

SARGENT v. PUTNAM.

An action at law may be committed, without the consent of the parties, to one or more referees for the settlement of accounts too complicated to be intelligently investigated and adjusted in a jury trial.

ASSUMPSIT, on the common counts, and a special count on a written contract. The plaintiff's specification, containing two hundred and thirteen items, amounted to more than \$35,000. Sixty-four of the items, specially disputed, amounted to more than \$7,000. The defendant's set-off, containing one hundred items, amounted to more than \$50,000. Both parties moved for the appointment of an auditor, for the reason that the accounts were so long and complicated that they would not be comprehended by a jury. The court, upon examination, finding that the accounts, by reason of their length and complication, could not be understood or intelligently adjusted by a jury, committed the cause to a referee, and the defendant excepted.

Stevens & Parker, for the defendant.

Burns, for the plaintiff.

DOB, C. J. Section 2 of chapter 35, Laws of 1876, authorizes the court to commit to one or more referees any cause at law or equity, or the determination of any question of fact "wherein the parties are not, as matter of right, entitled to a trial by jury." "As matter of right" here means as matter of constitutional right. And, by the constitution, neither party is entitled to a jury trial for the settlement of accounts too complicated to be intelligently investigated and adjusted in that way. *Copp v. Henniker*, 55 N. H. 179, 210, 211; *Perkins v. Scott*, 57 N. H. 55, 81, 82, 83, 84; *Bellows v. Bellows*, ante, p. 60.

Exception overruled.

BINGHAM, J., did not sit.

STATE v. NASHUA & LOWELL RAILROAD.

An indictment upon Gen. St., c. 264, s. 14, for the benefit of the prosecutor, found more than one year after the act complained of, is barred by the statute of limitations.

INDICTMENT, found in 1877, upon Gen. St., c. 264, s. 14, for causing the death of a person in 1873. Motion to quash.

58a	182
66	72
58a	182
67	438
58	182
Case 1	
72	126

George, for the defendants.

Burns, for the state.

DOE, C. J. "All suits or prosecutions founded upon any penal statute, which are wholly or in part for the use of the prosecutor, shall be brought within one year; and all other suits and prosecutions thereon within two years after the commission of the offence, unless otherwise specially provided." Gen. St., c. 248, s. 10; Rev. St., c. 211, s. 9; Act of Jan. 26, 1790. This limitation applies not only to actions of debt on penal statutes (*Pike v. Madbury*, 12 N. H. 262, 264), but also to indictments on such statutes, wholly or in part for the benefit of the prosecutor. *State v. Robinson*, 29 N. H. 274, 276; *State v. Hunkins*, 43 N. H. 557. From 1850, when the act was passed on which this indictment is founded, to 1867, when the general statute of limitations for criminal cases (Gen. St., c. 242, s. 8) was introduced, the limitation of one and two years applied to cases of this kind. And it does not appear that the general act of 1867 was intended to take this class of cases out of the operation of the limitation to which they had been subject seventeen years.

Indictment quashed.

STANLEY and BINGHAM, JJ., did not sit.

CHASE & CO. v. BEAN.

58 183
66 184

An action at law cannot be maintained by copartners to recover a debt which has been discharged by one of them, and paid by a set-off of his separate debt with his assent, when the defendant acted in good faith.

ASSUMPSIT, by C. H. Chase and S. H. Chase, partners, for goods sold. After the sale of the plaintiffs' goods to the defendant, C. H. Chase and the defendant agreed that \$150 of the price should be paid by the defendant's allowing that sum in payment of a debt of that amount due to him from C. H. Chase: and that agreement was executed, the defendant acting in good faith.

Osgood and *L. W. Clark*, for the plaintiffs.

Smith and *Andrews*, for the defendant.

DOE, C. J. An action at law cannot be maintained by copartners to recover a debt which has been discharged by one of them, and paid by a set-off of his separate debt with his assent, when the defendant