THE PECULIAR METHOD OF ENFORCING JUDGMENTS AGAINST QUASI-CORPORATIONS IN THE NEW ENGLAND STATES.

The method ordinarily employed in the majority of the States of this country, for the enforcing of judgments against quasi-corporations, does not prevail in the New England States. Instead of proceeding by mandamus, it is the practice there, derived from immemorial usage, to hold the estate of any inhabitant of a county, town, territorial parish, or school district, liable to be taken on execution against the corporation.

The liability seems, however, to have been invariably confined to inhabitants. The person or property of a citizen, who removes out of one town and becomes domiciled in another, is not subject to be taken upon an execution in a suit subsequently instituted against the town from which he removed; although it might have issued upon a debt which occurred prior to his removal. The courts have invariably declined to extend the remedy by construction; but hold its operations limited to those who were members or inhabitants at the time of the rendition of the judgment, or at most at the time of the commencement of the action.

Outside of the New England States, in the absence of an express provision of law to that effect, creditors of a municipal corporation cannot resort to the individual property of the inhabitants for the purpose of discharging a judgment against the corporation. Their remedy is by mandamus to compel the corporation to pay the debt by levying a tax; but the failure of the corporation to make the levy, or of the inhabitants to pay the tax, does not render their individual property liable to be taken by the creditor. There are many decisions to this effect.[1]

The usage seems originally to have been confined to towns. Later on, by construction, it was extended to counties, school districts and territorial parishes. The rule was particularly applic-

1 Meriwether *v.* Garrett, 102 U. S. 472; Horner *v.* Coffey, 25 Miss. 434; Miller *v.* McWilliams, 50 Ala. 427; Weber *v.* Lee County, 6 Wall. 211; Rees *v* Watertown, 19 Wall. 107.

able to all three cases. The counties were but collections, as the school districts and parishes were subdivisions of towns, created for certain administrative purposes. Mr. Cooley, referring to this point in his "Constitutional Limitations," says:[2] "By the several statutes which have been passed respecting school districts, it is manifest that the legislature has supposed that a division of towns, for the purpose of maintaining schools, will promote the important object of general education; and this valuable object of legislative care seems to require, in construing their acts, that a liberal view should be had to the end to be effected. Following out this view, the courts of the New England States have held, that when judgments are recovered against towns, parishes and school districts, any of the property of private owners within the municipal division is liable to be taken for their discharge."

The custom is believed, by the best authorities, to have existed in England, and to have been brought from there by the early settlers of New England. Actions against the "hundred" were known as far back as the reign of Edward I. As the "hundred" had no property except that of individuals, the judgment must necessarily have been collected from them.

In 1788, it was held in an action upon the case, for an injury done to the wagon of the plaintiff, in consequence of a county bridge being out of repair, that indictments against counties were sanctioned by the common law, though they would be levied on the men of the county.[3] Subsequently, Lord Chancellor Eldon said that, "If a fee-farm rent was chargeable on the whole of the place called Exeter, he who was entitled to the rent might have demanded the whole, or any part of it, from any one who had a part of or in that city; leaving the person who was thus called upon to pay, to obtain contributions from the other inhabitants as he best could."[4]

We see from the above cases, that the principle was operative and applied in England, especially in cases where a statute fixed a liability upon a municipality which had no corporate funds. In New England the practice "obtained from the earliest times without any statute."[5]

The practice, however it originated, has been regarded as settled law in Massachusetts for over a hundred years. About

---

2 Third Edition, 1874, p. 242.

3 2 D. & E. 660.

4 2 Russ, 45 (1826).

5 Hill *v.* Boston, 122 Mass. 344 (1877).

the year 1790, one Gatchill was imprisoned on an execution against the town of Marblehead, for a debt the town owed. Mr. Dane, even at that early day, said that the practice was justified by "immemorial usage." Such an imprisonment, so soon after the Revolution, when the principles of liberty had so recently been vindicated, would never have been permitted had it not then been a familiar practice.[6]

As early as 1809, a law for the laying out of town roads provided that the damages might be recovered against the inhabitants of the town through which the road passed, by a warrant of distress, which might be levied against the personal estate of any inhabitant. An action was also given to the inhabitant to recover the amount so paid.

