

RUSSELL v. BABBITT, *in rev.*

Evidence of an agreement made by the parties in the trial of a cause not limited to that trial nor to the purposes of that case is competent in an action of review of the same case.

In an action of review by the defendant, the amount in controversy does not exceed the amount of the judgment in the original action.

ACTION OF REVIEW, by the defendant, to recover \$57.55, being the amount of the judgment against him in the original action. The plaintiff in that action sued for \$107. At the trial the parties agreed that if the plaintiff could recover anything it would be \$57.55. To show that the amount in controversy in this action of review is less than \$100, the defendant offered to prove that agreement, and moved to refer the action against the plaintiff's objection.

*Barton*, for the plaintiff.

*Shirley & Carr*, for the defendant.

ALLEN, J. The case does not show that the agreement was intended by the parties to be limited to the original action, and evidence of the agreement is competent in this action of review upon the question of the amount in controversy. *Page v. Brewster*, 58 N. H. 126.

The defendant's right of review was a right to bring a new action to recover what he alleges has been wrongfully taken from him by the judgment in the original suit. *Page v. Brewster*, and cases cited. The amount in controversy, therefore, cannot exceed the amount of that judgment, which being less than \$100, the action may be referred without the consent of the parties.

*Case discharged.*

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

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BETSEY PERKINS v. MILAN H. PERKINS & a.

The mortgagee of land, with the mortgage conditioned for the support of himself and his wife during their joint lives and the life of the survivor, is a trustee for that purpose, and on his death and condition of the mortgage broken the court will appoint a trustee to appropriate the land for the purposes of the trust.