

OPINION
45-103

January 30, 1945 (OPINION)

FINES AND PENALTIES

RE: Paid Without Protest Under Judgment - Not Recoverable

I acknowledge your letter of January 19, in which you refer to the case of the State of North Dakota v. Victor F. Johnson, defendant. In view of the decision rendered in that case, you ask whether the fines imposed in cases involving the violation of the speed limit set by the proclamation of the Governor, that is, driving a motor vehicle in excess of thirty-five miles, but less than fifty miles, could be refunded. That raises the question whether a fine imposed under a mistake of law may be recovered back, where it was voluntarily paid.

In 25 C.J. page 1164, paragraph 38, we find:

A fine illegally imposed may be recovered back where it was paid involuntarily or under duress, for example, where it was paid to avoid or obtain release from imprisonment; but there can be no recovery where the fine, although illegally imposed, was voluntarily paid under a mistake of law, . . ."

Under not 57, cited in connecting with the above quotation, we find reference to the following cases:

Colorado - Clark v. Asher, 53 Colo. 313, 125 P. 538.

Iowa - Bailey v. Paulina, 69 Iowa, 463, 29-N.W. 418.

Maine - Houlehan v. Kennebec County, 108 Me. 397, 81 A. 499,

Ann. Cas. 1913B 435.

and other cases cited in this note, in support of the above quoted statement.

The case of Bailey v. Pauline, found in 29 N.W. 418, seems to be very much in point with the situation referred to in your letter. In that case a party was arrested and tried for violating a town ordinance, which was later found void, but which was not questioned as to validity by him. After he was found guilty, he paid his fine without protest. The case held that he, or rather his assignor, could not recover the amount of the fine in an action against the incorporated town of Paulina. The court in dealing with the case regarded the payment as voluntary and said:

In the absence of fraud, deceit, duress, or mistake of fact, the money cannot be recovered back. Kraft v. City of Keokuk, 14 Iowa, 86; Espy v. Town of Fort Madison, Id. 226."

In 8 Ruling Case Law, page 271, paragraph 283, we find the same proposition stated in this manner:

A defendant who has voluntarily paid a fine, although the proceedings in which he was prosecuted were void or the indictment was invalid, cannot recover the fine in another action."

Supporting that proposition, the following citations are given:

McDonald v. Sowell, 129 Ga. 242, 58 S.E. 860, 12 Ann. Cases 701, and note.

The note is found in 12 Ann. Case, 703. See also 36 C.J.S. page 798, paragraph 17, dealing with the same subject matter. Note 38 refers to additional cases as well as to 25 C.J. page 1164, note 57, from which I have previously quoted.

On the assumption that the fines imposed by the court for violating the 35-mile speed limit under the terms of the Governor's proclamation were paid into court voluntarily and without protest, it is our opinion that they cannot be recovered back and that there is no basis for refunding them to the defendants involved.

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