A little later, in an action of assumpsit for work and labor performed on a new county jail, Chief Justice Parsons, in delivering the judgment of the court, said: "The defendants move * * * that every inhabitant of the county of Kennebeck is a party. * * * As in judgments recovered against the inhabitants of a county, the estate of every inhabitant is liable to be taken by execution to satisfy such judgments; every inhabitant of a county may be deemed a party to all actions sued against it." The writ was accordingly abated.[7]

In 1833, it was said by the court to be very clear that one of the inhabitants of a town "could not volunteer, and make the payment for the town, and so cause the town to become his debtor without its consent."[8] Five years later it was said that "where judgment is recovered against a parish, and execution issued, every parishioner is liable in his person and property to satisfy it. His individual property may be taken for that purpose. There is, therefore, much ground to maintain that where a demand is made on a parishioner by an officer, to satisfy an execution against the parish, he may pay it and maintain an action in his turn against the parish. But it is not necessary to put the decision on this ground. The plantiff's property was under attachment. * * * The result is, that the plaintiff was under actual coercion, and was compelled to pay the debt to save his property from execution. It was in no sense a voluntary payment."[9]

---

6 Dane's Abr. 5 c. 143, art. 5, §§ 10, 11, p. 158.

7 Hawkes *et al. v.* The Inhabitants of the County of Kennebeck, 7 Mass. 461 (1811); The Inhabitants of Brewer *v.* The Inhabitants of New Gloucester, 14 Mass. 216 (1816); The President of the Mechanics Bank *v.* Cook, 4 Pick. 405, 414 (1826).

8 Andrews *v.* Callender *et al.* 13 Pick. 484.

9 Keith *v.* The Congregational Parish in Easton, 21 Pick. 261.

In Chase *v.* President of the Merrimack Bank, it was decided *per Curiam*, that where the plaintiff, before the sale on execution of certain shares of stock belonging to him, had delivered a certificate to the parish clerk, setting forth that he no longer considered himself as a member of the parish, he had, by so doing, ceased to be a member of the parish, and that the execution did not run against him or his property, although he was a member of the parish when judgment was recovered.[10]

In Gaskill *v.* Dudley, Chief Justice Shaw said: "We think that if the present plaintiff was liable at all, it was because all the members of the quasi-corporation were sued by their aggregate name, all were liable as parties and original debtors, and the judgment creditor had his election, in the first instance, to levy upon the corporate property, or on the property of one or more of the members of the corporation, as in the case of towns."[11]

In Massachusetts, payment of a judgment against a quasi-corporation has never been compelled by mandamus.

The courts of Connecticut have been called upon, even more than the courts of Massachusetts, to pass upon the question which we are considering. We find there a long line of decisions, beginning in 1808 and running up to 1844, when the question received such an exhaustive investigation by the court, in the case of Beardsley *v.* Smith, as practically to put an end to all further litigation on the subject.

The court there said: "The same reasons and necessity for the application of such a principle and practice existed in both England and the United States. Such corporations are of a public and political character; they exercise a portion of the governing power of the State. Statutes impose upon them important public duties. In the performance of these they must contract debts and liabilities, which can only be discharged by a resort to individuals, either by taxation or execution. Taxation, in most cases, can only be the voluntary action of the corporation, dependent upon the contingent will of a majority of the corporators, and upon their tardy and uncertain action. It affords no security to creditors, because they have no power over it. Such reasons as these probably operated with our ancestors in adopting the more efficient and certain remedy, which has been resorted to in the present case, and which they had seen, to some extent, in operation in the country whose laws were their inheritance.

---

10 19 Pick. 564 (1837).

11 6 Met. 546 (1843).

