcement of Constitutional Provisions  
92VI(C) Determination of Constitutional Questions  
92VI(C)3 Presumptions and Construction as to Constitutionality  
92k995 Plainly Unconstitutional  
(Formerly 92k48(1), 92k48)

An act of the Legislature cannot be adjudged unconstitutional unless it is plainly forbidden by some plain provision of the Constitution.

[Cases that cite this headnote](#)

[3] **Constitutional Law**

🔑 **Taxation and Public Finance**

92 Constitutional Law  
92XX Separation of Powers  
92XX(C) Judicial Powers and Functions  
92XX(C)2 Encroachment on Legislature  
92k2499 Particular Issues and Applications  
92k2525 Taxation and Public Finance  
(Formerly 92k70.3(14), 92k70(3))

The wisdom and policy of prescribing that upon certain kinds and classes of property taxes shall be imposed while others shall be exempted is for determination, not of the judiciary, but of the Legislature.

[1 Cases that cite this headnote](#)

[4] **Taxation**

🔑 **Constitutional Requirements and Operation Thereof**

371 Taxation  
371III Property Taxes  
371III(B) Laws and Regulation  
371III(B)4 Constitutional Regulation and Restrictions Concerning Equality and Uniformity  
371k2121 Constitutional Requirements and Operation Thereof  
(Formerly 371k40(1))


The constitutional requirement that all taxes upon real and personal estate shall be apportioned and assessed equally according to the just value thereof does not require Legislature to impose taxes upon all property within state, but only that any tax which shall be lawfully imposed upon any kind or class of real or personal property shall be apportioned and assessed upon all such property equally. Const. Amend. art. 36.

[Cases that cite this headnote](#)

[5] **Taxation**

🔑 **Constitutional Requirements and Operation Thereof**

**Taxation**

 [Effect of Requirement of Equality and Uniformity](#)


371 Taxation  
 371III Property Taxes  
 371III(B) Laws and Regulation  
 371III(B)4 Constitutional Regulation and Restrictions Concerning Equality and Uniformity  
 371k2121 Constitutional Requirements and Operation Thereof  
 (Formerly 371k40(1))

371 Taxation  
 371III Property Taxes  
 371III(F) Exemptions  
 371III(F)1 In General  
 371k2287 Constitutional Provisions  
 371k2289 Effect of Requirement of Equality and Uniformity  
 (Formerly 371k194)

Constitutional provision that Legislature shall have power to levy a tax upon intangible personal property at such rate as it deems wise and equitable without regard to rate applied to other classes of property does not deprive Legislature of power to determine what kinds and classes of property shall be taxed and what kinds and classes shall be exempt from taxation. Const.Amend. art. 36.

[2 Cases that cite this headnote](#)

[6] **Taxation**

 [Effect of Requirement of Equality and Uniformity](#)

371 Taxation  
 371III Property Taxes  
 371III(F) Exemptions  
 371III(F)1 In General  
 371k2287 Constitutional Provisions  
 371k2289 Effect of Requirement of Equality and Uniformity  
 (Formerly 371k194)

A proposed act of Legislature exempting intangible property from taxation would not be violative of Constitution. Const.Amend. art. 36.

[1 Cases that cite this headnote](#)

**Opinion**

**\*\*47 \*442** State of Maine

In House-March 28, 1945.

Whereas, a bill has been introduced into the House and it is important that the Legislature be informed as to the constitutionality of the proposed bill; and

Whereas, it appears to the House of Representatives of the 92nd Legislature that it presents important questions of law and that the occasion is a solemn one; now, therefore be it

Ordered: That in accordance with the provisions of the constitution of the state, the Justices of the Supreme Judicial Court are hereby respectfully requested to give this House their opinion of the following question:

‘Would H.P. 1009, L.D. 530, ‘An Act to Abolish Taxation of Intangibles’, if enacted **\*\*48** by the Legislature in its present form, be constitutional?’

House of Representatives March 29, 1945 Passed Harvey R. Pease, Clerk.

State of Maine

In The Year Of Our Lord Nineteen Hundred Forty-Five H. P. [1009-L. D. 530](#)

An Act to Abolish Taxation of Intangibles.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. R.S., c. 81, § 5, amended. Section 5 of chapter 81 of the revised statutes is hereby amended to read as follows:

‘Sec. 5. Personal estate taxable. Personal estate for the purposes of taxation shall include only tangible, physical goods, or chattels, and effects, wheresoever they are, and all vessels, at home or abroad.’

Sec. 2. R.S., c. 81, § 6, sub-§ II, repealed. Subsection II of section 6 of chapter 81 of the revised statutes is hereby repealed.

Sec. 3. R.S., c. 81, § 6, sub-§ XI, amended. Subsection XI of section 6 of chapter 81 of the revised statutes is hereby amended to read as follows:

'XI. The aqueducts, pipes, and conduits of any corporation supplying a town with water are exempt from taxation, when such town takes water therefrom for the extinguishment of fires without charge; but this exemption does not include therein any reservoir or grounds occupied for the same, or any property, real or personal, owned by such company or corporation, other than as hereinbefore enumerated.'

Sec. 4. R.S., c. 81, § 6, sub-§ XIV, repealed. Subsection XIV of section 6 of chapter 81 of the revised statutes is hereby repealed.

