

Portsmouth Municipal Court,
No. 5255.

MERRIMACK PAVING CORPORATION

v.

JOHN L. SOUTHWICK III.

Argued January 5, 1965.

Decided February 26, 1965.



Arthur J. Reinhart (by brief and orally), for the plaintiff.

John L. Southwick, Jr. (by brief and orally), for the defendant.

WHEELER, J. After hearing the court made the following findings on the defendant's plea of abatement: "11/9/63 — After hearing the Court finds that the subject matter of the claim was entirely a Massachusetts transaction, and that the Plaintiff can properly maintain the action in N. H. — Motion denied. — Exception noted — Defendant appeals — Reserved case within 10 days or exception waived." The reserved case states that the defendant offered no evidence in support of the plea in abatement.

On the same day the plea of abatement was denied the court made the following entry: "Defendant appears under letter of Atty. After hearing verdict for Pl. in the sum of \$75.50 plus interest and costs."

The defendant has filed here a petition requesting this court "... to review the conduct procedure and rulings of the lower court." Complaint is made that the action should not have been tried in the Portsmouth municipal court. It is further contended in substance that the court below denied defendant the right to have his bill of exceptions transferred, withholding testimony and refusing to transfer all the records.

The Portsmouth municipal court had jurisdiction of the action since defendant was a resident of Hampstead, in Rockingham county and plaintiff was a nonresident. RSA 502:26. The court did not approve defendant's bill of exceptions, but transferred it by reserved case which adequately reserved defendant's exceptions.

The plaintiff admits that it was not registered to do business in this state but contends this is immaterial since defendant went to Massachusetts, purchased the goods in question and transported them away. The defendant's motion was based upon RSA 300:3. In view of the findings by the municipal justice, the motion was properly denied. *Chickering & Co. v. Jackson*, 81 N. H. 60.

No transcript of the evidence is before us, but the defendant's statements with respect to the evidence are not questioned by the plaintiff. The findings of the presiding justice are consistent therewith. The defendant's objections to the order of procedure in the municipal court present no issue of law for decision here. The plea of abatement was properly overruled, and the verdict is supported by the record.

*Exception overruled; judgment
on the verdict.*

All concurred.