

of the property as well as by the language of the will. A bequest of the legatee's own note could not form a provision for her support, directly nor indirectly, unless she was possessed of property out of which payment could be enforced. If she had no property except such as is by law exempt from attachment, as an aid to her support, it would be entirely worthless; so that the more she stood in need of assistance the less could she obtain from such a gift.

The clause respecting the note is to be construed as if it were a separate and distinct item in the will, and the next clause as if the words "for her support for life" immediately followed the word "also," and the ellipsis of the words "I give and bequeath" were supplied so as to read, "also I give and bequeath for her support for life the sum," &c.

Judgment for the defendants.

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

SULLIVAN.

POWERS & a. v. COUNTY OF SULLIVAN AND TOWN OF GRANTHAM.

The county is not liable for costs incurred in prosecuting offences against the police of towns on the complaint of selectmen.

This agreed case presented the question whether the town of Grantham or the county of Sullivan is liable to pay justice, sheriff, and witness fees in the prosecution of persons for being common drunkards, on complaint of the selectmen of Grantham. The respondents were found guilty, and served out their sentences in the house of correction and jail respectively, but were discharged without paying the costs.

Ira Colby, Solicitor, for the county.

SMITH, J. "All legal costs attending the arrest, examination, or conveyance of any offender, except when the same is directed or approved in writing by the counsel of the state, or county commissioners, shall be paid by the complainant." G. L., c. 268, s. 13. "No such bills of costs [in criminal proceedings before magistrates] shall be allowed unless an indictment be found in the case, or the prosecution be instituted by the authority and under the direction of the attorney-general or the solicitor for the county." Rule 92. Hall and Thornton were convicted of an offence against the police of towns. G. L., c. 269, s. 17. A person convicted of such an

offence may, upon petition and proof of inability to pay his fine or costs, be discharged by the selectmen, and the town is liable for his prison charges in case of his inability. G. L., c. 268, s. 11. *County of Merrimack v. City of Concord*, 30 N. H. 299; *County of Strafford v. Somersworth*, 38 N. H. 21; *County of Strafford v. City of Dover*, 61 N. H. —. Fines for the violation of police offences or of the by-laws of towns are for the use of the towns. *County of Hillsborough v. City of Manchester*, 49 N. H. 57, 61. The fines being for the use of the town, the town being liable for the prison charges, and the selectmen having authority to discharge the prisoner, the legislature have not undertaken to impose the expense of such prosecutions upon the county unless they were directed or approved by some other authority than that of the town. In this case the complaints were made by the selectmen of Grantlam, acting in their official capacity. The complaints not having been authorized or approved by the counsel for the state, or the county commissioners, the county is not liable. Whether the selectmen had power to bind the town is a question we do not consider.

Case discharged.

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

FARWELL v. METCALF & a.

The appropriation of partnership property to the payment of the individual debts of a partner is valid against subsequent creditors of the firm.

Facts found by a referee.

E. D. Baker and *H. W. Parker*, for the plaintiff.

Ira Colby and *Batchelder & Faulkner*, for the defendants.

CARPENTER, J. The action is brought to recover the amount of the defendant's promissory note for \$200, dated April 11, 1882, payable on demand to H. L. Barker & Co., a copartnership composed of H. L. Barker and M. P. Stone, and given for partnership property sold to the defendants. When it was given, Barker agreed that the defendants might, if they chose to do so, pay to one F. \$81.84 due to him from the firm, and deduct that amount from the note in case they should pay it. Ten days afterwards Barker sold, and in the name of the firm indorsed the note to the plaintiff, in payment of his preëxisting individual debt. It is not found that this was done with any fraudulent intent. Stone was