

Stevens
vs.
Gilson.

Such an agreement, as well as an award on the subject, is an estoppel, between the parties to it, to deny the line. But it is an estoppel only between the parties to it, and those claiming under them through subsequent conveyances. It is certainly not conclusive between these parties. It would not be evidence against this demandant. It is not, then, evidence in his favor. 1 *Stark. Ev.* 195.

The verdict for the plaintiff must be set aside.

STEVENS vs. GILSON.

In an action of assumpsit the court will not limit the costs merely because the plaintiff has consented to receive in full satisfaction of his demand a less sum than \$13.33, paid into court under the common rule.

ASSUMPSIT. The defendant pleaded the general issue, and paid into court under the common rule \$7. When the cause was called to be tried, the plaintiff elected not to take the amount brought into court, in full satisfaction of his demand, and the cause was opened to the jury. But at length the plaintiff concluded to take the \$7 in full satisfaction of his claim; and the court, taking the cause from the jury, permitted him so to do.

C. G. Atherton, for the defendant, moved the court to limit the costs; but it not appearing that the plaintiff could have had no reasonable expectation of recovering more than \$13.33, the judge who tried the cause refused to limit them, but transferred the case to this court for decision.

Sawyer and Emerson, for the plaintiff.

RICHARDSON, C. J., delivered the opinion of the court. It is provided by statute that in certain cases, if it appear

that the plaintiff had no reasonable expectation of recovering more than thirteen dollars and thirty-three cents, the court may limit the costs. But the court never interferes in these cases unless it in some way clearly appears that the plaintiff had no such reasonable expectation.

It may so appear on the face of the declaration, or by the evidence introduced on the trial. 4 *N. H. R. 227, Rumney vs. Ellsworth.*

But it has been decided, that the court are not to infer that a plaintiff could have had no reasonable expectation of recovering more than \$13.33, merely from the circumstance that the jury have found a less sum. 5 *N. H. R. 247, Herrick vs. Fuller*; 6 *ditto 59, Ames vs. Cady.*

And we are of opinion, that no such inference is to be drawn from the circumstance that the plaintiff has consented to receive in satisfaction of his claim a less sum paid into court under the common rule. There are many cases in which a plaintiff might greatly prefer to take a less sum than he believed to be really due to him, rather than proceed further in the suit; in a particular manner in cases where the amount in controversy is small. And it would be very hard to deprive the party of his reasonable costs merely because he had been willing to take less than was due to him, in order to be rid of the suit.

Full costs allowed.

AMHERST vs. HOLLIS.

A prisoner, confined in gaol upon an execution, may be a pauper within the intent of the statute for the relief of the poor; and, in such case, the selectmen of the town in which the gaol is situated are bound to relieve him; and may recover of the town in which he has his settlement.

Amherst
vs.
Hollis.