
SULLIVAN.

SUNAPEE v. LEMPSTER.

A person seventy years of age cannot lawfully be taxed for his poll; and an assessment of such a tax against one of that age does not meet the requirement of the statute as to gaining a settlement by being taxed for a poll, but is wholly inoperative and void.

ASSUMPSIT, for the support of one Hall, a pauper. Facts found by a referee. Hall has no settlement in Sunapee, and none in any town in this state unless he has one in Lempster. He was duly assessed for his poll and some other property for six years next preceding 1859, and for all those years he paid all taxes thus assessed upon him. In the year 1859 he was assessed for his poll and some other property, and his taxes were committed to the collector, but before they were paid it was ascertained that he was over seventy years of age before he was taxed for that year, and the collector, being notified of that fact, when Hall came to pay his taxes, received \$3.21, and gave Hall a receipt "in full for the taxes assessed against him for the year 1859." The remainder of the tax, being the amount of poll tax, was afterwards abated.

Ira Colby, for the plaintiff.

A. S. Wait, for the defendant.

FOSTER, J. "Any person of the age of twenty-one years, who shall have resided in any town in this state, and, being taxed for his poll for seven years in succession, shall have paid all taxes legally assessed on his poll or estate during said term, shall thereby gain a settlement in such town." G. S., c. 73, s. 1.

"Every person seventy years of age is exempted by law from the payment of a poll tax." G. S., c. 49, s. 1.

It is a well settled rule, that no tax shall be considered as imposed by law, in the absence of a manifest declaration of the intent of the legislature to impose it. *Dock Co. v. Browne*, 2 B. & Ad. 43; *Pott. Dwarris* 175, 185, 255, 256.

In our own statutes the legislative intention is unequivocal, that no person seventy years of age shall be taxed for his poll. The taxation of Daniel Hall for his poll in 1859 was therefore without authority and void. The statute in question, concerning the 9th method of gaining a settlement, has always received a very strict construction. See *Weare v. New Boston*, 3 N. H. 203; *Burton v. Wakefield*, 4 N. H. 47; *Henniker v. Weare*, 9 N. H. 573; *Tamworth v. Freedom*, 17 N. H. 279.

Where authority to levy a tax exists, a settlement by force of taxation and payment of taxes may undoubtedly be acquired notwithstanding, and may not be avoided by reason of a mere informality, or even a clear illegality, in the method of assessment or collection of such lawful tax; because, the tax and the taxation being provided by law, the requisitions for gaining a settlement under the statute are all complied with by payment, not necessarily of *the* tax assessed, but by payment of all taxes *legally* assessed.

But a taxation not provided, and in fact prohibited, by law is no taxation,—is a purely void act, can confer no authority, impose no obligation, and afford no foundation for anything whatever. Taking these two statutes together,—*c. 49, s. 1*, relating to poll taxation, and *c. 73, s. 1, cl. IX*, relating to the settlement of paupers,—no doubt can be entertained as to the intention of the legislature and the legal construction required to be given to the law.

When the legislature provided for the taxation of polls from twenty-one to seventy years of age only, and also made it one condition of gaining a settlement that the person *shall be taxed* for his poll seven years in succession, they made it impossible that a settlement should be acquired in the ninth mode provided by the statute, by any person who by reason of having attained seventy years of age *could not be* legally taxed. Applying these views to the facts reported by the referee, it is manifest that the pauper never acquired a legal settlement in Lempster, and there must be

Judgment for the defendant.

WALKER v. WETHERBEE.

When a division of fence in a statutory method, between owners of adjoining lands, is rendered unequal by a change of land-title on either side, severing the boundary line, the statute authorizes a new division.

Impounding animals doing damage in an enclosure is a cumulative remedy.

The statute of pounds does not impair the common-law right of doing anything reasonably necessary to be done in defence of property.

TROVER, for two horses. The plaintiff's father and one Humphrey formerly owned farms in Langdon adjoining each other, the line between them extending some one hundred rods; and they divided the fence on this line, Humphrey taking the north half and Walker the southerly half to make and keep in repair. This division was in writing, was in proper form, and no objection was made to its validity as between the original parties. The plain-