"The courts of this State, from a time beyond the memory of any living lawyer, have sanctioned and carried out this usage, as one of common law obligation; and it has been applied, not to towns only, but also, by legal analogy, to territorial ecclesiastical societies and school districts. The forms of process against these communities have always corresponded with this view of the law. The writs have issued against the inhabitants of towns, societies and districts, *as parties.* As early in the history of our jurisprudence as 1705, a statute was enacted, authorizing communities, such as towns, societies, etc., to prosecute and defend suits, and for this purpose to appear, either by themselves, agents or attorneys. If the inhabitants were not then considered as parties individually, and liable to the consequences of judgments against such communities as parties, there would have been a glaring impropriety in permitting them to appear and defend, by themselves; but if parties, such a right was necessary and indispensable. Of course this privilege has been and may be exercised."[12]

The old Connecticut statute providing for the collection of taxes, enacted that the treasurer of the State should direct his warrant to the collectors of the State tax in the several towns. If neither this, nor the further proceedings against the collectors and the selectmen authorized by the statute, should enforce the collections of the tax, the law directed that then the treasurer should issue his execution against the inhabitants of such towns. Such an execution could be levied upon the estate of the inhabitants; and this provision of the law was "not considered as introducing a new principle, or enforcing a novel remedy, but as being only in conformity with the well-known usage in other cases." The levy of an execution under this statute produced the case of Beers *v.* Botsford.[13]

In this case, an execution which had been issued against the town of Newtown, by the treasurer of the State, had been levied upon the property of the plaintiff, an inhabitant of that town, and he had then been compelled to pay the balance of a State tax due from the town. He sued the town for the recovery of the money so paid by him and obtained judgment against it.

Shortly afterward, it was held in another case that, "Had the defendant below been acquitted and recovered her costs, an execution therefor would not have issued against the selectmen

12 Beardsley *v.* Smith, 16 Conn. 368 (1844).

13 Beers *v.* Botsford, 3 Day 159 (1808).

individually or collectively. It must have been issued against the property of the inhabitants of the town; and such is the invariable practice."[14]

The ecclesiastical society of Bethany had a fund invested for the sole purpose of supporting the ministry of the gospel in that society, by an annual appropriation of the interest. In 1821, the town of Woodbridge laid a tax on the society in respect to this fund, as money at interest, and collected the amount by distress of one of its members. Brainard, J., said, in delivering the opinion of the court, that, "this practice, with regard to towns, has obtained in New England, so far as I have been able to investigate the subject, from an early period—from its first settlement; a practice brought by our forefathers from England, which had there obtained in corporations similar to the town incorporated in New England. And if this be correct as to towns, I see no reason why the same principles and practice should not be applicable to societies. They are communities for different purposes, but essentially of the same character. In either case the individual affected has his remedy, the operation of which, if well applied, will cure the evil. The town or society will be brought to a sense of duty and make provision for payment and indemnity."[15]

The law on the subject was more fully brought out and considered by the court in the case of McLoud *et al. v.* Selby. Judge Bissell there said: "May the property of an individual corporator be taken to satisfy a judgment against a school district? * * * So far as we have been able to ascertain, it has been the invariable practice, in Connecticut, and that from an early period, to levy executions against towns, upon the property of the inhabitants. * * * If then, such be the principle with regard to these corporations, it seems to us, that it would be breaking in upon the analogies of the law, to deny its application to school districts. They are communities for different purposes, but essentially of the same character."[16] In Beardsley *v.* Smith, the court said that with all the evidence of the law before them, "until this time uncontradicted and undisputed, what else can we say, than to declare, that by the law of this State, each inhabitant of a town is a party to all suits prosecuted against it for a recovery of its debts; that each is liable to pay them; and that executions for their collection may be levied upon the private estate of such

[14] Fuller *v.* Hampton, 5 Conn. 417 (1824); Jewett *v.* The Thames Bank, 16 Conn. 511 (1844).

[15] Atwater *v.* Woodbridge, 6 Conn. 223 (1829).

[16] McLoud *v.* Selby, 10 Conn. 390 (1835).

inhabitants? That the same remedy may be pursued for the collection of the debts of cities, by reason of the analogies of the law, we cannot doubt. * * * We know of no other practical remedy but the one to which the plaintiff has resorted; and if this shall produce an equalized taxation of the inhabitants of the corporation, it will probably have the effect which our ancestors intended should be produced by it."[17]

In Union *v.* Crawford, Waite, J., said: "A judgment against a town is a judgment against the inhabitants of the town; and the execution may be levied upon the private property of any one of them at the election of the creditor."[18] This is the latest reported case in Connecticut.

