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Osgood v. Taggard.

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the collection of it before the district, at a subsequent meeting, undertook to reconsider its previous action.

It is clear, that, after all this had been done, it was not in the power of the district, by a reconsideration, to render nugatory the previous vote. The vote of February 28th is therefore of no avail. It may well be held that there could be no reconsideration after the selectmen had assessed the tax.

*Bill dismissed.*

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OSGOOD, Pet'r, v. TAGGARD.

Upon the death of one of several petitioners for partition, the petition does not abate, but notice is to be given to his heirs, who, if competent to act, may come in as petitioners; otherwise, they may be treated as petitionees.

PETITION of Lemuel H. Osgood and Leonard Osgood, for partition. It appeared that since the entry of the petition Lemuel H. Osgood had deceased.

*Leland*, for the petitioner.

*Hubbard & Cushing*, for the respondent.

PARKER, C. J. By section 12, chapter 206, Revised Statutes, no partition is to be avoided by the death of either party, after the entry of the petition, but the share of each party named in the petition shall be set off in severalty, and be subject to all legal claims thereon as if the claimant had been a party.

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The provision that the partition shall not be avoided, &c., shows that it may proceed, notwithstanding the death, if it occur at any stage after the entry.

If a petitionee had died, unless his heirs come in voluntarily, it would be necessary to order a notice to them. The fourth section of the statute requires all persons interested to be notified; and by the seventh section, if any petitionee is an infant, &c., the court shall not cause partition to be made until an agent or guardian is appointed.

On the death of a petitioner, his heirs, if competent to act, may come in and become parties. If they do not choose to come in as petitioners, they cannot be regarded as such from the fact that their ancestor petitioned. But they are interested, and should have notice. If they do not come in as petitioners they must be regarded as petitionees; and it may be the duty of the court to appoint guardians and agents, if it be shown that they are incapacitated.

There must be notice in this case to the heirs of Lemuel H. Osgood of the pendency of this petition, and the case proceed accordingly.