

was made for the amendment. The petition could not be amended so as to give the court jurisdiction, and make valid the inquisition and report.

Hoit v. Molony was trover for a quantity of household furniture. The action was commenced in the superior court, and a verdict found for the plaintiff for \$77. The defendant moved in arrest of judgment, on the ground that the *ad damnum* in the writ had never been filled up. The plaintiff contended that this defect was cured by the verdict, or if not cured, that he was entitled to remedy the defect by an amendment. The court say,—“But by our statute of June 29, 1818, this court has no jurisdiction over personal actions originally brought here, unless the sum demanded in damages shall exceed the sum of fifty dollars. . . . The objection to our jurisdiction, and consequently our right to grant an amendment or make any other order as to this cause than to dismiss it, is not a personal privilege or local restraint, which may be waived by those for whose benefit they are introduced, and which are in law waived by pleading to the merits. . . . This objection is of a public nature, reaches the court itself, and anything done by us in the present action would be *coram non jndice*. We are bound to notice such an objection *ex officio*; and as the allowance of even an amendment would be an assumption of jurisdiction, the plaintiff is without redress, except by the commencement of a new action. The present proceedings must be quashed.”

J. Y. Mugridge, for the defendants.

DOE, C. J. The amendment was properly allowed. If the error was jurisdictional, there was jurisdictional power to cure it. *Bartlett v. Lee*, 60 N. H. 168.

All concurred.

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MERRILL v. PERKINS & a.

A motion to set aside a verdict on the ground of excessive damages, raises a question of fact to be determined at the trial term.

CASE. Reported 59 N. H. 343. Second trial on review. Verdict for the plaintiff, which the defendants moved to set aside because the damages were excessive. The court denied the motion, and the defendants excepted.

J. Y. Mugridge and *S. C. Eastman*, for the defendants, cited 1 Barb. 495; 1 Graham & Waterman, New Trials, 549; *Clerk v. Udall*, 2 Salk. 649; *Hewlett v. Cruchley*, 5 Taunt. 281; *Goodwin v.*

Gibbons, 4 Burr. 2108; *Doyle v. Dixon*, 97 Mass. 208; *Hamilton v. Bullock*, 2 Hayw. (N. C.) 224; *Com'rs v. Ross*, 3 Binn. 520; *Mitchell v. Mitchell*, 4 Binn. 180; *Woodruff v. Richardson*, 20 Conn. 238; *M. & W. R. R. v. Winn*, 26 Geo. 250; *Russ v. Steamboat*, 14 Iowa 363; *Sexton v. Brock*, 15 Ark. 345.

