

*Pike & Parsons*, for the plaintiff.

*J. L. Wilson and Bingham & Aldrich*, for the defendants.

DOE, C. J. The principle of local government authorizes grants of limited powers of local legislation to towns, but the power of general state legislation cannot be delegated by the senate and house in whom the constitution vests it. *State v. Hayes*, 61 N. H. 264. Taxation is an equal division of public expense. Local government necessarily allows taxation to be higher in one town than in another for local purposes, but not for purposes not local. *Gould v. Raymond*, 59 N. H. 260, 278; *State v. Express Co.*, 60 N. H. 219, 251. The rule of uniformity is coextensive with the territory in which a tax is assessed, and prevents unjust discriminations. *Railroad v. State*, 60 N. H. 87, 95. Authority to provide for the prosecution of the war of 1861 was not a power of local municipal legislation, and could not be delegated by the state to the towns. The expense of the war was not local in its legal character, and an unequal division of it among the towns cannot be constitutionally made by the legislature, or by a delegated power of taxation exercised in some towns and not exercised in others. *Bowles v. Landaff*, 59 N. H. 164, 193, 194. But in 1862, when Daniel Lee enlisted on the faith of the bounty offered by the defendants, the construction established by general acquiescence was, that an unequal division was legal. *Crowell v. Hopkinton*, 45 N. H. 9; *Stone v. Danbury*, 46 N. H. 139; *Huntress v. Stratham*, 46 N. H. 409; *Shackford v. Newington*, 46 N. H. 415, 422, 423; *Upton v. Stoddard*, 47 N. H. 167; *Hilliard v. Stewartstown*, 48 N. H. 280; *Kidder v. Stewartstown*, 48 N. H. 290; *Knowlton v. Sanbornton*, 48 N. H. 333; *Greenland v. Weeks*, 49 N. H. 472; *Spaulding v. Andover*, 54 N. H. 38, 50; *Pittsburg v. Danforth*, 56 N. H. 272. And the contract made by him and the defendants, being valid by the law as then construed, was not invalidated by the subsequent change of construction. 58 N. H. 623; *Lee County v. Rogers*, 7 Wall. 181; *Douglass v. County of Pike*, 101 U. S. 677, 686, 687; *Taylor v. Ypsilanti*, 105 U. S. 60, 69-72; *New Buffalo v. Iron Co.*, 105 U. S. 73; *County v. Douglass*, 105 U. S. 728, 732; Dil. Mun. Cor., s. 517.

*Case discharged.*

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

JUDGE OF PROBATE *v.* SOUTHARD & *a.*

By s. 7, c. 327, Laws 1846, when a husband was administrator of his intestate wife, the legal and beneficial title of her personalty vested in him, subject to the payment of her debts.

One claiming as next of kin, but not entitled to a distributive share of an intestate estate, cannot maintain an action on the administrator's bond for breach of the condition which requires him to return an inventory.

DEBT, on an administrator's bond given by the defendant Southard, as administrator of his wife, to whom he was married in 1845. She died intestate, November 1, 1856, leaving personal property which he had not reduced to his possession during her life, and of which he has not returned an inventory. The suit is brought for the benefit of their daughter. Facts found by a referee.

*G. F. Putnam*, for the plaintiff.

*S. B. Page* and *G. A. Bingham*, for the defendants.

DOE, C. J. Mr. Southard being administrator of his wife's estate, the legal as well as the beneficial title of her personal property vested in him, subject to the payment of her debts. *Laws* 1846, c. 327, s. 7; *Judge of Probate v. Chamberlain*, 3 N. H. 129; *Parsons v. Parsons*, 9 N. H. 309, 321; *Weeks v. Jewett*, 45 N. H. 540; *Atherton v. McQuesten*, 46 N. H. 205. As the daughter has no interest in the estate, she cannot complain of the non-return of an inventory. *Gookin v. Hoit*, 3 N. H. 392.

*Judgment for the defendants.*

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

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CAVIS v. BECKFORD.

As between the vendor and vendee of a mill, a steam boiler and looms, used in the mill as a part of it, and necessary for doing its work and carrying on its business, may be a part of it, though held in position only by their own weight.

TROVER, for a steam boiler, its fixtures, and two looms. Facts found by a referee. February 9, 1870, the defendant, owning a woollen mill and the machinery in it, situated in Bristol, conveyed the mill, by a warranty deed describing the land on which the mill stood, to Augustus and William H. Williams, for the sum of \$7,000, and the latter, on the same day, reconveyed it to the defendant by warranty mortgage deed as security for the purchase-money. In April or May of the same year the purchasers took possession.

The mill, when sold, was warmed by stoves, and the heat for scouring and coloring purposes was obtained from a copper boiler