

that there was evidence tending to prove the opposite of the defendants' contentions on each point. The facts upon which questions of law are based are settled at the trial term. *Gamsby v. Columbia*, 58 N. H. 60. The case as presented to us discloses evidence competent for the consideration of the jury upon the questions of the defendants' negligence and the plaintiff's care; and was properly submitted to the jury under instructions to which no exception was taken, and which must be assumed to have correctly and fully stated the rights and liabilities of the parties upon the various claims as to the evidence.

Exceptions overruled: judgment for the plaintiff.

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

Hillsborough, }
Dec., 1900. }

MCQUADE, *Adm'r*, *v.* MANCHESTER.

The imposition by a police court of a fine not exceeding two hundred dollars, upon a plea of guilty or *nolo contendere*, is not a hearing and determination of a criminal action, within the meaning of section 3, chapter 248, of the Public Statutes.

An action cannot be maintained for the recovery of a fine not exceeding two hundred dollars, imposed by a police court for a confessed violation of law.

ASSUMPSIT, for money had and received. Facts agreed. Between April, 1895, and March, 1897, the plaintiff's intestate was arraigned before the police court of Manchester upon sundry complaints charging that he kept spirituous liquor for sale contrary to law. In each instance he pleaded guilty or *nolo contendere*, and was fined \$50 and costs for the first offence, and \$100 and costs for subsequent offences. He paid the fines and costs to the chief of police, who paid the same to the city treasurer. The plaintiff made a demand upon the defendants for the money so paid, but they refused to repay it. The court ordered judgment for the defendants, and the plaintiff excepted.

John O'Neill, for the plaintiff.

George A. Wagner, for the defendants.

PIKE, J. The fines in question were imposed in accordance with the statute which provides that "police courts may render final judgment and sentence in any criminal case where the fine does not exceed two hundred dollars, . . . if the accused pleads guilty or *nolo contendere*." P. S., c. 248, s. 8. The authority of a police court to render final judgment and impose a fine under such circumstances is confirmed by the opinion in *Philpot v. State*, 65 N. H. 250, which holds that a respondent has no right of appeal from such a judgment. See, also, *State v. Williams*, 68 N. H. 449, 451.

The holding in *State v. Jackson*, 69 N. H. 511, that a police court has not authority under the constitution to "hear and determine any prosecution or action of a criminal nature" where the punishment is a fine exceeding ten dollars (P. S., c. 248, ss. 3, 7), is not applicable to the present case. Here the respondent by his pleas confessed his guilt, and the justice's duty did not require him to "hear and determine" the merits of the case. The fines having been paid by the intestate for confessed violations of the law, in accordance with the judgment of the court, under the provisions of a valid statute, this action cannot be maintained.

Exception overruled.

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

Hillsborough, }
Dec., 1900. }

AMOSKEAG MANUFACTURING CO. v. SHIRLEY & a.

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Where a manufacturing corporation purchases the right to maintain for purposes of flowage flashboards supported by pins not less than four feet apart, and subsequently acquires from the same grantor the privilege of maintaining the boards at an increased height, by a deed in which no reference is made to the earlier restrictions, the grantee may use such reasonable means of support as will render the additional right effective.

BILL IN EQUITY, praying for an injunction to restrain the defendants from removing flashboards from the plaintiffs' dam. Facts found by a referee.

January 11, 1875, the defendants conveyed to the plaintiffs "the right and privilege to build, erect, and maintain its stone dam to the height it is now constructed . . . and the right to place flashboards thereon to any height above the present top of said stone