

any renewal of said note, then this deed, as also said note, shall be void and of no effect, otherwise to remain in full force and virtue."

Upon demand of the bank the defendant paid to it four hundred and four dollars, in satisfaction of the note he signed with Ahern. The defendant duly foreclosed the power of sale mortgage for condition broken. With the proceeds of the sale, he paid the expenses of foreclosure, satisfied a prior mortgage and his own note for two hundred and twenty-five dollars, and then retained four hundred and four dollars to reimburse him for the amount he had paid the bank in satisfaction of the note he had signed with Ahern. This absorbed all the proceeds of the sale.

Before the foreclosure the plaintiff attached this mortgaged real estate in a suit against Ahern, and now contends that the defendant had no legal right to retain any part of the proceeds of the foreclosure sale to reimburse him for the amount he paid the bank in satisfaction of the note for four hundred dollars.

In the absence of a brief and oral argument in support of the plaintiff's exception, no reason occurs to the court why the verdict should be disturbed.

*Exception overruled.*

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Merrimack, }  
Feb. 5, 1924. }

FRANKLIN LIGHT & POWER COMPANY v. STATE.

APPEAL, from order No. 1252 of the public service commission disallowing a proposed increase in lighting rates.

*Demand, Woodworth, Sulloway & Rogers, for the plaintiff.*

*Murchie & Murchie, for the city of Franklin.*

*Per Curiam.* The Franklin company complains because the commission (1) held that federal taxes were not an operating expense and (2) because it found that the company's property was worth only \$245,000 for rate-making purposes.

Notwithstanding the commission erred when it held that federal taxes were not an operating expense the order appealed from will not be vacated, for the company has failed to show that the rates as

allowed by the commission, and now in force, will not produce sufficient income to enable it to pay its federal taxes and give it a reasonable return on its investment. This result is not to be construed as a finding that the value of the company's property for rate making or any other purpose is only \$245,000 as found by the commission, or that it is worth more than \$300,000 as the company contends.

What is intended and all that is intended by this decision is that the company has failed to satisfy the court that as to lighting rates the decision and order are "clearly unreasonable," and for that reason unlawful. Laws 1913, c. 145, s. 22 (e).

*Appeal dismissed.*

PARSONS, C. J., did not sit.

Grafton, }  
March 4, 1924. }

RUTH MARSHALL, *Adm'x*, v. BOSTON & MAINE RAILROAD.

CASE, for negligently causing the death of plaintiff's intestate at a grade crossing in Thetford, Vt. Transferred by *Sawyer*, J., upon plaintiff's exception to an order of nonsuit.

*Doyle & Doyle* and *Owen & Veazey*, for the plaintiff.

*Alvin Burleigh* and *Jewett & Jewett*, for the defendant.

*Per Curiam.* The controversy relates to an occurrence in Vermont, and the rights of the parties, as fixed by what then happened, are determined by Vermont law. A nonsuit was ordered because under Vermont law the facts in proof conclusively established the contributory negligence of the deceased. This necessarily implies a determination by the trial court of Vermont law as applied to the facts in proof.

Foreign law is a matter of fact, determinable at the trial term. *Connecticut &c. Co. v. Railroad*, 78 N. H. 553, 557; *Hansen v. Railway*, 78 N. H. 518, 521, 523; *Kimball v. Kimball*, 75 N. H. 291, 292; *Jenne v. Harrisville*, 63 N. H. 405. The Vermont decisions considered as evidence by the trial court tend to prove the law of Vermont requires the order made. The implied finding as to the foreign law being supported by some evidence is not open to exception.