Sec. 5. R.S., c. 81, § 13, sub-§ III, amended. Subsection III of Section 13 of chapter 81 of the revised statutes is hereby amended to read as follows:

'III. Machinery employed in any branch of manufacture, goods manufactured or unmanufactured, and real estate belonging to any corporation, except when otherwise expressly provided, shall be assessed to such corporation in the town or place where they are situated or employed.'

Sec. 6. R.S., c. 81, § 13, sub-§ XI, repealed. Subsection XI of section 13 of chapter 81 of the revised statutes is hereby repealed.

Sec. 7. R.S., c. 81, § 14, repealed. Section 14 of chapter 81 of the revised statutes is hereby repealed.

Sec. 8. R.S., c. 81, § 17, amended. Section 17 of chapter 81 of the revised statutes is hereby amended to read as follows:

'Sec. 17. Stock of companies invested in other stock, how to be taxed. When an insurance or other incorporated company is required by law to invest its capital stock or any part thereof in the stock of a bank or other corporation in the state, for the security of the public, such investments shall not be liable to taxation.'

Sec. 9. R.S., c. 81, § 19, amended. Section 19 of chapter 81 of the revised statutes is hereby amended to read as follows:

'Sec. 19. Mortgaged personal property; loan secured by deed taxable to grantee. When personal property is mortgaged or pledged, it shall, for purposes of taxation, be deemed the property of the party who has it in possession, and it may be distrained for the tax thereon. Personal property, loaned or passed into the hands or possession of another, by any person

residing in the state, secured by an absolute deed of real estate, shall be taxed to the grantee, as in case of a mortgage, although the land is taxed to the grantor or other person in possession.'

To the Honorable House of Representatives of Maine:

The undersigned Justices of the Supreme Judicial Court have the honor to submit the following answer to the question propounded to us bearing date of March 28, 1945, relating to the taxation of intangibles.

Question.

Would H.P. 1009, L.D. 530, 'An Act to Abolish Taxation of Intangibles' if enacted by the Legislature in its present form be constitutional?

Answer.

A reading of Legislative Document H.P. 1009, L.D. 530 leaves no doubt that the real intention and purpose of the framers of this legislation is to exempt all intangible property from taxation. That the enactment of this bill would accomplish that result is apparent. Under existing statutes all real property within the state and all personal property tangible and intangible of inhabitants of the state, and within \*\*49 specified limitations of other persons, subject only to exemptions expressly defined and enumerated, is taxable. R.S., Chapter 81, Sections 2-5 et seq. By providing that 'personal estate for the purpose of taxation shall include only tangible, physical goods, or chattels, and effects, wheresoever they are, and all vessels at home or abroad,' with direct or amendatory repeal of related provisions inconsistent therewith, intangible property is withdrawn from taxation and all other real and personal property left with the entire burden thereof except as relieved by exemption of express statutory mention. As the question propounded is presented our only concern is whether the proposed exemption of intangible property from taxation is constitutional and the pending bill in its details needs no consideration.

[1] [2] [3] It is settled in this State that full power over taxation is vested in the Legislature including that of determining upon what kinds and classes of property taxes shall be imposed and what shall be exempt from taxation and is limited only by the positive requirements and prohibitions of the Constitution. It is a fundamental principle that no act of the Legislature shall be adjudged unconstitutional unless it is

plainly forbidden by some plain provision of the Constitution. And the wisdom and policy of prescribing that upon certain kinds and classes of property taxes shall be imposed while others shall be exempted is for the determination, not of the Judiciary, but of the Legislature. [Whiting v. Inhabitants of Lubec](#), 121 Me. 121, 115 A. 896; [In re Opinion of Justices](#), 102 Me. 527, 66 A. 726; [In re Opinion of Justices](#), 123 Me. 573, 121 A. 902; [In re Opinion of Justices](#), 133 Me. 525, 178 A. 820.

[4] [5] The only limitation upon the exercise of the legislative power of taxation in this State appears in Amendment XXXVI to Section 8 of Article IX of the Constitution and reads: 'All taxes upon real and personal estate, assessed by authority of this state, shall be apportioned and assessed equally, according to the just value thereof; but the legislature shall have power to levy a tax upon intangible personal property at such rate as it deems wise and equitable without regard to the rate applied to other classes of property.'

As to taxes upon real and personal estate in general it has long been accepted that this provision of the Constitution does not require the Legislature to impose taxes upon all property within the State but only that any tax which shall be lawfully imposed upon any kind or class of real or personal property shall be apportioned and assessed upon all such property equally. Exception by amendment only is that taxes levied on tangible and intangible personal property may vary as to rate. We are of opinion that the Legislature still has the power to

determine what kinds and classes of property shall be taxed and what kinds and classes shall be exempt from taxation. [Brewer Brick Company v. Inhabitants of Brewer](#), 62 Me. 62, 73, 74, 16 Am.Rep. 395; [In re Opinion of Justices](#), 102 Me. 527, 66 A. 726; [In re Opinion of Justices](#), 133 Me. 525, 178 A. 820.

[6] Finding no constitutional limitation upon the power of the Legislature to exempt intangible property from taxation we answer this question in the affirmative.

Very respectfully,

GUY H. STURGIS

SIDNEY ST. F. THAXTER

JAMES H. HUDSON

HARRY MANSER

HAROLD H. MURCHIE

ARTHUR CHAPMAN

**All Citations**

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