Maine, originally a part of Massachusetts, and of course subject to its laws, was early in the history of the Republic set off from it and constituted into an independent State. Its people, while it was a part of Massachusetts, were familiar with the usage now under consideration. It was most natural, therefore, that they should cling to a rule of such long standing and tried merit, which had existed for so long a time in their parent State.

As early as 1821, it was held that, a town "having no corporate fund, each inhabitant would be liable to satisfy the judgment. The common law does not impose this burden; though a statute may. In regular corporations, having a corporate fund, this reason does not exist. * * * It is well known that all judgments against quasi-corporations may be satisfied out of the property of any individual inhabitant."[19]

Statutes upon the subject were early enacted in Maine, thus preventing any question, in regard to the usage, coming before the courts. A full discussion of these statutory provisions will be given later on. We have ascertained that the principle which we are considering was recognized at a very early date in Massachusetts. From there it seems to have spread over the whole of New England, with the possible exception of Rhode Island. In New Hampshire and Vermont, the principle, while never adjudicated prior to the passage of the statutes hereafter referred to, must, in all probability, have been recognized. Its manifest advantages were readily appreciated by the inhabitants of those States and, as a consequence, statutes were passed, early in their history, giving expression to the rule prevailing in Massachusetts and Connecticut, which was there based upon "immemorial usage."

17 Beardsley *v.* Smith, 16 Conn. 368 (1844).

18 Union *v.* Crawford, 19 Conn. 331 (1848); Bloomfield *v.* Charter Oak Bank, 121 U. S. 121 (1887).

19 Adams *v.* The President of the Wiscasset Bank, 1 Greenl. 361.

In the last mentioned States the law on this point, having been well settled by repeated adjudications, there was no real need for a statutory provision upon the subject, and none seems to have been adopted.

The statutory provisions of New Hampshire are as follows:

"§ 5. When such copy of an execution against a school district is so left, the prudential committee shall pay the same, or call a meeting of the voters of the district, at which meeting they shall vote to raise the necessary sum to satisfy said execution and the officer's fees thereon; and the clerk of the district shall certify the same to the selectmen, who shall forthwith assess a tax for said sum.

"§ 7. If the selectmen to whom such vote of the school district is certified neglect for thirty days to assess such district tax, and deliver to the collector their warrant for the collection thereof, such execution against the district may be levied upon the property of said selectmen.

"§ 8. If such execution is not paid within sixty days after an attested copy is left as aforesaid, it may be levied, if against the town, upon the goods or estate of the selectmen, and if against the school district, upon the goods or estate of the prudential committee; and if sufficient goods of said selectmen or prudential committee are not found, it may be levied upon the property of any inhabitant of the town or district respectively.

"§ 10. Every person upon whose property an execution against any town or school-district has been levied may, in an action of assumpsit for money paid, recover of such town or school-district the sum so levied, and *damages and double costs.*"[20]

The provisions of this statute seem to me to be eminently fair. It is careful to make the execution run, primarily against the property of those officers who are, by law, specially charged with the levy and collection of the tax. It is only where they do not possess sufficient property to satisfy the judgment, that the property of the inhabitants can be taken. The provision, also, as to double costs appears to be a wise one, inasmuch as it tends to discourage the town officials from allowing the property of an individual inhabitant to be seized through their neglect to levy a tax.

Vermont has provided that:

"§ 1559. When judgment is rendered against a county, town, incorporated village, or school-district, execution shall issue against the goods or chattels of the inhabitants of such county, town, incorporated village, or school-district, and may be levied and collected of the same.

"§ 1560. The officer who receives any such execution shall forthwith demand the amount thereof of the treasurer of the county, town, or village; or, if the execution is against a school district, of one of the prudential committee of such district; and such treasurer or committee shall pay the same, with charges, if there are sufficient moneys in his hands belonging to such county, town, village or district.

---

[20] N. H. R. S., 1878, Chap. 239.

"§ 1561. If at the expiration of twelve days after making such demands, the execution or any part thereof remains unpaid, the officer shall levy and collect the same as therein directed; but he shall not levy upon the goods and chattels of such inhabitants until twelve days after such demand is made.

"§ 1562. Any inhabitant whose goods or chattels are taken on such execution may at any time before their sale pay to the officer the amount of such execution and the charges thereon.

