

Aldrich & Parsons and *Dudley*, for the defendant.

Johnson and *Ray, Drew & Jordan*, for the plaintiff.

FOSTER, J. The plaintiff's title, so far as it is derived from the legislative grant of 1850, depends on the questions whether at that time he was a resident of the town of Pittsburg, and whether he was also in the occupation of the premises in dispute; and his title under the grant of 1860 depends on the question whether, for six months prior to the passage of that act, he had been in the "actual possession, *bona fide*, and making improvements" upon said premises. These were the only conditions that the legislature saw fit to impose upon those who might desire to avail themselves of its grants of land in the town of Pittsburg. Whether the plaintiff fulfilled these conditions with reference to the land he now claims to own, under either or both of these grants, is a question of fact, and the referee having answered it in the affirmative, his finding is conclusive.

The fact that the plaintiff had given Day a license to tap trees on a part of the gore, and had received pay for the same, was competent to show that the plaintiff was in the possession of that part of the land, and claimed to be the owner of it. It could make no difference, on the question of his possession or his ownership of the land, whether he hired some one to tap the trees for him, or sold the right to tap them, or tapped them himself.

The evidence offered by the defendant, to show that the plaintiff and Homans had agreed upon and marked on the ground the plaintiff's north line, was rightly rejected. It was not an agreement between adjoining owners in regard to a disputed line. It was an agreement between a trespasser, or a party having no title to the land on either side of the line, as attempted to be established, and the owner of the entire tract. *Prescott v. Hawkins*, 12 N. H. 26; *Carleton v. Redington*, 21 N. H. 291, 301; *Jackson v. Dysling*, 2 Caines 198; *Robertson v. M'Niel*, 12 Wend. 578; *Terry v. Chandler*, 16 N. Y. 354.

Judgment for the plaintiff.

ALLEN, J., did not sit: the others concurred.

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COE & a. v. CARTER & a.

Chapter 41, Laws of 1875, is not applicable to an unincorporated place, which has organized and elected officers, and raised money by taxation for highways and other town purposes.

BILL IN EQUITY. Facts agreed.

Wentworth's Location was organized, under Gen. St., c. 48, February 8, 1876, by electing officers as required by that statute. On the second Tuesday of March, 1876, town officers were again chosen, and annually since. At the annual meeting in March, 1876, the Location voted to raise money to build a school-house, for the support of schools, and for highways, and at the annual meetings since money has been raised for similar purposes and for town charges, and the selectmen have taken inventories and assessed the taxes voted, which have been collected.

The state treasurer, under the provisions of c. 41, Laws of 1875, has assessed a tax on the Location for 1876 and 1877, which he is proceeding to collect. The question is reserved, whether the assessment and collection of the taxes assessed by the officers of the Location exonerates it from the payment of the taxes assessed by the state treasurer.

W. & H. Heywood, for the plaintiffs.

The Attorney-General, for the defendants.

STANLEY, J. Wentworth's Location was organized by electing officers, and it has raised money by taxation to be expended on highways and for other purposes. This renders the act of 1875 inapplicable to it, and it is therefore exonerated from the payment of the tax assessed under the provisions of that act. If it were otherwise, the Location would be subject to double taxation. It is not necessary to decide whether the act of 1875 is constitutional, for, whether it is or is not, it is not applicable to this Location.

Case discharged.

SMITH, J., did not sit: the others concurred.

STATE v. ROBERTS.

The penalty for catching fish in the prohibited season may be recovered by indictment.

The indictment, if a public prosecution, may be at any time within two years after the date of the offence.

A person is liable for catching fish in the prohibited season from water, though within his own land, unless it be so enclosed as to prevent the free passage of the fish.

INDICTMENT, for catching four trout in the prohibited season from North pond in Stark. The respondent claimed that the proceeding should have been by action of debt for the penalty, and