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 Hopkinton v. Springfield.
 

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If the town of Springfield, in the course of the progress of that cause, had, by any vote or resolution, admitted the settlement of Hall to be in that town, there is no doubt that such admission might be given in evidence against them, in any subsequent case in which the question should arise; and the act of an agent, within the scope of the authority committed to him, may be given in evidence against the principal, the presumption being that it was done by his direction, or with his assent. *Story on Agency* 126, 131; 2 *Stark. Ev.* 42; 3 *Stark. Ev.* 1302. The act of the agent, here, had a tendency to show an admission by the principal. It was not evidence of an offer of compromise. Nor was it conclusive evidence of the fact, or offered as such. The plaintiffs were entitled to have the matter weighed by the jury, along with other evidence.

A presumption of payment arises in relation to bonds, mortgages, judgments, &c., after a lapse of twenty years, if there is no evidence to repel it, and to show that the debt is still unsatisfied. 1 *Phil. Ev.* 160; 2 *Cowen's Phil.*, note 307, and *auth. cited.* Taxes cannot have any higher character, in this respect, than debts due by specialty, and of record. The assessment is in the nature of a judgment, and the warrant for the collection operates like an execution. There is no reason, that we discover, why the same principle should not be applied to them.

*Judgment for the plaintiffs.*

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 TAPPAN vs. EVANS & a.

A supplemental bill in equity, introducing new facts relating to the merits, can be filed only by leave of court, upon sufficient cause shown.

IN EQUITY. After the delivery of the opinion, and the entry of the decree in this case, sending an issue to the com-

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Tappan v. Evans.

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mon pleas for trial, (11 *N. H. Rep.* 311,) the plaintiff filed a supplemental bill, setting forth that on the writ issued against Heath, and Evans as trustee, October 8, 1830, the homestead farm of Heath, in Warner, conveyed by him to Evans, as set forth in the original bill, was attached, with other land, as the property of Heath—that Heath had been defaulted in the action, &c.

The defendants demurred to this bill, and assigned, among other causes of demurrer, that it was filed and served on them without leave of the court first had, the whole matter charged therein having arisen, and being in existence when the original bill was filed; and if available at all to the plaintiff, that it was so by way of amendment; also, that the plaintiff had not verified, or offered to verify, the matters charged before filing the same.

*Tappan, & Bartlett*, for the plaintiff.

*J. Harris, B. M. Farley, & Jos. Bell*, for the defendants.

PARKER, C. J. A decree having been entered, in this case, it is very apparent that the plaintiff cannot file a supplemental bill, introducing new facts, as a matter of right. 2 *Atkyns* 139, *order in note*; 17 *Vesey* 178, *Perry vs. Phelps*; 2 *Smith's Ch. Pr.* 64; *Mitford's Pl.* 91.

If this bill is allowed, the operation of it must be to open the decree, or at least to suspend farther action upon it, until the new matter is considered; and this is not in the power of the plaintiff, at his pleasure.

And we are further of opinion, that a supplemental bill, introducing new facts relating to the merits, ought not to be filed as a matter of course, but only by leave of court, upon sufficient cause shown. Such is the practice in New York, in relation to injunction bills at least. 2 *Paige's Ch. R.* 333, *Eager vs. Price*; 3 *Paige* 294, *Lawrence vs. Bolton*. And it is said to be most safe to apply for liberty in all cases. 1 *Hoffman's Ch. Pr.* 403.

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Tappan v. Evans.

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In Massachusetts, it is held generally that a supplemental bill ought to be filed only by leave of court, and upon cause shown. 1 *Metcalf's R.* 76, *Pedrick vs. White*. And so in England, after publication, (2 *Smith* 64,) or after the parties are at issue, if the matter is of such a nature that it might have been introduced as an amendment to the original bill. 1 *Smith's Ch. Pr.* 528; 4 *Simons' Ch. R.* 76, *Colclough vs. Evans*. But it seems to be held there, that if before decree the cause is in such a state that the bill cannot be amended, a supplemental bill may be filed, for the purpose of putting new matter in issue. 4 *Simons* 628, *Crompton vs. Wombwell*. Whether this results from the new orders does not appear. It is said, in *Colclough vs. Evans*, that if the new orders had not existed, the supplemental bill could not have been filed without leave, because it sought to change completely the issue raised by the original bill.

A party cannot amend his bill here, without leave of court, after answer. This bill is in the nature of an amendment.

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SARGENT vs. STARK.

The erection of a dam, with the usual waste gates, by an owner of a mill privilege, by which he is enabled to flow back water higher than he had any right to do, furnishes no ground of action against him, or any agents engaged in superintending the erection of such dam.

It is the subsequent control and management of the water, by means of the dam, that renders the owner or his agents liable for damage.

The lessor of such property is not liable for any mismanagement of it by the lessee.

CASE, for damage in flowing a portion of the plaintiff's woodland, from April 7th, 1836, to the date of the writ, May 4th, 1839. Plea, the general issue.

The declaration alleged that the defendant, on the first of