

conduct. In the one case he abandons her to suffer and starve by his voluntary desertion of her ; in the other he leaves her to the same fate by his voluntary ill-treatment and neglect.

We think, upon the facts shown in this case, the libellant is entitled to treat the result of her husband's ill-conduct and neglect of herself as willing absence on his part. If at the trial term she can show that, during the period of absence alleged, the libellee had the ability to provide for her support, a divorce will be decreed ; otherwise, the libel must be dismissed.

Case discharged.

BINGHAM, J., did not sit.

BATCHELDER & a. v. HIBBARD.

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| 58 | 269 |
| 68 | 600 |
| 58 | 269 |
| 71 | 162 |
| 71 | 550 |

A parol license of a privilege to be executed upon land of the licensor is revocable so far as it remains unexecuted, or so far as any future enjoyment of the easement is concerned. *Houston v. Laffee*, 46 N. H. 505, overruling earlier decisions, affirmed.

PETITION, for the assessment of damages, under the provisions of c. 20, Laws of 1868. The committee to whom the petition was referred reported that the plaintiffs' mill is of public benefit, and that their dam was erected with the permission, by parol, of the defendant, upon his land, and has since been maintained with his consent, except so far as he has, from time to time, objected to the plaintiffs' right to use it, and to the use made of it, to flow his land. The committee assessed the defendant's damages. The plaintiffs moved for judgment on the report, which the court, *pro forma*, granted, and the defendant excepted.

Sanborn & Clark, for the defendant.

Mugridge, for the plaintiffs.

SMITH, J. The committee have not found in terms whether the license was revoked. The revocation of a parol license may be in writing, or verbal, or by acts clearly giving the licensee notice of the licensor's intention. *Carleton v. Redington*, 21 N. H. 291, 311. The committee have reported certain facts from which a revocation may be inferred ; but whether the license was revoked, is a question of fact to be found by them, or by the court at the trial term.

The plaintiffs' counsel strenuously contend that a parol license to exercise a privilege upon the land of another cannot be revoked when it has been executed. The more recent decisions in this state, and

the weight of authority, are to the effect that a mere license of this character is always revocable at the will of the licensor, so far as any further enjoyment of the privilege is concerned; for otherwise, such parol license would acquire the force of a conveyance of a permanent character in real estate. *Marston v. Gale*, 24 N. H. 176; *Cowles v. Kidder*, 24 N. H. 364; *Houston v. Laffee*, 46 N. H. 505; 1 Washb. Real Prop. *400, *et seq.*

The doctrine, that such a license cannot be revoked without first reimbursing the money expended, or doing what is equivalent to restoring the licensee *in statu quo*, as held in *Woodbury v. Parshley* 7 N. H. 237, was overruled in *Houston v. Laffee*, above cited; and the doctrine of the latter case must be regarded as the settled law of this state. See, also, *Morse v. Copeland*, 2 Gray 302; 3 Kent's Com. (12th ed.) *452, *n.* 1.

We are not called upon to determine at this time what remedy, if any, on account of their expenditures, on the faith of the defendant's license, the plaintiffs have in equity.

Case discharged.

STANLEY, J., did not sit.

STATE v. THOMPSON.

A plea, that the defendant has been adjudged a bankrupt since the fraudulent concealment of his property, charged in an indictment under Gen. St., c. 257, s. 2, and that jurisdiction of such offences in all cases where bankruptcy proceedings are commenced is conferred exclusively upon the United States courts, is not a good plea to the jurisdiction.

INDICTMENT, for fraudulently concealing personal estate to the value of one hundred dollars, contrary to the provisions of Gen. St., c. 257, s. 2, on the twenty-third day of February, 1877. The defendant appeared specially, and pleaded that in proceedings begun in the U. S. District Court after the time of the alleged concealment he was adjudged a bankrupt, &c. The court reserved the question whether the state court has jurisdiction.

H. S. Clark, for the defendant.

Greene, solicitor, for the state.

CLARK, J. Section 5132 of the U. S. Rev. St. punishes "every person respecting whom proceedings in bankruptcy are commenced * * * First. Who secretes or conceals any property belonging to his