

charged in this complaint with having removed on the 19th of August, 1877, was not such a boundary. Proceedings for partition had been commenced, and the committee appointed to make partition had performed their duty, but the complainant and respondent were still tenants in common of the land, and so remained until August 22, 1877, when the partition was completed, and the title passed to each in severalty, by virtue of the acceptance of the report by the judge of probate, and his order for judgment thereon. Therefore the stake and stones removed by the respondent on the 19th of August were not a "boundary of lands," within the meaning of the statute.

Case discharged.

JUDGE OF PROBATE v. RICE.

In an action upon a probate bond, the judgment for the plaintiff is for the penalty of the bond without interest, and but one bill of costs is to be taxed.

DEBT, upon the bond of the defendant as executor of the will of Arabella Rice. The defendant had been defaulted. The plaintiff claimed judgment for the penalty of the bond, and interest thereon from the date of the writ. Upon the hearing in chancery on the forfeiture, twenty legatees under the will appeared and endorsed their names upon the writ, and gave separate bonds with sureties to pay such costs as might be adjudged against them. Each of the legatees claimed to recover costs. The questions, whether the plaintiff should have judgment for the penalty of the bond with or without interest, and whether the legatees should have separate costs, were reserved.

Goodall, Frink, and Thompson, for the plaintiff.

W. H. Y. Hackett, for the defendant.

CLARK, J. Gen. St., c. 187, s. 7, relating to probate bonds and suits thereon, provides, that "When it shall appear upon confession, verdict, demurrer, or in any other way, that the penalty of such bond is forfeited, judgment shall be rendered against the defendant for such penalty; and such judgment shall be security for all interested." In accordance with this provision of the statute, the judgment in this case should be for the amount of the penalty of the bond at the time when the default was entered; and no interest should be allowed previous to that time.

As to the question of costs, we think but one bill of costs should be

allowed. There is but one suit, and but a single question in issue. If the defendant had prevailed, he would have recovered only one bill of costs, and but one bill of costs should be taxed against him. *Prescott v. Bartlett*, 43 N. H. 298; *Parker v. Colcord*, 2 N. H. 36, 39; *Thomas v. Sever*, 12 Mass. *379; *Ticknor v. Harris*, 15 N. H. 106.

Case discharged.

CORWIN v. HOOD.

58	401
67	219
67	561
68	129
68	134
68	328
58	401
70	31
58	401
71	424

In the construction of written instruments, the intention of the parties is what is sought; and to ascertain that intention, regard may be had to the nature of the instrument itself, the situation of the parties executing it, and the purpose they had in view.

The enumeration of particular things in a written instrument may exclude others of the same class; but there is no absolute rule of construction that such enumeration excludes things of a different class, when the general terms used are broad enough to include them.

BILL IN EQUITY, by the administratrix of John F. T. Corwin, praying for an accounting concerning a partnership formerly existing between said Corwin and the defendant. The defendant pleaded in bar a settlement made between him and said administratrix, and an answer supporting the plea. The cause having been referred to a master, the paper which the defendant had pleaded as a settlement of the partnership affairs was produced in evidence, as follows:

“Derry, March 1, 1876. H. P. Hood bo't of Esther Corwin, administratrix, all the interest of the late J. F. T. Corwin in the milk business known under the firm name of Hood & Corwin. Ice-house, cans and tools belonging to the same also, good will of trade, &c. Said Esther Corwin agreeing not to interfere with the business in any way for the sum of \$2500. All bills to be settled by said Hood as best he can, and one half the receipts paid over to said Corwin free of charge after outstanding bills are all paid to January 1, 1876. Rec'd payment by note. Esther Corwin, Adm'x.”

It appeared that the defendant had paid \$750, in cash, on the note given in payment, and had also paid to the plaintiff the sum of \$200 on account of unsettled bills previous to January 1, 1876.

The plaintiff claimed that the agreement of March 1, 1876, did not bar an account, and was only a sale of the milk-car and certain fixtures, and the good-will of the business. The defendant contended that the agreement between him and the administratrix was a sale of all the personal chattels of the copartnership, and a settlement of all