

debt, without process seize and hold the debtor's property casually and without pledge in the creditor's possession.

Undoubtedly at the end of a month from the last settlement, or at any time when rent became due, the defendant could apply the plaintiff's debt to him in payment of such accrued rent, but he could not, without the consent or agreement of the plaintiff, create a new tenancy, nor make the existing one different from that agreed upon in the original contract, nor change the time within which notice to quit might be given by statute.

It was agreed that the defendant should have such notice to quit as would afford him ample opportunity to find another dwelling, and it does not appear that the notice given was too short for that purpose, nor that any question in that regard was made. The tenancy being one at will from month to month, and that not being changed or extended by agreement, and there being no waiver of the statutory time for notice to quit, and no stipulation for a different time or mode of terminating the tenancy, the notice given was sufficient, and the plaintiff is entitled to maintain his action for possession. On the facts reported there must be

*Judgment for the plaintiff.*

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

KENT & a. v. TAYLOR & a.

The words "to a tree on the bank of a river, thence up said river," etc, in the description of land conveyed by deed, locate the line at the thread of the stream; and that location is not changed by other words in the same description giving the length of lines and quantity of land conveyed.

ASSUMPSIT, for use and occupation of a portion of the bed of Newfoundland river upon which the defendants' grantors, in 1868, constructed a canal. In 1804, Moses Lewis, owning the land on both sides of the river, conveyed to James Martin, under whom the defendants claim, "about forty-four square rods of land, being a part of the lot No. 61 in the first division of lots in New Chester and Bridgewater bounded as follows viz.: Beginning four feet and six inches south of the south-easterly corner of my corn-barn and thence north 85° east six rods and seven links to a stake and stones; thence south 81° east four rods and fifteen links to a stake and stones; thence south 27° west five rods and twenty links to a poplar tree on the bank of Newfoundland river so called and thence

64	489
66	596
64	489
67	564
68	126
64	489
71	392
64	489
72	594

up said river until it comes on the line to make a right angle with the easterly end of said corn-barn and from thence north  $11^{\circ}$  west about two rods to the bound first mentioned." The last named or westerly line, and the easterly line extended to the centre of the river, measure each about two and one half rods more than the distances named in the deed. The tract exclusive of the river bed contains about forty-four square rods. The court ruled that the southerly boundary of the land conveyed is the thread of the river, and the plaintiffs excepted.

*Daniel Barnard* and *W. L. Foster*, for the plaintiffs.

*Fling & Chase*, for the defendants.

CARPENTER, J. Land described in a deed as bounded on the bank of a river not navigable, or by lines running to a stake or tree standing on the bank, and thence up, down, on, or by the river to another monument on the bank, extends to the thread of the stream. The doctrine is founded on the presumption that such was the intention and understanding of the parties. The mere fact that the distances and the quantity of land conveyed are greater under this construction than those named in the deed is not sufficient to overcome the presumption. *Rix v. Johnson*, 5 N. H. 520; *State v. Canterbury*, 28 N. H. 195, 216; *Woodman v. Spencer*, 54 N. H. 507, 511, 512; *Sleeper v. Laconia*, 60 N. H. 201; *Taylor v. Blake*, ante, 392; *Newhall v. Ireson*, 8 Cush. 595, 598; *Gould v. Eastern Railroad Co.*, 142 Mass. 85, 89; *Berridge v. Ward*, 10 C. B. N. S. 400; *County of St. Clair v. Lovington*, 23 Wall. 46, 64.

*Exceptions overruled.*

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

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BOSTON, CONCORD & MONTREAL RAILROAD *v.* STATE.

When a railroad tax is reduced on appeal, the amount abated is allowed on a subsequent tax.

APPEAL, from the assessment of the plaintiffs' tax of 1881. The sum of \$2,331.10 was abated, which the plaintiffs asked to have applied upon the balance of \$4,255.68 due to the state upon their tax of 1880.

*D. Barnard*, for the plaintiffs.

*E. G. Eastman*, for the state.

64	490
74	564
74	568
74	579