Chase & Streeter, for the plaintiff. In cases of tort, where it is claimed that the damages assessed by the jury are excessive, and that their verdict should be set aside for that reason, courts almost universally hold that they will not interfere unless the damages are so exorbitant, when compared with the circumstances of the case, as to satisfy them that the jury must have been influenced by passion, partiality, prejudice, or corruption in making the assessment. *Rand v. Redington*, 13 N. H. 76; *Belknap v. Railroad*, 49 N. H. 358; *Field Dam., c. 37*, and numerous authorities cited in notes; *Sedg. Dam.* (5th ed.) 707, and authorities cited; *Hilliard New Trials, c. 17*; *Bodwell v. Osgood*, 3 Pick. 380; *Treanor v. Donahoe*, 9 Cush. 228; *Worster v. Canal Bridge*, 16 Pick. 541; *Ayer v. Bartlett*, 9 Pick. 156; *Stoneham School Dist. v. Richardson*, 23 Pick. 62; *Tompson v. Mussey*, 3 Me. 305; *Jacobs v. Bangor*, 16 Me. 187; *Gilbert v. Woodbury*, 22 Me. 246; *Kimball v. Bath*, 38 Me. 219; *Campbell v. Portland Sugar Co.*, 62 Me. 552; *Gee v. Patterson*, 63 Me. 49; *Powers v. Cary*, 64 Me. 9; *Hobbs v. E. R. R.*, 66 Me. 573; *Clark v. Pendleton*, 20 Conn. 509; *Woodruff v. Richardson, ib.* 243; *Nicholson v. Railroad*, 22 Conn. 88; *Waters v. Bristol*, 26 Conn. 405; *Coleman v. Southwick*, 9 Johns. 45; *Worford v. Isbel*, 1 Bibb (Ky.) 247; *Solen v. Railroad*, 13 Nev. 106; *Ford v. Ward*, 26 Ark. 360; *Railroad v. Parks*, 88 Ill. 373; *Westerville v. Freeman*, 66 Ind. 255; *Railroad v. Casey*, 52 Texas 112; *Huckle v. Money*, 2 Wils. 205; *Ash v. Ash*, Comb. 357; *Cowp.* 230; 2 Wils. 405; 3 Wils. 61; 1 D. & E. 277; 2 W. Bl. 1327; 1 Burr. 609; *Butler v. Bangor*, 67 Me. 385; *Clark v. Whitaker*, 19 Conn. 330; *Hewlett v. Cruchley*, 5 Taunt. 281; *Duberley v. Gunning*, 4 D. & E. 651; *Shaw v. Railroad*, 8 Gray 45; *Clerk v. Udall*, 2 Salk. 649; *Chambers v. Robinson*, 1 Strange 691; *Anon.*, 6 Mod. 22; *Railroad v. Winn*, 26 Ga. 250; *Russ v. Steamboat*, 14 Ia. 365. We think no case can be found where the court have set aside a second or subsequent verdict that was substantially like the first, on the ground that the damages assessed were excessive. "There ought to be an end of things," and a second verdict, substantially like the first, is reasonable proof that the first is right.

DOE, C. J. The defendants' motion raised a question of fact to be determined at the trial term, and the case shows no error of law. *Hovey v. Brown*, 59 N. H. 114; *Smith v. Cushman*, 59 N. H. 519; *Gamsby v. Columbia*, 58 N. H. 60; *Daniels v. Lebanon*, 58 N. H. 284; *Burnham v. Butler*, 58 N. H. 568; *Wentworth v. Jefferson*, 60 N. H. 158; *Dodge v. Stickney*, 60 N. H. 461; *Hovey v.*

Morrill, 61 N. H. 9, 14; *Chase v. Woodward*, 61 N. H. 79; *Whitcher v. Dexter*, 61 N. H. 91; *Garvin v. Legery*, 61 N. H. 153.

Exception overruled.

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

STATE (*ex rel. Pearson*) v. HAYES.

The legal construction of a statute is the ascertainment of the intention of the legislature. In one sense, their intention is a matter of law: it is a question for the court. In another sense, it is a matter of fact: it is to be determined by the natural weight of competent evidence.

The principle of local government authorizes the grant of limited powers of local legislation to municipalities; but the power of general state legislation cannot be delegated by the senate and house of representatives, in whom it is vested by the constitution.

The provision of c. 54, Laws of 1879, that "the sense of the voters of this state shall be taken upon section one of this act, by ballot, those in favor thereof voting 'yes,' and those opposed voting 'no'; . . . and the governor shall . . . make proclamation of the result of said vote; and if it shall appear that a majority of the voters voting upon said proposition voted in favor thereof, then section one of this act shall go into effect and become a law . . . and otherwise shall be of no effect," was intended to be a delegation of legislative power.

QUO WARRANTO, to test the validity of the election of the defendant as one of the directors of the Concord Railroad Corporation, at the annual meeting of the stockholders, May 23, 1881. Facts found by a referee. At the June session of the legislature, 1879, an act was passed providing that "In all elections for directors or managers of a corporation, each member or shareholder may cast the whole number of his votes for one candidate, or distribute them upon two or more candidates, as he may prefer." It was further provided that the sense of the voters of the state should be taken, at the biennial election to be holden in the November following, upon the foregoing proposition; and that the same should or should not go into effect and become a law, according to the result of such popular vote. The returns of the vote showed a majority in favor of the proposition: whereupon the governor, in pursuance of a requirement of the act, issued his proclamation stating the result of the vote, and declaring that section one of the

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