

SANBORNTON v. TILTON & A.

The amount awarded to the several towns in this state by the state commissioners, under the reimbursement acts, so called, was designed to be in the nature of, and to be treated as, a debt due from the state to the towns for a portion of the amount expended by the towns in furnishing men for the service of the United States in the late war.

Hence, when a town had been divided after the men had been furnished and after the war was over, the legislature took no notice of this change, but awarded the whole amount to the old town, which furnished the men.

The act, dividing the town of Sanbornton in 1869, provided that all property and "all debts, claims, and demands of every kind, now owned by and due to the town of Sanbornton, * * should be divided between the two new towns in a certain proportion. *Held*, that the amount assigned to the old town under the "reimbursement acts," so called, of 1870 and 1871, should be divided in the same proportion between the new towns. And, as the act of division provided that the county commissioners should make such divisions between the new towns—*Held*, that a bill in equity brought in this court to procure such division, in the first instance should be dismissed.

When the county commissioners have in such a case, upon proper application, heard the parties and made their report, their decision is final and conclusive, and can only be inquired into by this court on the ground of fraud, partiality, or other misconduct of the commissioners, or some irregularity in their proceedings.

TO THE SUPREME JUDICIAL COURT—BELKNAP SS.

The town of Sanbornton, in said county, complains against Solon A. Carter, of Concord, in the county of Merrimack, treasurer of the state of New Hampshire, and the town of Tilton, in said county of Belknap, and says, that, by virtue of the act of the legislature of said state, passed at the June session, 1870, entitled "An act to authorize a reimbursement of the municipal war expenses," and of the act in addition thereto, passed at the June session, 1871, there was found due to said town of Sanbornton towards said reimbursement the sum of \$22,483.33, which sum is now in the possession of the said Solon A. Carter, treasurer as aforesaid, and stands, by the report of the commissioners appointed under said acts, as due to the said town of Sanbornton.

That the said town of Tilton wrongfully claims that \$12,365.83 of said sum of \$22,483.33 legally belongs to said Tilton; that said Tilton has demanded the same of said Carter, treasurer as aforesaid, and that

said Carter illegally threatens to pay over and deliver to said Tilton said sum of \$12,365.83.

Wherefore the said town of Sanbornton prays that the said Solon A. Carter, treasurer of the state of New Hampshire, be restrained by injunction of this honorable court from paying over to said town of Tilton said sum of \$12,365.83, or any part of said sum of \$22,483.33; and that said town of Tilton be restrained by injunction from receiving the same, and for such other relief as may be just.

The town of Sanbornton, by *Eastman, Page & Albin*, their solicitors.

IN THE SUPREME JUDICIAL COURT—BELKNAP SS.

THE TOWN OF SANBORNTON v. THE TOWN OF TILTON.

TO MR. CHIEF JUSTICE SARGENT :

The town of Sanbornton prays that the injunction sought in the foregoing bill be granted by the said chief justice, the said bill having been duly filed, and the said court not being in session.

Town of Sanbornton, by *Eastman, Page & Albin*, their solicitors.

Upon the petition for a temporary injunction, in June, 1873, a hearing was had, and the following facts were proved:

In 1869, the town of Sanbornton was divided into two towns, Sanbornton and Tilton. In that division, Sanbornton was to have $\frac{4}{10}$ of all the town property, and was to assume the same proportion of the town debts, as they then existed, and Tilton was to have $\frac{5}{10}$ of the town property, and pay the same proportion of the existing town debts. Nothing was said about any claim upon the state specifically. The proportion of property and of debts that should be assigned to each was a matter of compromise when the town was divided.

After the passage of the "reimbursement acts," so called, of 1870 and 1871, upon an exhibition to the commissioners appointed by the state for that purpose, of the number of men furnished by the old town of Sanbornton for the United States service during the war of the rebellion, an award was made to Sanbornton of \$22,483.33, and no award was made to the new town of Tilton. The award in every case was made to the town that furnished the men; and where such town had been divided after the men were furnished, and before the award was made, the whole amount was awarded as though no division had been made.

Tilton applied to the court by bill in equity for $\frac{5}{10}$ of the award, and the court dismissed the bill for want of jurisdiction, holding that, under the law by which the town was divided, the application must first be made to the county commissioners to make the division. Application was thereupon made by the town of Tilton to the county commissioners of Belknap county to make a division of this award between the new towns, and they, after hearing the parties, decided that Tilton was entitled to receive $\frac{5}{10}$ and Sanbornton $\frac{4}{10}$ of said award, and made report accordingly.

Thereupon this bill was filed by the new town of Sanbornton to prevent Tilton from obtaining the amount awarded them by the county commissioners, the plaintiff claiming,—

1. That there was no property here which had an existence at the time of the division in 1869, which the county commissioners could divide; and

2. The award by the state commissioners was to Sanbornton alone and that Tilton has no right to interfere with it; that legislative action is necessary before that town can receive any of the bonds or money under the reimbursement acts.

The hearing upon the petition for the temporary injunction was adjourned into this court, at its June law term, for the decision of the whole court.

Eastman, Page & Albin, for Sanbornton.

Pike & Blodgett and Barnard & Sanborn, for Tilton.

