

Merrimack, }  
June, 1898. }

PATTEE *ſ a. v.* THOMPSON *ſ a.*

Under P. S., c. 112, s. 23, towns have power to appoint agents to enforce the law against the illegal sale of spirituous and malt liquors.

BILL IN EQUITY, by taxpayers of the town of Warner, praying that the defendant Flanders be enjoined from collecting of the town the expenses incurred by him as its agent to enforce the liquor laws therein, and that the other defendants, as selectmen and treasurer of the town, be restrained from paying the same.

*Streeter, Walker & Hollis*, for the plaintiffs.

*William H. Sawyer* and *Albin, Martin & Howe*, for the defendants.

BLODGETT, J. The question raised by the case is whether towns have power to appoint agents to enforce the law against the illegal sale of spirituous and malt liquors, under s. 23, c. 112, P. S., relating to such liquors, by which it is enacted that "The selectmen shall prosecute, at the expense of the town, every person guilty of a violation of any previous section of this chapter, of which they can obtain reasonable proof; and if any selectman shall neglect his duty as specified in this section, he shall be fined not more than two hundred dollars. But this provision shall not be construed to prevent any person from making complaint, and instituting and carrying on prosecutions for such offences; and such complainant, whether a town or city by its officers, or an individual, shall be entitled to one half of every fine collected through such prosecution."

We have no doubt that this question should be answered in the affirmative, and, moreover, it is in effect so answered in *Northumberland v. Coös*, 51 N. H. 557, 559, where it was held that a town is entitled to one half the fines in liquor prosecutions instituted and carried on by its agent. In other words, it is our opinion that the explanatory and qualifying part of s. 23 is to be construed as if it read: But this provision shall not be construed to prevent any person, town, or city from making complaint, etc. Taking this to be so, if the selectmen neglect their duty to prosecute, or if for any reason it is deemed desirable, the town may do so; and as towns can act only through agents, they may of course appoint an agent for that purpose.

*Bill dismissed.*

All concurred.