

Hillsborough, }  
May 5, 1908. }

NASHUA LIGHT, HEAT, AND POWER CO. v. FRANCESTOWN  
SOAPSTONE CO. & Tr.

A tenant of a lessor, who attorns to the owner of the premises to avoid eviction, is not chargeable as the lessor's trustee.

FOREIGN ATTACHMENT. The defendants were defaulted. The issue of the trustee's chargeability was tried before *Peaslee, J.*, at the September term, 1907, of the superior court. The trustee was discharged, and the plaintiffs excepted.

February 15, 1905, the defendants leased to the trustee for the term of three years a tract of land, part of which they leased from the Boston & Maine Railroad. Their lease expired June 1, 1905, and was not renewed. The trustee paid rent to the defendants to that date, and afterward to the railroad. The writ was served on the trustee June 9, 1905.

*Henry A. Cutter*, for the plaintiffs.

*Branch & Branch*, for the trustee.

YOUNG, J. The test to determine whether the trustee is chargeable is to inquire whether the defendants could maintain an action against him for rent. *Glauber Mfg. Co. v. Voter*, 71 N. H. 68; *Corning v. Records*, 69 N. H. 390, 396; *Marsh v. Garney*, 69 N. H. 236. It is an answer to such an action for the tenant to show that, in order to avoid eviction, he attorned to the person legally entitled to the immediate possession of the premises. *Russell v. Allard*, 18 N. H. 222; *Smith v. Shepard*, 15 Pick. 147; *Morse v. Goddard*, 13 Met. 177; 11 Cyc. 1120; 8 Am. & Eng. Enc. Law 105-108. The test, therefore, to determine whether the court erred in discharging the trustee is to inquire whether it can be found that the trustee attorned to the railroad in order to avoid eviction; for the plaintiffs do not contend it cannot be found that the trustee acted in good faith, that the railroad's title was superior to the defendants', and that the railroad was entitled to the immediate possession of the premises.

The trustee states in his disclosure that, notwithstanding his lease was not formally cancelled, he paid rent to the railroad after June 1, 1905, because that corporation owned the property. It is clear it can be found from this evidence, not only that the trustee

became the railroad's tenant to avoid eviction, but also that he assumed that relation with the defendants' consent; and either of these facts is fatal to the plaintiffs' right to recover.

*Exception overruled.*

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

Sullivan, }  
May 5, 1908. }

WILMARTH *v.* KING.

The statute authorizing a justice of the peace to impose a sentence of six months' imprisonment as punishment for crime is not in conflict with the constitution.

HABEAS CORPUS. The petitioner, having been duly convicted before a justice of the peace for the county of the offence of drunkenness in a public place, was sentenced by the justice to confinement in the county jail for the term of four months. The ground of his application for discharge was the claim that the sentence of confinement for four months was in excess of the jurisdiction which could be conferred upon a justice of the peace under the constitution. Upon examination before *Wallace, C. J.*, in the superior court, the jurisdictional question was transferred to the supreme court for determination, the petitioner being admitted to bail pending the decision.

*George R. Brown*, for the plaintiff.

*Frank O. Chellis*, solicitor, for the defendant.

PARSONS, C. J. The extreme term for which imprisonment is authorized as punishment for the offence of which the petitioner was found guilty is six months. P. S., *c.* 264, ss. 14, 20; Laws 1903, *c.* 32. Section 3, chapter 248, of the Public Statutes, authorizes every justice of the peace to "hear and determine any prosecution or action of a criminal nature arising within his county, or triable therein, where the punishment is . . . by imprisonment not exceeding six months." The limitation, by constitutional provisions securing to the individual an untrammelled right of trial by jury when accused of crime, upon the judicial