

SOLOMON JESSIMAN

versus

THE HAVERHILL AND FRANCONIA IRON MANUFACTORY.

A plea of an award, in pursuance of a parol submission, is a good bar without an averment of performance.

THIS was an action of trespass on the case, for erecting and continuing a dam across the river Ammonoosuc, whereby the plaintiff's lands were overflowed and injured.

The defendant pleaded in bar a parol submission of the cause of action to arbitrators, and an award made in pursuance of the submission; but the plea contained no averment that the award had been performed.

To this plea the plaintiff demurred, and objected that the plea was defective for want of such an averment.

But *the court* said that it seemed to be now well settled that a plea of an award in pursuance of a parol submission was good, without averring performance, (11 *Johnson* 189, *Armstrong vs. Masten*.—*Kid on Awards* 381,) and gave judgment for the defendant.

Payson, for the plaintiff.

Swan, for the defendant.

MOSES LEWIS versus SAMUEL L. BLAIR.

When the return of a sheriff upon mesne process may be contradicted.

CASE, for malicious prosecution in procuring the plaintiff to be indicted for rescuing from the custody of the defendant, a deputy sheriff, one J. C. Wood, who had been arrested by the defendant on the 20th November, 1811, on mesne process, at the suit of one G. Erwin.

The cause was tried in this county at May term, 1815, upon the general issue. The plaintiff having proved at the trial that he had been indicted for the rescue, by the procurement of the defendant, and that he had been acquitted, in order to shew the prosecution to have been altogether groundless and malicious, produced a copy of the writ upon which

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Case 2	
70	228

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