

STATE v. PERKINS.

The supreme court has no jurisdiction to try a complaint brought by appeal from the judgment of a police court, in a case where the police court has not authority to render judgment, but only to hold the defendant to recognize for his appearance at the trial term.

COMPLAINT, for unlawfully keeping for sale fermented cider in less quantities than ten gallons. The complaint was entered in the police court of Pittsfield, and from the judgment of that court the respondent appealed. Plea, not guilty.

The respondent moved to quash the complaint (1) because no crime is alleged; (2) because it is not alleged that the respondent was not the manufacturer of the cider; (3) because it is not alleged that the keeping for sale was not at the press; (4) because *c. 102, Laws of 1881, repealing s. 17, c. 109, G. L., also repealed ss. 15 and 16 of the same chapter.* Motion denied, and the respondent excepted.

E. G. Leach, solicitor, for the state.

A. F. L. Norris, for the defendant.

STANLEY, J. The motion to quash should have been granted. The police court had no authority to impose a fine upon the respondent. He pleaded not guilty, and on this plea the court could not legally do more than determine whether there was probable cause to believe the respondent guilty, and, if satisfied that there was, order him to recognize for his appearance at the trial term of this court (*G. L., c. 109, ss. 20, 21, 22*); and the only remedy for the violation of law alleged in this complaint being by indictment, the court at the trial term had no jurisdiction to try the case on appeal. It is unnecessary to consider the other questions raised by the motion.

Motion granted.

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

EASTMAN v. GOULD.

In assumpsit, the question being whether the defendant's promise was or was not upon a condition not performed by the plaintiff, the burden of proof is on the plaintiff to show that the promise was unconditional

ASSUMPSIT, to recover \$25 for building a sidewalk. Facts found by the court. The defendant admitted that he promised to

pay \$25 towards building the walk, but upon condition that a crossing should be put in from his front door-steps to the north side of Elm street; and whether such a condition was annexed to the promise was the principal question in controversy. Upon this point the court reported that there was no balance of evidence in favor of the defendant, and thereupon found for the plaintiff. The defendant excepted.

E. B. S. Sanborn and Shirley & Stone, for the plaintiff.

C. C. Rogers and W. D. Hardy, for the defendant.

ALLEN, J. The burden of proof in the trial of the cause, with the general issue pleaded in defence, was upon the plaintiff throughout, and was not shifted by the defendant's claiming a conditional promise, a promise different from that alleged by the plaintiff. *Shepardson v. Perkins*, 60 N. H. 76, 82, 83; *Blodgett v. Cummings*, 60 N. H. 115. The finding of no balance of evidence for the defendant on the question of a conditional promise, and a finding therefore for the plaintiff, was, in effect, a finding that a preponderance of evidence on a question material to the issue was necessary to defeat the plaintiff's case; and that, as matter of law, the burden of proof was shifted from the plaintiff to the defendant. For the defendant to succeed, it was not necessary for him to show by a preponderance of evidence that the promise alleged by the plaintiff was not made, but only to meet the plaintiff's case by an even weight of evidence. As a matter of law, the burden of proof was not shifted from the plaintiff to the defendant in the trial; and for error in the ruling upon this subject, the verdict is set aside and a

New trial granted.

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

CHASE v. CURRIER.

A fund bequeathed to C., "to be prudently used if needed by him for his support during the remainder of his life," with remainder to others, is not attachable in the hands of the executor by C.'s creditors.

FOREIGN ATTACHMENT. Facts found by the court. The trustee is executor of the will of Lucretia M. Currier, who died February 15, 1883. Her will was proved and allowed, and the trustee appointed executor February 27, 1883. Service of the writ was made upon the trustee February 28, 1883. The defendant was