

own use." This statute, considered by itself, merely authorizes the rescission of the vote by which an annual salary was established for the police justice. It contains no phraseology indicating a purpose to give towns the power to abolish their police courts; and the last clause of the section is without meaning, and superfluous, unless police courts may exist after towns vote to abolish the salaries of the justices.

A general police-court law was passed in 1852, under which a police court was established in each town that adopted the provisions of the act and voted to pay the justice not less than \$100 annually in full compensation for his services. Laws 1852, c. 1282, ss. 1, 7, 12. There was no provision authorizing a rescission of a vote adopting the act, or a refusal to pay a salary to the justice. By an amendment of this act, in 1854, any town was empowered "to rescind any vote by which said provisions shall have been so adopted;" and it was further enacted, that "all right to hold office by virtue of said act or any of its provisions, or to perform the duties thereof, shall cease and be fully determined upon the rescission of any vote for its adoption as aforesaid. And no such town shall be deemed liable for any salary or other compensation for services rendered thereafterwards by any officer therein named, and performed under the provisions of said act." Laws 1854, c. 1534, ss. 1, 2. This amendment allowed the town to abolish its police court by a rescinding vote; but until rescission, it remained liable for the salary. The present provision, allowing the town to rescind the salary and giving the justice the fees when his salary is rescinded (G. L., c. 215, s. 16), is a copy of Gen. St., c. 196, s. 14, which was proposed by the commissioners of revision in 1867 as a substitute for former law, and was marked by them as materially different. The difference between the amendment of 1854 and the substitute of 1867 is too great to admit a supposition that the legislature understood that one was a mere reënactment of the other. The vote of March 2, 1882, changed the mode of compensation, but did not abolish the court.

Petitioner discharged.

DOE, C. J., did not sit: the others concurred.

BERRY v. McARDLE, *Adm'r.*

In a suit against an administrator who does not elect to testify, the plaintiff cannot testify to facts known only to him and to the deceased unless it clearly appears that injustice may be done without his testimony.

BILL IN EQUITY, founded on Gen. Laws, c. 193, s. 22, to recover compensation for labor and services alleged to have been performed

by the plaintiff for the deceased. The administrator did not elect to testify. The plaintiff testified, in substance, that in 1834, when about twelve years old, she began to live in the family of the deceased, and remained there the greater part of the time till about four years before his death in 1874; that when not there she worked in other families, receiving from \$1.75 to \$5 per week; and that when she was in his family she had the care of the house most of the time, and did most of the work. Other witnesses testified to the fact of her working there and to the character of her work. The plaintiff offered to prove by her own testimony what the bargain was between her and the deceased as to her compensation. The testimony was excluded on the ground that it related to matters wholly within the knowledge of the witness and the deceased; and the plaintiff excepted.

W. Towle (and *Bartlett*, of Massachusetts), for the plaintiff.

J. Hatch, for the defendant.

STANLEY, J. It does not clearly appear that injustice may be done without the plaintiff's testimony. G. L., c. 228, ss. 16, 17. Its exclusion was equivalent to a finding that justice did not require it, because the fact which she desired to prove was known only to herself and the deceased, and she could not be contradicted by the administrator or by any other witness. The legislature have prohibited the admission of her testimony on the ground that it would put the parties on an unequal footing, and afford an unreasonable opportunity for fraud. For aught that appears, aside from her own testimony (*Harvey v. Hilliard*, 47 N. H. 551, 553, *Fosgate v. Thompson*, 54 N. H. 455), her services may have been gratuitous, or she may have been paid. There was no error at the trial. *Moore v. Taylor*, 44 N. H. 370, 374; *Chandler v. Davis*, 47 N. H. 462, 464; *Brown v. Brown*, 48 N. H. 90; *Drew v. McDaniel*, 60 N. H. 480, 482; *Cochran v. Langmaid*, 60 N. H. 571.

Exceptions overruled.

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

SARTWELL v. MOSES.

An agreement by the plaintiff, that goods which he claims, and for the taking of which by the defendant, a deputy sheriff, upon attachment against a third person, he has brought his action, may be sold, and the proceeds retained in place of the goods, is not a release of the cause of action, nor conclusive against the plaintiff's right to maintain the action.