

wise occupied, but it was inadmissible to show an intention on the part of the lessor, or a parol agreement of the parties, to reserve any part of the premises not reserved by the terms of the lease. The language of the lease conveyed the yard-room around the building "not otherwise occupied," having reference to the usual and customary occupation, and evidence of a parol agreement to reserve land for the millinery shop not usually occupied in connection with it, and any conversation about a reservation for future occupation was rightfully excluded, being in conflict with the language of the lease. *Prescott v. Hawkins*, 12 N. H. 19; *Peaslee v. Gee*, 19 N. H. 273; *Sanborn v. Clough*, 40 N. H. 316; *Wells v. Iron Company*, 47 N. H. 235; *Andrews v. Todd*, 50 N. H. 565; *Coburn v. Cozeter*, 51 N. H. 158; *Goodeno v. Hutchinson*, 54 N. H. 159; *Hunt v. Haven*, 56 N. H. 87; *Packard v. Putnam*, 57 N. H. 43; *Sleeper v. Laconia*, 60 N. H. 201.

Whether the merits of this case can be reached on a count in general assumpsit, filed as an amendment of the declaration, is a question not necessary to be now considered.

Exceptions overruled.

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

BRADLEY v. LACONIA.

The remedy against a tax illegally assessed is by appeal from the assessment.

ASSUMPSIT, to recover back money paid for taxes which the plaintiff claims were illegally assessed upon the parochial school property of the Catholic church in Laconia, from 1879 to 1888 inclusive.

F. M. Beckford, for the plaintiff.

Jewell & Stone, for the defendants.

CLARK, J. The taxes which have been paid under the impression that the assessment was legal cannot be recovered back. The remedy was by an appeal from the assessment. *Edes v. Boardman*, 58 N. H. 580; *Locke v. Pittsfield*, 63 N. H. 122; *Boody v. Watson*, 64 N. H. 162, 187. Payments made under a mistake of law cannot be recovered back. *Ladd v. Kenney*, 2 N. H. 340; *Webber v. Aldrich*, 2 N. H. 461; *Pinkham v. Gear*, 3 N. H. 163, 168; *Peterborough v. Lancaster*, 14 N. H. 382; *Evans v. Gale*, 17 N. H. 573; *Manchester v. Burns*, 45 N. H. 482, 486; *Bisp. Eq.* (2d ed.) 244; *Pom. Eq. Jur.*, s. 851. The payments were voluntary. *Bean v. Jones*, 8 N. H. 149; *Caldwell v. Wentworth*, 14 N. H. 431;

66	269
69	338
69	533
66	269
72	556

Barrett v. Cambridge, 10 Allen 48; *Lee v. Templeton*, 13 Gray 476; *Forbes v. Appleton*, 5 Cush. 115, 117, 118; *Railroad Co. v. Commissioners*, 98 U. S. 541, 543; *Little v. Bowers*, 134 U. S. 547.

The question whether the property was legally taxable does not arise in the case, and has not been considered.

Exceptions overruled.

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

66	270
72	200

PENDEXTER & a. v. CATE, *Guard. of Cole.*

An officer's return on a writ that "I made service on the within named defendant by delivering a summons in hand for his appearance at court" is sufficient under the statute of Maine to give the court jurisdiction of the person and cause.

A judgment by default in such a case is conclusive.

DEBT, on a judgment recovered in Maine by the plaintiffs against the defendant Cate, in 1871, upon default. The officer's return of service on the original writ was, "I made service on the within named defendant by delivering a summons in hand for his appearance at court." The defendant objected that the return did not show that the summons was given by the officer to the defendant in hand, as required by the Maine Revised Statutes. He also objected that the defendant having been defaulted, judgment was entered for \$78.40, while the account annexed to the writ was \$77.65.

Frank Weeks, for the plaintiffs.

Worcester & Gafney and *Beacham & Foote*, for the defendant.

CLARK, J. The return of the officer that he "made service on the within named defendant by delivering a summons in hand for his appearance at court" was sufficient. It cannot, by any reasonable interpretation, be construed to mean a delivery in hand to any other person than the defendant.

As the court had jurisdiction of the subject-matter of the case and of the person of the defendant, the record is incontrovertible, and the judgment cannot be inquired into in this suit. *Lawrence v. Smith*, 45 N. H. 533, 537; *Fowler v. Brooks*, 64 N. H. 423; *McDonald v. Drew*, 64 N. H. 547.

Judgment for the plaintiffs.

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