

plaintiff at the time of his purchase, nor the bank at the time of the proceedings in the sale of the land to and by the town, had actual notice of the same, there could be no estoppel against a purchaser at a tax sale, notice of the proceedings as provided by law having been given, and actual notice not having been intentionally or fraudulently withheld. No question is raised by the case upon the effect of want of notice to the bank beyond the bearing of the fact upon the question of estoppel, and that question cannot be affected by want of notice, if the want did not arise, or was not promoted by the fraud of the defendant or the town. It was no fault of the town that the bank was ignorant of the assessment of the tax of 1878, or of the sale of the land for that tax in 1879; nor was it the fault of the town that the bank did not redeem the land and protect its title by paying the tax some time in the two and one half years after the sale and before the deed was taken, and neither the plaintiff, nor his grantor the bank, can now complain if the defendant, and his grantor the town, insist upon asserting a title which they, the plaintiff and the bank, might by reasonable diligence have easily defeated.

The selectmen of the town are public officers, whose duties are defined by law, and the town could not be estopped from claiming title to its land by any wrongful or unauthorized act of its selectmen in assessing a tax upon the land against one not the owner, nor in collecting and receiving the tax. *Rossin v. Boston*, 4 Allen 57, 58; *St. Louis v. Gorman*, 29 Mo. 593; *Ellsworth v. Grand Rapids*, 27 Mich. 280; *McFarlane v. Kerr*, 10 Bos. (N. Y.) 249.

*Exceptions overruled.*

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

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AHEARN & a. v. MANN, *Adm'r.*

Leave to appeal from a decree of the probate court allowing the settlement of an administrator's account, cannot be granted when the terms of the settlement were agreed to by counsel for the petitioners, and there was no fraud, and the only errors in the account were such as would have been discovered by reasonable diligence on the part of the petitioners and their counsel.

PETITION, for leave to appeal from a decree of the probate court, allowing the settlement of the defendant's account as administrator of the estate of John Briony, on the ground that the petitioners were prevented from appealing therefrom within sixty days,

through mistake, accident, or misfortune. Facts found by a referee.

*Edw. O. Cooke* (of Massachusetts) and *J. Kivel*, for the petitioners.

*T. J. Smith* and *J. G. Hall*, for the defendant.

ALLEN, J. The reasons assigned for leave to appeal from the defendant's settlement of his administration account are, that one inventory having been made and filed, other assets, of which no inventory was made, were discovered, and that neither at the settlement of the account, nor subsequently within the time for taking an appeal, did the administrator produce his books and vouchers for examination, and the petitioners were deprived of the opportunity of various errors and frauds, which it is claimed were made in the settlement.

The only errors in the account which the referee has found are a charge by the administrator of money paid for services by his attorney, thirteen dollars of which were for services rendered while the attorney was register of probate, and an excess—how much is not found—taken by the administrator, as commissions upon money collected and disbursed. These charges were examined and agreed to by the plaintiffs' attorneys, at the time the amount was settled. The assets, of which no appraisal was made, were accounted for at their value. At the time the vouchers were called for by the plaintiffs, the administrator could not find them, but they were subsequently discovered and produced before the referee, and corresponded with the items of the account. After the settlement the plaintiffs gave a receipt for the balance found, and a release, under seal, of all further claim against the administrator. There was no fraud or concealment on the part of the administrator, and there were no errors in the account, which, by reasonable diligence, might not have been discovered in season for correction or appeal. There being no fraud or concealment, and all matters having been open to examination, or so situated that by reasonable diligence they might have been examined, there is no such mistake, accident, or misfortune as warrants the granting of leave to appeal to prevent injustice.

*Petition dismissed.*

All concurred.

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JONES v. LANE.

Under G. L., c. 233, s. 5, the plaintiff cannot be allowed more costs than damages when the title to real estate is not in question and the damages recovered do not exceed thirteen dollars and thirty-three cents.

TRESPASS *qu. cl.* The title to real estate was not in question.