"§ 1563. Such inhabitant shall be entitled to recover against the county, town, village, or district, the sum so paid or levied on his goods or chattels, *with twelve per cent.* interest thereon, in an action of assumpsit for money paid, laid out, and expended."[21]

The provision, as to the rate of interest to be allowed on the sum paid by the inhabitant in satisfaction of the judgment, is intended, probably, to perform the same purpose as the New Hampshire provision for double costs.

The Maine statute has existed for half a century or more, having been passed February 27th, 1833. It provides that:

"§ 30. All executions or warrants of distress against a town shall be issued against the goods and chattels of the inhabitants thereof, and against the real estate situated therein, whether owned by such town or not; and the officer executing them shall satisfy them by distress and sale of the goods and chattels of the inhabitants as provided by law; and for want thereof, after diligent search, which fact the officer shall certify in his return, he shall levy upon and sell so much of the real estate in said town by lots, as they are owned, occupied, or lotted out on the plan thereof, as is necessary to satisfy said precepts and expenses of sale.

"§ 31. He shall advertise in the State paper, and in one of the newspapers printed in the county where the lands lie, if any, for three weeks successively, the names of such proprietors as are known to him, of the lands which he proposes to sell, with the amount of the execution or warrant of distress; and, where the names of the proprietors are not known, he shall publish the number of the lots or divisions of said land; the last publication shall be three months before the time appointed for the sale. If necessary to complete the sale, he may adjourn it from day to day, not exceeding three days. He shall give a deed to the purchaser of said land in fee, expressing therein the cause of sale. The proprietor of the land so sold may redeem it within a year after the sale by paying the sum for which it was sold, the necessary charges and interest thereon.

"§ 32. The owner of any real or personal estate so sold may recover against the town, in an action of assumpsit, the full value thereof, with interest at the rate of twelve per cent. yearly, with costs of suit; and *may prove and recover the real value thereof*, whatever was the price at which it was sold."[22]

An interesting feature of these provisions is that given in the last paragraph, providing that the owner of property sold on execution "may prove and recover the real value thereof, whatever was the price at which it was sold." The Maine statute is unique

21 Revised Laws of Vt., 1880.

22 Rev. Stat., Maine, 1883, ch. 84; ch. 3, § 58; ch. 46, § 55; ch. 1, § 6, xvii.

in containing this most equitable provision for the protection of the property of the individual inhabitant.

In a case arising under this statute it has been held that chapter LXXXIV. § 30, requires an execution against a town to run against the real estate situated therein, and against the personal property of its inhabitants. If issued only against real and personal property owned by the inhabitants of the town, the land of a non-resident proprietor cannot be legally sold thereon. The court can, however, in its discretion, render such sale valid by permitting an amendment to the execution.[23]

When we come to consider the law in Rhode Island, regarding the enforcement of judgments against quasi-corporations, we find a radical departure from the rule prevailing in the other New England States.

The rule of the common law, by which members of parishes and counties were liable for the corporate debts, where there was no corporate property, originated in their ecclesiastical policy or in local causes, and for similar reasons became the law in Massachusetts and Connecticut, but was never adopted in Rhode Island. In 1666, an act was passed prescribing the mode of collecting debts against towns. Parishes never existed. The only municipal corporations, existing prior to the enactment of the School Act, were towns. The mode of collecting debts against them was early provided for by statute, and the same provision was subsequently made for the collection of the debts against school-districts.

In support of the above it is interesting to note that the question of the liability of members of quasi-corporations was, in the language of Brayton, J., "for the first time raised in this State," in 1851. The court went on to say, "As it is not likely that the question can ever arise again, and is not necessary to the determination of this cause, we give no opinion upon it."[24] This is the only Rhode Island case in which the question has ever been raised.

The statutory provisions upon the subject can be briefly explained. Every person, who has any money due him from a town, presents to the town council a particular account of his claim. If the town treasurer does not pay within forty days, an action may be commenced against him for the recovery of the same. In case the town does not have sufficient funds on hand to satisfy the judgment, any justice of the peace of the town must, on demand, order a town meeting to be held for the purpose of

[23] Hayford *v.* Everett, 68 Me. 505.

