

arate parcels to several persons are made with warranty by his grantee. *Guion v. Knapp*, 6 Paige Ch. 35.

July 12, 1871, Mead & Co. held the unincumbered title in fee to lot A, and their mortgage upon the remainder of the Vail tract. *Mahagan v. Mead* [*ante*, 132]. By their quitclaim of that date to McIntire by McIntire's warranty of July 24, 1871, to Quimby, and by the other intermediate deeds, the same unincumbered fee in A passed to Halloran, who now holds it. The lot did not in Quimby's hands become subjected to the mortgage from the operation of which it had been released. Mead & Co. are estopped by the covenants in their deed of quitclaim from claiming it under their mortgage, as well against Quimby and her grantees as against McIntire. *Loomis v. Bedel*, 11 N. H. 74, 86. The estoppel created by Quimby's warranty of the Vail tract to McIntire is set at large in respect to lots A and E by the latter's reconveyance of those lots to her with warranty. *Carpenter v. Thompson*, 3 N. H. 204. The case stands as if Quimby had conveyed to McIntire A and E by quitclaim and the remainder of the Vail tract with warranty, and McIntire had in turn quitclaimed to her those lots.

Lot E, when reconveyed to Quimby, was placed in the same position as if she had never parted with the title. In her hands it was first liable for the satisfaction of the mortgage debt, and Halloran holds it subject to that burden. McIntire last conveyed F, G, and H to Taylor by deed of August 28, 1871. If lot I did not pass by this deed, it is chargeable with the mortgage debt next after E. Taylor first conveyed lot F to Sleeper, and then lot G to Rand. He still holds the title to H and also to lot I, if it passed to him from McIntire; if it did, the two lots are to be applied equally upon the debt next after E. It will not be necessary to determine whether the title to I is now in McIntire or in Taylor, unless E, H, and I are more than sufficient to satisfy the mortgage debt; and there may be evidence upon the question which is not disclosed by the case. Should they prove insufficient, the other lots are chargeable in the order G, F, D, C, and B.

Case discharged.

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

BOSTON & MAINE RAILROAD v. STATE.

A tax-payer who has paid more than his share of public expense may be entitled to interest on the excess abated by such an order, as justice requires.

APPEAL from the assessment of the plaintiffs' tax of 1884. Facts agreed.

The board of equalization valued the plaintiffs' road in New Hampshire at \$2,000,000, and assessed the tax accordingly, which the plaintiffs paid, under protest, October 30, 1884. This appeal was immediately taken, on which the valuation was reduced \$200,000, the tax assessed, and reduced \$2,473.40, and an order reducing the tax has been certified to the state treasurer, who gave credit for the sum of \$2,473.40 on the plaintiffs' tax due October 30, 1885. The plaintiffs claim one year's interest on the reduction.

Albin & Martin, for the plaintiffs.

The Attorney-General, for the State.

BINGHAM, J. The plaintiffs were required by law "to pay an annual tax as near as may be in proportion to the taxation of other property in all the cities and towns of the state." Laws of 1881, c. 53, s. 1.

It has been adjudicated that the plaintiffs were wrongfully required to pay the sum of \$2,473.40 more than their legal annual tax for 1884, and paid the same to the state, under protest, October 30, 1884. The plaintiffs claim that they were entitled not only to the sum wrongfully taken, but to interest on the same to the time it was applied to their use.

They could not be taxed for a greater sum than their proportional and equal share with the other property in the state, ascertained as nearly as it reasonably could be. *Railroad v. State*, 60 N. H. 87. This, however, has been done, and the taking and detention of the principal sum was the act of the defendants, and not the fault of the plaintiffs.

In actions of tort, the ordinary rule of damages is the value of the property taken, with interest. *Felton v. Fuller*, 35 N. H. 226; *Adams v. Blodgett*, 47 N. H. 219; *Thompson v. Railroad*, 58 N. H. 524; *Parrott v. Ice Co.*, 46 N. Y. 361, 369; *Schwerin v. McKie*, 51 N. Y. 180, 187.

A party aggrieved at the decision of the board of equalization may apply by petition, within one year, "to the supreme court at its law term, which shall give such notice to the parties, and such hearing, and make such orders in the same as justice may require." G. L., c. 61, s. 9. The statute gives the court, in this proceeding, power to determine the question now raised.

Section 1, c. 53, Laws of 1881, provides that "the collection of any tax assessed against any railroad corporation shall be made, and the amount thereof distributed, as by law directed, notwithstanding any application of any such corporation for an abatement of the same; and if, upon such application, judgment shall be rendered for any reduction of such tax, the state treasurer shall credit and allow the same upon the tax against said railroad corporation collectible next subsequent to such judgment." This section of the statute is to be construed in connection with the authority given

the court in s. 9, c. 61, Gen. Laws, in which the court is to make such orders as justice may require.

It is not just that a tax-payer should be compelled to bear more than his share of the public expense. He would bear more than his share if he lost and the public gained a year's use of an excess by him paid. It could not have been the intention to impose an unjust loss of a year's interest. Justice requires that there should be an equitable adjustment of that loss. In actions at common law, involving like questions, interest would be allowed as part of the damages, and we think it should be in this case.

The clerk will cast the interest on the excessive payment in the plaintiffs' tax of 1884 from the date of its payment to October 30, 1885, and certify the same to the state treasurer.

Case discharged.

All concurred.

HILLSBOROUGH.

MANSFIELD v. FASSETT & a.

A police court record, containing a clerical error, does not entitle a party to a *mandamus* for the issue of an execution to which he would not be entitled on a correction of the error.

PETITION, against the justice and clerk of the police court of Nashua, for a writ of *mandamus* commanding the issue of an execution by that court in favor of the plaintiff against the trustee in the action *Mansfield v. Dunn and N. L. Co., Tr.* Facts found by a referee. That action, and another brought by O'Neil against the same defendant and the same trustee, were entered at the May term of the police court, 1884. Both suits were brought by the same attorney. O'Neil's writ was served on the trustee before that of Mansfield. Judgment was rendered for the plaintiff against Dunn in Mansfield's action, and it was understood that the trustee's disclosure in O'Neil's case should be used in both cases. No appearance was entered on the docket for the trustee, who had no counsel. The disclosure was taken in O'Neil's case, and one Barry appeared as claimant of the funds in the hands of the trustee, and filed a bond. On the issue between O'Neil and Barry there was a trial; and judgment being rendered for the claimant discharging the trustee, O'Neil appealed. The justice and the claimant understood there would be no hearing on the liability of the trustee in Mansfield's action, but that the question, being the same in both cases, would be settled for both on O'Neil's appeal, and that the question in the second suit would await and be determined by the