

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.

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HILLSBOROUGH.

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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

result in the first. Mansfield's attorney, not having the same understanding, obtained from the clerk and caused to be served on the claimant an order of notice requiring him to appear at the July term and maintain his claim. At the July term, the claimant did not appear, and nothing was done. September 14, Mansfield's attorney moved that the trustee be charged, and the justice directed this entry to be made on the docket in Mansfield's action,—“Tee charged subject to previous suit in favor of O'Neil.” The meaning of this order, as understood by the justice, was, that the trustee should be charged if O'Neil prevailed on his appeal, and not otherwise. On that appeal, the judgment of the police court was affirmed. The clerk, by direction of the justice, refused to issue against the trustee an execution demanded by Mansfield.

*J. B. Parker* and *W. W. Bailey*, for the plaintiff.

*J. B. Fassett*, for the defendants.

DOE, C. J. Whether the entry charging the trustee subject to the previous suit does or does not correctly express the order intended to be made, this petition cannot be maintained. Whatever might be done for the correction of a clerical error by an amendment of the record of the police court, the record containing such an error would be no cause for compelling that court to give the plaintiff an execution to which, upon a correction of the error, he would not be entitled.

*Petition denied.*

All concurred.

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*In re* SCHOOL-LAW MANUAL.

Legislative power cannot be delegated to the supreme court or to a commissioner appointed under the joint resolution, c. 144, Laws of 1885.

A statutory provision that certain rules and forms of school-law procedure, prepared by a commissioner, shall be deemed valid and sufficient when approved by the supreme court, does not empower the court to decide the judicial questions of validity until those questions arise in cases brought for trial and judgment.

A question of law is not judicially decided by opinions of the justices of the supreme court required under the 74th article of the constitution; and that article does not authorize such advisory opinions to be required on questions which the body asking advice has determined not to consider.

Chapter 144, Laws of 1885, does not require legal advice of the justices under art. 74, and does not confer on them any power of approval or disapproval, legislative, judicial, or advisory.