

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

BY THE COURT. A railroad corporation is required to pay its tax to the state treasurer, notwithstanding it has applied to the supreme court for an abatement of the same. If judgment shall be rendered for any reduction, "the state treasurer shall credit and allow the same upon the tax against said railroad corporation collectible next subsequent to such judgment." Laws 1881, c. 53, s. 1. The statute is mandatory.

*Motion denied.*

All concurred.

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COÖS.

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STATE v. SMALL.

64 491  
71 436

In an indictment for a second offence, an averment of a conviction that gives no information of the time, court, or county in which the judgment was rendered, is insufficient.

The provision of Gen. Laws, c. 109, s. 23, in relation to the form of an averment of a former conviction, does not dispense with the requirement of such a description as will enable the defendant to find the record.

INDICTMENT, under Gen. Laws, c. 109, s. 13, for keeping spirituous liquor for sale, with an averment that the defendant "has previously been convicted of a violation of section 13 of chapter 109 of the General Laws in relation to the keeping for sale of spirituous liquor." The question was reserved whether the indictment sufficiently describes a "subsequent offence." Other questions raised in this case were decided in *State v. Fagan* and *State v. Adams, ante*, 431, 440.

*J. H. Dudley, solicitor*, for the state.

*Aldrich & Remick (Drew & Jordan with them)*, for the defendant. Gen. Laws, c. 109, s. 23, is in conflict with Art. 15 of the Bill of Rights. *Com. v. Harrington*, 130 Mass. 35.

DOE, C. J. The provision of Gen. Laws, c. 109, s. 23, that the record of a former conviction need not be "set forth particularly" in an indictment for a second offence, and that "it shall be sufficient to allege briefly that such person has been convicted of a violation of any provision of this chapter, as the case may be," implies that there must be a statement of the record if it is relied on with a view of charging the defendant with the higher penalty. *Tuttle v. Com.*, 2 Gray 505, 507. The judgment need not be set forth literally; but he is entitled to a description that will enable