

[Sullivan, June, 1886.]

## LADD v. BARTON.

64 613  
Case 1  
71 148

ASSUMPSIT, for \$100, money had and received. Facts found by the court.

*G. R. Brown*, for the plaintiff.

*H. W. Parker* and *L. W. Barton*, for the defendant.

DOE, C. J. The defendant obtained a pension for the plaintiff, and received \$10 from the government and \$100 from the plaintiff. Both parties understood that it would be unlawful for the defendant to receive for his services in a pension case a greater sum than \$10 (U. S. Rev. St., ss. 4785, 4786, 5485; Act of June 20, 1878), and that the sum of \$100, though paid voluntarily, without demand or undue influence, was paid and received as compensation for the defendant's services in the plaintiff's case. The amount of the fee is fixed for the protection of the pensioner, as the rate of interest is fixed by the usury law for the protection of the borrower; and the parties were not in equal fault. *State v. Rand*, 51 N. H. 361. The right of the pensioners to recover in such cases as this is necessary for the protection the statute was intended to give them.

*Judgment for the plaintiff*

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

[Merrimack, December, 1886.]

## GAGE v. BARNES.

CASE, for diverting the water of Pond brook from the plaintiff's mill, against the provisions of a deed from the defendant to the plaintiff. Report of a referee for the plaintiff.

*Albin & Martin*, for the plaintiff.

*C. P. Sanborn*, for the defendant.

BINGHAM, J. The claim of the defendant is, that his deed only gave the right to erect and maintain a dam and penstock on his land, and that in other respects the right of upper and lower riparian proprietors was created by it. An examination of the deed does not sustain this claim. The deed conveyed the right to take the entire water from the dam, and carry it over the defendant's