

“to be paid at the rate of and in proportion to likely six feet oxen, at \$50 per yoke.” This, in our opinion, is clearly tantamount to a gift of \$150, payable in such oxen at \$50 a yoke. It is, in fact, a gift of a sum of money equal to the value of three yokes of six feet oxen. The amount of the legacy is then to be ascertained by the value of oxen at the several times when the legacy becomes payable. When the third of the legacy, for which this action is brought, became due, likely six feet oxen are agreed to have been worth \$70 a yoke. That sum is of course the amount the plaintiff is entitled to recover in this action.

Morrill
vs.
Morrill.

Defendant defaulted.



CALEB PILLSBURY vs. CAMMETT AND NELSON.

In an action of assumpsit against two, one of the defendants, who has been defaulted, is not a competent witness for the other.

This was an action of assumpsit upon a promissory note, made by the defendants, and payable to one *Benjamin Pillsbury*, and by him endorsed to the plaintiff. *Nelson* was defaulted. *Cammett* pleaded the general issue, upon which the cause was tried at September term, 1819.

The defence, upon which *Cammett* relied, was, that the contract had been rescinded between him and *Benjamin Pillsbury*, the promisee, before the note was endorsed to the plaintiff; and to prove this, he called *Nelson*, the other defendant. The plaintiff's counsel objected to the admission of *Nelson* as a witness; but he was admitted, and a verdict returned in favor of *Cammett*. The verdict was, however, taken, subject to the opinion of the court, upon the question, whether *Nelson* was a competent witness.

French, for the plaintiff.

Hoar, for the defendant.

By the court. This is an action of assumpsit against two defendants, upon a joint contract, and it is a general rule, to which this case seems to form no exception, that in such a case, judgment cannot be given against one defendant with-

Pillsbury
vs.
Cammatt et al. *Willks.* out the other. 1 *Chitt. Pl.* 31.—1 *East* 48, *Sheriff et al. vs.*

The verdict in favor of *Cammatt* has placed the plaintiff in a situation, in which he cannot avail himself of *Nelson's* default. *Nelson* was, therefore, clearly an incompetent witness for *Cammatt*.(1)

(1) Phillips'
Ev. 62.

The verdict must be set aside, and a new trial be granted.



HILLSBOROUGH, OCTOBER TERM, 1820.

SAMUEL GREELY vs. DAVID STEELE.

Where there existed in a town only one right of land belonging to a person by the name of *Ray*; and that right was sold for taxes under the description of both the *Christian* and the *Christopher Ray* right, but was described in the conveyance as the right which had been owned by *Christopher Ray*, when in fact the former owner was *Christian Ray*, the title was still held to pass.

This was an action of covenant, founded on a deed from the defendant to the plaintiff, made January 11th, 1804; and which deed contained the usual covenants, and purported to convey the right of land originally belonging to *Christopher Ray*, in the town of Harwick, in the state of Vermont. The breaches assigned were of the covenants of seisin, and of lawful right to convey.

The defendant pleaded, that he was seized, &c.; on which, issue being joined, he produced, at the trial here, October term, 1819, the following evidence. First, a copy of the charter of Harwick, dated August 28th, A. D. 1761, in which there was only one grantee of the name of *Ray*, and he was described by the name of *Christian Ray*.

It further appeared, that no person of the name of *Ray* had ever been known to claim this right, nor was it understood who the grantee was, or where he lived.

On the 10th of November, 1797, the legislature of Vermont passed an act, "assessing a tax of one cent on each acre of land in the state, for the support of government," &c. At that time, the *Ray* right, with many others in Harwick, was undrawn and unlocated. The constables in the several towns were empowered to collect the tax; and one