SARGENT, C. J. A bill in equity was entered at the term in Belknap county, in September, 1872, in favor of the town of Tilton, and against the town of Sanbornton and said Carter, asking the court to divide the money in Carter's hands between the two towns, and give Tilton her just and rightful share; to which the town of Sanbornton answered making the same claim substantially which she makes in this case. Questions of law were raised and reserved, and heard at the law term in December last (1872), and the bill was dismissed upon the ground that the act of 1869, chapter 58, dividing the town of Sanbornton, provided a tribunal which should hear and determine all disputes that might arise between the two towns in this matter; and that the legislature having appointed the tribunal that should decide and settle such questions, the court had no jurisdiction of the matter, at least in the first instance.

The provisions of the act, by which the town of Sanbornton was divided, are as follows: "All real and personal property, including debts, claims, and demands of every kind now owned by and due to the town of Sanbornton, all school and other funds belonging to said town, and the proportion of the literary fund which, until a new apportionment of state taxes, shall be payable to said towns, shall be divided between them in the proportion of \$1.50 to Sanbornton, and \$5.50 to Tilton; and if said towns cannot agree upon the division of any such property, the county commissioners of the county of Belknap for the time being, upon the request of either town, may make division of the same; or assign the same, or any part thereof, to either of said towns, and may order the town, to which such property may be assigned, to pay over such sums of money to the other town as in their opinion equitable, according to the foregoing proportion, and may fix the time of payment." It is also provided that when either town shall call for a division of the paupers, if they cannot agree upon a division, s

commissioners shall divide them; and assign to each town its proportion of such paupers according to the same basis as that provided for the division of town property, and shall determine which of said paupers shall be supported by each of said towns.

The reimbursement act, so called, of 1870, chapter 12, was entitled "An act to authorize a limited reimbursement of the municipal war expenditures," and the court did not doubt that the legislature intended that this award of the state commissioners to the several towns should be as the title to the act indicated, in the nature of a repayment, so far as the war debt of such towns; and as this war debt had been divided between the two new towns, according to the ratio prescribed in the act, that is, \$5.50 to Tilton and \$4.50 to Sanbornton, and had been assigned to and assumed by the towns in that proportion, it seemed just and equitable, if this debt was to be repaid in any part, that it should be repaid to the towns in the same proportion in which they had assumed the debt which was thus repaid; and the fact that in such cases the legislature made the award wholly to the old town, which furnished the men for the army, without noticing the subsequent division, makes it evident that they intended the money or bonds thus assigned and delivered in part payment of this debt should be considered the property of the old town, which should be divided between the new towns according to the rule prescribed or agreed on for the division of the property belonging to, and the debts or claims due to, the old town. The court having no doubt that such was the intention of the legislature, and that this was to be considered in the nature of a claim due to the old town from the state, dismissed the former bill brought by the town of Tilton, and sent the town to the county commissioners, who had been made by the legislature the tribunal to settle such questions.

Since that bill was dismissed, the town of Tilton has called upon the county commissioners, who have had a hearing, and have decided the question submitted to them, and have made their report,—they finding that the town of Tilton is entitled to recover the amount which they claim, and the town of Sanbornton the residue, and have ordered the same to be paid over accordingly. They have reserved no questions of law for the consideration of the court, nor have they asked the opinion of the court upon any subject; but they have settled, or undertaken to settle, the whole matter, both the law and the fact, and we think their decision is final and conclusive. They have been made, by the legislature, the arbiters between the towns in cases of disagreement. No appeal is given from their decision; no rehearing is provided for. Their decision, within the scope of their authority as conferred by the act, would have the same effect as a legislative enactment. No suggestion is made that the county commissioners acted corruptly, or partially, or in any way improperly. No fault is found with the form of their proceedings. All parties were properly notified, and everybody was fully heard that desired to be heard, and the commissioners have in good faith come to their conclusion and reported their decision. We think this report must be conclusive, until it is impeached on

account of some fraud, partiality, or other misconduct on the part of the commissioners, or some irregularity in their proceedings. But, as none of these things are pretended in this case, we think the application for a temporary injunction must be denied; and unless an entirely new and different case can be made before the court, from the case made before me, it would seem of little use to proceed further with this bill.

Injunction denied.

BROWN v. COLLINS.

A person whose horses, frightened by a locomotive, became uncontrollable, ran away with him, went upon land of another, and broke a post there, is not liable for the damage if it was not caused by any fault on his part.

TRESPASS, by Albert H. Brown against Lester Collins, to recover the value of a stone post on which was a street lamp, situated in front of his place of business in the village of Tilton. The post stood upon the plaintiff's land, but near the southerly line of the main highway leading through the village and within four feet of said line. There was nothing to indicate the line of the highway, nor any fence or other obstruction between the highway, as travelled, and the post. The highway crosses the railroad near the place of accident, and the stone post stood about fifty feet from the railroad track at the crossing. The defendant was in the highway, at or near the railroad crossing, with a pair of horses loaded with grain, going to the grist-mill in Tilton village. The horses became frightened by an engine on the railroad near the crossing, and by reason thereof became unmanageable, and ran, striking the post with the end of the pole and breaking it off near the ground, destroying the lamp with the post. No other injury was done by the accident. The shock produced by the collision with the post threw the defendant from his seat in the wagon, and he struck on the ground between the horses, but suffered no injury except a slight concussion. The defendant was in the use of ordinary care and skill in managing his team, until they became frightened as aforesaid.

The foregoing facts were agreed upon for the purpose of raising the question of the right of the plaintiff to recover in this action.

Rogers, for the plaintiff.

Barnard & Sanborn, for the defendant.

DOB, J. It is agreed that the defendant was in the use of ordinary care and skill in managing his horses, until they were frightened; and