

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.

The precise ground upon which the nonsuit was ordered would definitely appear if the facts which the court considered conclusively established negligence under the law of Vermont were stated. The plaintiff has leave to apply to the superior court for such a finding.

Case discharged.

Rockingham,)
Nov. 5, 1924.)

STATE v. JOSEPH HASELTON.

COMPLAINT, for illegally transporting intoxicating liquor in violation of Laws 1917, c. 147, s. 20, as amended by Laws 1919, c. 99, s. 4. The defendant had theretofore been convicted, under the same section, of illegal possession. This complaint charges him with a second offence. In the superior court he was found guilty of illegal transportation, and the question whether upon these facts he could be found guilty of a second offence was transferred without ruling by *Allen, J.*

Jeremy R. Waldron, solicitor, for the state.

John L. Mitchell, for the defendant.

Per Curiam. The case is governed by *State v. Gendron*, 80 N. H. 394. The defendant is guilty of a second offence.

Case discharged.