

being the same premises conveyed to me by" the plaintiffs, "by their deed April 24, 1857, reference to said deed being had for a more particular description."

The court reserved the question whether the mortgage was of the whole land, or of the half conveyed by the plaintiffs to the mortgagor.

Marston, for the plaintiffs.

Bartlett, for the defendants.

STANLEY, J. In the construction of written instruments, the inquiry is, What was the intention of the person executing the instrument to be construed? That inquiry is to be answered, like a question of fact, by the weight of competent evidence. No technical rules of construction applicable to all cases can be established. The intention in each case must be determined by the evidence bearing on the question. *Rice v. Society*, 56 N. H. 191, 198, 203; *Houghton v. Pattee*, 58 N. H. 326.

"A certain tract of land, being the same premises conveyed to me," was intended, we think, as a description of the tract described in the deed referred to, and not of the interest conveyed by that deed. The mortgagor, by that expression, intended to say, I mortgage to you a tract of land having the same boundaries as the tract described in the deed referred to. The language used might mean "a certain tract, being an undivided half of said tract, and being the same conveyed to me;" but the mortgagor then owned the whole of the tract described, and there is no evidence tending to show any reason why he should limit the mortgage to one half rather than the other, or why he should mortgage one half rather than the whole, or why he did not say half if half was meant; and in the absence of such evidence we cannot infer that he intended thus to limit it. The conclusion is, that the mortgage is of the whole land.

Case discharged.

BINGHAM, J., did not sit.

WILSON v. DAME.

If a person acts as an agent without authority, and his acts are ratified, he is entitled to the same compensation and remedy as if he had been duly authorized.

ASSUMPSIT, on the common counts. Facts found by a referee. The plaintiff was a constable. The defendant was the city marshal of Portsmouth. Walters, an escaped convict from the Massachusetts state prison, came to Portsmouth, and the police were looking for

him. The plaintiff saw him, and, knowing that the police wanted him, gave notice at the station, and accompanied in an unsuccessful search. The plaintiff soon after found and arrested Walters, and delivered him to the defendant at the police station. The warden of the state prison had offered a reward of \$100 for the arrest and return of Walters, but the parties to this suit did not then know of it. They only knew that he was wanted to answer for a crime. The defendant telegraphed, and a Massachusetts officer came and took Walters to the prison, and the warden afterwards paid the defendant the reward, less \$7.91, the expenses of the officer in taking him back, on the defendant's promise that he would pay it to the persons entitled to it, and save the warden harmless from all claims. The defendant paid four sixths of the reward to four persons, kept one sixth for himself, and offered a sixth to the plaintiff, which he refused.

The referee found that the plaintiff performed the greater part of the service, and was entitled to the larger share of the reward, and awarded him \$50 damages.

Page, for the plaintiff.

Hodgdon and *Hatch*, for the defendant.

BINGHAM, J. The facts reported by the referee establish (1) that the defendant, city marshal of Portsmouth, desired to arrest Walters ; (2) that the plaintiff rendered necessary and valuable services in accomplishing it, as the defendant's servant or agent, expecting to be paid for them ; (3) that the defendant, knowing these facts, accepted the services, intending to pay for them, and afterwards, on receiving the reward, promised the warden that he would do so.

If a person acts as an agent, without authority, and the principal, after full knowledge of the transaction, ratifies it, it will be his act, the same as if he had originally given the authority ; and the agent will be entitled to the same rights and remedies, and to the same compensations, as if he had acted within the scope of an acknowledged original authority. *Story on Agency*, s. 244.

If the case does not show an original employment of the plaintiff, or a request to assist in the arrest and return of the convict, it clearly shows that the defendant accepted and ratified whatever the plaintiff did, and that the defendant is liable to pay a reasonable compensation for the same. *Hatch v. Taylor*, 10 N. H. 538 ; *Low v. Railroad*, 45 N. H. 370 ; S. C., 46 N. H. 284.

Judgment on the report.