

settlement of Parker's claim. Parker had given the statute notice to Clough, and had acquired a valid lien at least upon Clough's undivided interest in the building, which had priority over the claims of Eastman, Flint, and Hall. Each trustee being liable to Newman for the whole price of the building, the trustees, and each of them, were obliged to pay Parker's claim to discharge his lien. No question is made as to the validity or amount of his claim.

If the sum of \$75 was paid to Newman before service of the writs upon the trustees, it would be a payment to that extent for which the trustees should be credited. If paid after service upon the trustees, and Newman retained the money instead of paying it over to Parker, the payment cannot avail the trustees as against the plaintiffs. But if paid to Parker, whether paid before or after service on the trustees, the payment having been made to discharge a lien upon the property which had priority over the plaintiffs' lien, the trustees are to be credited with the payment.

The trustees claim that Newman has not completed the building, and therefore is not entitled to receive the full contract price. This claim is in conflict with the reserved case; but if it were not, it would be a question to be determined at the trial term. Whether Batchelder and Moore & Sons have taken executions against the trustees for sums larger than they were entitled to (as claimed by Eastman), is also to be determined at the trial term.

Eastman also raises the question whether, having attached the building as the property of Newman, he may not hold it as Newman's to the extent that it was not paid for? That question can only be met when the question of ownership is properly before the court. It would seem, however, that if the trustees are charged for the balance due for constructing the building, the question proposed could not arise, the building being fully paid for.

Whether the trustees are chargeable, and if so, for what sum, will be determined at the trial term upon the principles thus laid down.

*Case discharged.*

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

---

PERKINS v. TOWLE & a.

Declarations of a grantor in his own favor made subsequently to the execution of the deed are not admissible to impeach it. But his admissions made against his interest are admissible to sustain the deed.

How far the admission of evidence upon collateral issues should be carried, for the purpose of disparaging the credibility of a witness, is a question of fact to be determined at the trial term.

59	583
67	383
67	580
68	344
59	583
69	172
59	583
70	275
59	583
71	94

WRIT OF ENTRY. The plaintiff claims under a deed from Samuel Towle, executed December 31, 1847, the demanded premises being then subject to the life estate of one N., who died March 18, 1872. One of the defendants claims title as the widow of Samuel, and the other as his son and heir. Samuel died April 12, 1872. The evidence tended to show that Samuel left home on the morning of December 31, 1847, and returned in the evening much intoxicated. The defendants offered to show what Samuel said on arriving home in regard to the way in which the plaintiff obtained the deed from him; also, the statements of one B., who wrote the deed, and before whom it was acknowledged, to the effect that the plaintiff obtained it by fraud, and that it ought not to stand. The evidence was excluded, and the defendants excepted.

For the purpose of rebutting the claim of fraud, the plaintiff called one K., who testified that Samuel called at his house about seven o'clock in the evening of December 31, and stated that he had sold his place to the plaintiff, and what he had received for it, and showed the money; also one C., who testified to conversations with Samuel after the life estate of N. had terminated by her death, in which he recognized the plaintiff's title under the deed in question. To the admission of this evidence the defendants excepted.

One P. testified for the plaintiff that she saw Samuel on his way home December 31, that he showed her his money, and stated how much he had received for the place. For the purpose of showing that she was not old enough at that time to know anything of the transaction, she was asked on cross-examination when and by whom she was married, and answered that she was married sixteen years ago by one L. The defendants then called the widow of L., who testified that he died in 1857. The defendants then offered to show by the witness when P. was married, but the evidence was rejected, and the defendants excepted. Verdict for the plaintiff.

*Bartlett and Barnard & Barnard*, for the defendants.

*Whittemore and Mugridge*, for the plaintiff.

SMITH, J. The declarations of Samuel Towle, made to his family after he executed the deed in question, being declarations in his own favor, and not a part of the *res gestæ*, were properly excluded. But K.'s testimony of Towle's statements to him, being admissions of Towle against his interest, were properly received; and the same is true of the testimony of C. The statements of B. were nothing but hearsay, and inadmissible.

According to P.'s testimony, she was married by L. in 1864. The defendants were then allowed to show that she was either mistaken or untruthful as to the date of her marriage, by showing that L. died in 1857, or seven years before the witness said she

was married. The object of this testimony was to show the jury that P., being mistaken or untruthful as to the date of her marriage, must also be unreliable in other particulars. If it would tend to weaken her testimony to any greater extent by showing the true date of her marriage, it would be contradicting her upon a collateral issue, and to what extent that should be carried is a question of fact to be determined at the trial term. *Amoskeag Co. v. Head*, ante 332, 337; *Merrill v. Perkins*, ante 343; *State v. Railroad*, 58 N. H. 410.

*Exceptions overruled.*

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

STOWELL v. FOWLER.

In assumpsit on a claim barred by the statute of limitations, evidence that the defendant said he had no money; that he would settle when he should get the money; that he would not promise any time when he would pay; that he expected his mother would die, and if she should he would settle up the matter,—is not sufficient to take the case out of the statute, without proof of the defendant's ability to pay.

ASSUMPSIT. Plea, the statute of limitations. Replication, a new promise within six years.

One C, having the claim to collect, called on the defendant and informed him that something must be done about it, and asked him what he would do. The defendant said he would not give a note to anybody, but would settle as soon as he could; that it should all be settled up; that he thought the bill was pretty strong, and that there was something wrong about it, but that he would settle it when he should get the money. He would not promise any time when he would pay, but said he expected his mother would die, and if she should he would settle up the matter.

On two previous occasions the defendant said he had no money, and could do nothing about the claim then; that he did not know when he should have any, but expected some to come to him at some time. He made no objection to the bill, but declined to give a note, and gave C to understand that he would settle.

On the above testimony the defendant moved for a nonsuit, which was denied by the referee who heard the cause, and the defendant excepted.

*Corser and W. T. & H. F. Norris*, for the defendant.

*Ray & Walker*, for the plaintiff.

59	585
69	184
69	644

59	585
71	387

59	585
74	273
174	274