

CARROLL

JANUARY TERM, A. D. 1846.

HANSON *v.* EFFINGHAM.

If petitioners for the laying out a highway do not prevail, the towns that are made parties are entitled to costs. In such case the fees of witnesses before the road commissioners are to be taxed as before a justice.

PETITION of Ira Hanson and others, for a highway in Ossipee and Effingham.

The petition was committed to the road commissioners, who reported against laying the road. The two towns thereupon moved for costs to be taxed against the petitioners, including the witnesses' fees, at one dollar a day for attendance and six cents a mile for travel; also, the fees of the commissioners.

The petitioners resisted the motion, upon the ground that they were not liable to pay such costs; and, if they were so liable, that the witnesses' fees should be no more than are taxed before justices of the peace.

Hobbs, for the petitioners.

Dearborn, for the defendants.

GILCHRIST, J. By chapter 191, section 1, Revised Statutes, it is provided that costs shall follow the event of every action or petition, unless otherwise directed by law or by the court. This seems to settle that the towns of Ossipee and Effingham, who have been made parties by

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the petitioners to a suit in court, shall be entitled to costs as the prevailing parties.

The fees of the witnesses who attended before the commissioners are the same as if they attended before justices. The practice has always been so to limit them. There is no ground upon which the county can be charged, the road not having been laid out. Revised Statutes, ch. 52, secs. 9, 10.

Judgment for the defendants for costs.

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One whom the plaintiff had agreed to support, and to permit to have certain privileges in a house while the plaintiff owned it, is not for that cause incompetent to testify for him in an action of trespass, involving a question of the boundaries of the farm upon which the house is situated.

The possession of an agent is the possession of the principal, although the agent was also mortgagee, and might, had he chosen to do so, have held possession in that right.

Evidence that a former clerk of a proprietary once showed a book to the witness as the proprietors' record, and that the witness took minutes from it, to aid him in making surveys, is not sufficient to identify the book as such records.

TRESPASS, *quare clausum*, and for cutting and carrying off timber, and destroying timber on lot No. 10, in Conway, drawn to the original right of George Abbott, and called the Burbank farm, on the 16th of December, 1844.

The writ was dated February 8, 1845. It was admitted that the defendant owns lot No. 11, which adjoins the "Burbank farm," which is on lot No. 10; but whether the "Burbank farm" covers the whole of lot No. 10, and where the line is between these parties, was the question in issue, the defendant admitting the cutting, &c.