

SNELL, *Ex'x*, v. PARSONS.

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Case 1	
72	438

Gen. Laws, c. 228, s. 16, does not take away the common-law right of a party to give in evidence his book of accounts supported by his supplementary oath, when the other party is an executor or administrator and does not elect to testify.

Services of a lawyer may be proved by his book of accounts and supplementary oath.

ASSUMPSIT. The defendant filed in set-off an account for services as a lawyer. The plaintiff, an executrix, did not elect to testify. Subject to exception, the court refused to permit the defendant to put in evidence his book of accounts supported by his supplementary oath. Verdict for the plaintiff.

T. J. Smith, for the defendant.

Copeland & Edgerly, for the plaintiff.

BINGHAM, J. Generally a party could not testify at common law, but he could give in evidence his books of account supported by his supplementary oath. *Eastman v. Moulton*, 3 N. H. 157. The fact that the other party was an executor or administrator did not affect this right. By Gen. Laws, c. 228, s. 13, it is provided that a party may testify in any civil cause. Sections 16 and 17 of the same chapter provide that neither party shall testify when the adverse party is an executor, administrator, or insane person, unless the executor, administrator, or guardian elects to testify, except it clearly appears to the court that injustice may be done without his testimony. Section 16 is intended as an exception to section 13, and not as an exception to the right which the party had at common law to give in evidence his books of account supported by his oath. The law in this respect remains as it was before any statute was enacted upon the subject. *Moore v. Taylor*, 44 N. H. 370, 374; *Swain v. Cheney*, 41 N. H. 232; *Page v. Whidden*, *ante*, p. 507; *Peirce v. Burroughs*, *ante*, p. 512.

Verdict set aside.

FOSTER, J., did not sit: the others concurred.

ROBINSON v. DOVER.

Berry v. Windham (*ante*, p. 288) affirmed.

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APPEAL, by a resident of Dover, from the refusal of the tax

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