[24] Kenyon *v.* Clarke, 2 R. I. 67.

making a tax. In case this is not done, the Supreme Court may order a tax to be assessed, upon the ratable property of the town, sufficient for the payment of the judgment.[25]

It will be observed from an examination of the above provisions that they differ very materially from the provisions in force in the other New England States. In effect, they more closely resemble the law existing in the States of the Union outside of New England.

The constitutionality of the foregoing common law and statutory provisions seems to have been but little questioned until about the middle of this century. Even since that period but few cases have come before the courts in which this question was directly involved.[26]

The law must not offend against "the established principles of private rights and distributive justice." So far as I have been able to determine, the provisions we have been considering most certainly do not do so. In the words of Judge Amery of the Supreme Court of Maine, it does not "transfer A.'s property to B. It only makes A.'s property liable to be taken for a debt, he in common with others, owes to B. A. can save his property by paying the judgment against his town, which judgment binds him and all the other inhabitants, and is a judgment he and each of the others ought to pay. Whether he pays, or lets his property be sold, he can recover full damages of the town, and have the same final process for the collection of his debt. In the end he only pays his ratable share of the common debt. The rule is general, and is uniform in its application, to every town and every inhabitant." The court further decided that the Maine statute on the subject was not in conflict with the fourteenth amendment of the United States Constitution.[27]

The question also arose in Connecticut in the case of Beardsley *v.* Smith. The court there said: "Does this rule authorize the taking of private property for public use, without compensation; or does it authorize the seizure of the property of one person for the benefit of another; and is it for either of these causes, unconstitutional? To sustain this objection as to the validity of the resolve, the plaintiff must be able to show the entire system, which we have been discussing, to be unconstitutional in its operation upon the inhabitants of towns, societies, and school districts; and that what has so long been considered as undisputed law, is not

25 Public Stat. R. I., 1882, ch. 34, §§ 12–15 inc.; ch. 58, §§ 7–8.

26 Chase *v.* Bank, 19 Pick. 568 (1837).

27 Eames *v.* Savage, 77 Me. 212.

law;—and that our jurists have been from the beginning, deceived as to the extent and application of a plain constitutional provision. We cannot concede this. * * * Nearly every case on this subject, to which we have referred, in this State, Massachusetts and Maine, has been decided since the adoption of the Constitutions of these States, securing the rights of property from public and private invasion. * * * The objection is not so much that the plaintiff's estate has been taken for public use as to the manner in which this has been done. But * * * the operations of the law as it has been received in this State, as we have seen, is not to take the property of an individual for public use, but to take it for the satisfaction of a judgment and execution against himself, to which he is a party and for which he, with the rest of the inhabitants of the city, is, in his own person and estate, responsible. There is no constitutional infirmity, therefore, in the resolve, * * * nor in the ancient law and usage of this State which gave rise to it."[28]

In two decisions of the United States Supreme Court, the method of enforcing judgments against quasi-corporations in New England is expressly noticed as an exception to the general rule and is not even incidentally condemned.[29]

In the face of the above authorities we are forced to the conclusion that the constitutionality of the method is beyond question.

It shows no inclination to become obsolete with the lapse of time. It is thoroughly in accordance with the spirit of modern progress, as it serves to bring about activity in the payment of the just debts of municipal corporations; it does not suffer by comparison with the oftentimes slow, cumbrous and expensive methods resorted to by creditors to secure a collection of their claims in other States; and it tends, indirectly, through keeping the citizen alive to his duties as such, to do away with much of the financial corruption, which for lack of a similar rule, often exists elsewhere on a gigantic scale, in the management of municipal finances. The doctrine, however, will probably never be extended beyond the boundaries of the territory on which it was first transplanted. But there it seems destined to enjoy a perennial life.

It is impossible to rise from a survey of the road over which we have just traveled, without feeling a profound admiration for the learning and conservative wisdom of the courts and legislatures, who have from such meagre materials developed a rule of so much merit.

William Angus Hamilton.

---

28 Beardsley *v.* Smith, 16 Conn. 368.

29 Rees *v.* Watertown, 19 Wall. 122; Meriwether *v.* Garrett, 102 U.S. 519.