

general property taxes, if all property is appraised in the same degree proportionally higher than its true value, the illegality of such an appraisal is cured in the resulting tax by the proportionally lower rate, determined on the basis of the ratio between the total appraised value of all taxable property and the sum required to be raised. By contrast, if the appraised values of all stumpage in a community are similarly set proportionally higher than the true value of that stumpage, the resulting tax is not affected by an automatically reduced rate and is illegal. The State's obligation to reimburse that particular municipality is reduced by such an excessive appraisal and the equality of burden between the State (or the taxpayers of other municipalities) and the yield tax payer is not properly maintained.

The yield tax applies to a distinctive class of property and is imposed only upon a certain event and at a fixed rate. It is not correlated with other taxes. *Opinion of the Justices*, 84 N. H. 559, 575. Its assessment contains no features which require the determination of the propriety of an abatement other than by comparison of the appraised value of the stumpage in controversy with its full and true value.

The opinions herein expressed provide the answers to the specific questions transferred and the order is

*Case discharged.*

All concurred.

Rockingham, }  
July 1, 1953. } No. 4213.

RUSSELL WEEKS HOOK

*v.*

THOMAS H. SIMES, *Conservator & a.*

*William. H. Sleeper and Wayne J. Mullavey (Mr. Mullavey orally), for Russell Weeks Hook.*

*William P. Fowler, for Betty W. P. Worden.*

LAMPRON, J. The notice of appeal required by R. L., c. 365, s. 4, "is an essential component of the procedural action necessary to the bringing of an appeal . . . 'without a compliance with these provisions there is no valid appeal.' " *Arnold v. Hay*, 95 N. H. 499, 500; *Parker's Appeal*, 15 N. H. 24; *Clough v. Sanders*, 53 N. H. 618, 619. Although this section does not specify to whom notice should be given "there can be no doubt that the leading object and policy of the statute . . . was to secure notice to the appellee and all parties interested." *Tilton v. Tilton*, 35 N. H. 430, 432.

Inquisition into the competency of a person and the appointment of a guardian is a proceeding by the State in its character of *parens patriae*, based on its interest in the welfare of the alleged incompetent. *People v. Janssen*, 263 Ill. App. 101, 103; *Wells v. Attorney General of the United States*, 201 F. (2d) 556, 559; 28 Am. Jur. 663 (1952 supplement); 44 C.J.S. 55. This proceeding is generally held not to be adversary in the ordinary sense. *Id.*, 55. It is not an action to determine rights between the petitioner and the person informed against. *Id.*, 56. Some authorities maintain that the petitioner is not a party thereto any more than the person who signs the complaint in a criminal prosecution is a party to the action. 28 Am. Jur. 663. Other authorities take the view that the applicant at whose instance the mental incompetency proceed-

ing is had (R. L., c. 343, s. 1) is a necessary party thereto. 44 C.J.S. 70.

There is no doubt, however, that proceedings to establish mental incompetency are not criminal but civil in nature (44 C.J.S. 54; see *In re Moulton*, 96 N. H. 370, 373), although they possess a special character of their own. If they should result in a finding of competency the petitioner might be subjected to costs if it is found they were not instituted upon probable cause and in good faith. Buswell on Insanity, 93. Under those circumstances the applicant could also be subjected to a suit for damages. See *People v. Janssen*, *supra*.

We are of the opinion that certain rights of the petitioner Worden can be sufficiently affected by this appeal to place her in the class of persons to whom notice was intended by R. L., c. 365, s. 4. *Arnold v. Hay*, *supra*.

We must therefore sustain the exception of Betty W. P. Worden without prejudice to any petition which may be filed on behalf of Hook for relief under R. L., c. 365, s. 7.

*Exception sustained.*

All concurred.

Belknap, }  
July 1, 1953. } No. 4216.

NORMAN P. LYNCH *v.* LOWIE GRUNDY & *a.*