

the defendants in the action at law, and the bill in equity was dismissed.

George R. Brown, for the plaintiff.

Albert S. Wait, for the defendants.

CHASE, J. The land in controversy is the island, using the term in a general sense, and not the strip of land between the bank and the thread of the brook. The parties understand that the west bank of one of the channels is the boundary, but they differ as to which channel was intended. If their difference related to the question whether the bank or the thread of the stream was the line, a consideration of facts not appearing in the case might be necessary for a correct decision of it. The most of the water of the brook, and at times all of it, flows through the easterly channel. That is the main channel. The other is an auxiliary, which furnishes a passage for surplus water in times of freshet. One speaking of Long Pond brook, and having reference to one channel, would be understood to refer to the principal one. If reference to the other was intended, some qualifying word would be used to designate it.

Illustrations of a similar use of language are found in cases in which it is held that a boundary of land upon a non-navigable river includes islands situated nearer the bank formed by the land than the opposite bank, the principal channel being regarded as the river. *Claremont v. Carlton*, 2 N. H. 369; *Greenleaf v. Kilton*, 11 N. H. 530; *State v. Canterbury*, 28 N. H. 195, 219, 220, 221; *Nichols v. Suncook Manufacturing Company*, 34 N. H. 345, 349; *Kimball v. Schoff*, 40 N. H. 190; *Cessill v. State*, 40 Ark. 501; *Lunt v. Holland*, 14 Mass. 149; *Missouri v. Kentucky*, 11 Wall. 395. There is no evidence tending to show that the parties did not use the phrase "Long Pond brook" according to its ordinary signification when referring to one of its two branches. Under such circumstances it describes the main or easterly branch.

Exceptions overruled.

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

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HENRY & a. v. HAVERHILL.

A statute authorizing a fire district to adopt the provisions of Gen. Laws, c. 78, and providing that it shall then have the same rights as cities have by virtue of said chapter, and that its commissioners shall have all the powers of mayor and aldermen of cities respecting all matters within

the legal authority of the district, does not transfer the power to lay out highways within the district from the selectmen of the town to the commissioners of the district.

PETITION for a new highway, which the defendants' selectmen had refused to lay out. The defendants moved that the petition be dismissed, on the ground that the original petition should have been addressed to the commissioners of the Woodsville Fire District, within the limits of which the proposed highway is located. The motion was denied, and the defendants excepted.

Smith & Sloane, for the plaintiffs.

Samuel B. Page, for the defendants.

ALLEN, J. By the act of July 21, 1887 (Laws 1887, c. 204), the Woodsville Fire District was authorized to adopt c. 78 of the Gen. Laws, relating to sidewalks and sewers, and to choose annually five commissioners, who "shall have all the powers of mayor and aldermen of cities respecting all matters within the legal authority of the district." The act was adopted, and commissioners were chosen by the district.

Section 4 of c. 78, Gen. Laws, gives to the mayor and aldermen of cities the power, upon an application for a new highway, to direct, as a condition of establishing the highway, that a portion of the expense of laying out and constructing it shall be paid by persons particularly interested in obtaining it. The defendants claim that the district of Woodsville, by virtue of its adoption of the provisions of the chapter, and as a consequence of the power thereby conferred, has authority to lay out and construct all highways within its limits. The general authority of the mayor and aldermen of cities to establish new highways is the same as that of the selectmen of towns (Gen. Laws, c. 46, s. 14), and "selectmen upon petition may lay out any new highway, or widen and straighten any existing highway within their town for which there shall be occasion, either for the accommodation of the public or of the person applying." Gen. Laws, c. 67, s. 1. The act of 1887, under which the defendants claim to oust the selectmen of their jurisdiction, does not, in terms or by implication, provide for the establishment of new highways. It gives the district commissioners "all the powers of mayor and aldermen of cities respecting all matters within the legal authority of the district," and the establishment of new highways is not one of those matters. It gives them "the sole power of appointing a surveyor of highways for said district," but provides that he shall give bond to the town and be deemed an officer of the town, and that "nothing in this act shall be construed to impose any distinct or special liability upon the district respecting highways within its

limits." The district is subjected to no liability respecting its highways "distinct" from its liability as a part of the town. It is not liable to indictment for neglecting to make new highways lawfully established, for neglecting to keep its highways "in good repair, suitable for the travel thereon" (Gen. Laws, c. 74, s. 1), or to travellers for damages happening to them by reason of defects therein. Gen. Laws, c. 75, s. 1. To these burdens the town alone is subjected. Legislation imposing upon one body the sole duty of constructing and keeping in repair highways, and subjecting another body to both criminal and civil liability for defects therein, which it has no power to prevent, would be novel as well as inequitable. There are no words in the statutes directly indicating, or from which it can be inferred, that the legislature intended such a result.

Exceptions overruled.

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

McFETRICH v. WOODROW & a.

A person not the payee of a promissory note, who writes his name on the back before it is negotiated, is liable as maker, not as endorser, although his signature was for the accommodation of the payee, and the payee, at the time of negotiating it, endorses it above such signature.

ASSUMPSIT, on a promissory note of the defendant Woodrow, endorsed by the defendant Jameson, dated October 27, 1886, and payable to the order of E. H. Williams, four months after date. Facts found by the court.

The note is an accommodation note made by Woodrow, and endorsed by Jameson for the benefit of Williams, at his request. January 1, 1887, the plaintiff took the note of Williams in good faith, for an adequate consideration, and without notice that it was an accommodation note. When the note was exhibited to the plaintiff, Jameson's name was on it; and at the time of its delivery to the plaintiff, Williams endorsed his name above that of Jameson. Jameson was not notified of the non-payment of the note until June, 1889.

Thomas F. Johnson and Ladd & Fletcher, for the plaintiff.

Jason H. Dudley and Ossian Ray, for the defendant Jameson.

ALLEN, J. The note was not a valid contract until it was negotiated and delivered to the plaintiff for value. Jameson was not entitled to notice of non-payment. He was liable to the plaintiff,