

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.

COÖS.

STATE v. SMALL.

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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

him to find the record, to apply for a correction or reversal, and to make preparation for a trial of the question whether he is the convict. A construction less favorable to him would not be consistent with his constitutional right. The averment giving him no information of the time, court, or county in which the judgment was rendered, is insufficient. The indictment is good, but not for a subsequent offence.

Case discharged.

All concurred.

GERRISH & a. v. CLARK.

A stipulation that the bailee of chattels shall pay a stated sum monthly as rent for the use thereof, and that, when the price fixed upon the goods is in that way fully paid, they shall become the property of the bailee, amounts to a conditional sale, and is invalid against attaching creditors without a written memorandum recorded as required by Laws of 1885, c. 30, s. 1.

TROVER, for several articles of household furniture delivered by the plaintiffs to one Barrett, upon a contract in writing which recited that Barrett had hired the goods of the plaintiffs, and was to pay them \$10 per month until a price fixed upon each article, amounting in the whole to \$29, was paid, when they were to become the absolute property of Barrett; and that, in case of failure to pay the stipulated rent, Barrett should return the same to the plaintiffs on demand. The goods were attached by the defendant, a deputy sheriff, on a writ against Barrett.

R. N. Chamberlin, for the plaintiffs.

D. J. Daley, for the defendant.

ALLEN, J. The contract was a conditional sale of the chattels enumerated, with the prices affixed to each article. The amounts specified to be paid as rent for the use of the furniture were, in the aggregate, equal to the agreed value or price of all the articles, and were the consideration for the sale and delivery of the chattels, which were to become Barrett's absolute property when that amount should be paid. It makes no difference that the payments to be made are called rent for the use of the property. Taken together, these payments were agreed upon as the amount of consideration to be paid, and the full payment of that amount was made the condition upon which the title of the property was to pass from

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