

[Strafford, December, 1880.]

KNIGHT *v.* EPSOM.

Copeland & Edgerly, for the plaintiff.

Hall, T. J. Smith, and *Mugridge*, for the defendants.

FOSTER, J. It is settled by the decisions in *Rowell v. Railroad*, 59 N. H. 35, and *Paine v. Railway*, 59 N. H. 215, that there is a right of review in this case.

Case discharged.

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

[Carroll, December, 1880.]

THORNE & *a.* *v.* DEMERITT.

THORNE, WATSON & *a.* *v.* DEMERITT.

REPLEVIN, for leather. Facts found by a referee.

Banfield and *Wheeler*, for the plaintiffs.

Fox, B. C. Carter, and *Hibbard*, for the defendant.

DOE, C. J. There is no error of law in the referee's finding that Wolfeborough was the place of destination, and that no one was authorized by the purchaser of the leather to hold or stop it in Boston, or to dispose of it there in any other way than by forwarding it directly to its place of destination. In the first case, the plaintiffs prevail. *Inslee v. Lane*, 57 N. H. 454; *Benj. Sales*, s. 846. In the second case, the leather had come into the buyer's possession; fraud is not a fact found by the referee; and the action cannot be maintained.

Case discharged.

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

[Merrimack, December, 1880.]

BATCHELDER & *a.* *v.* HIBBARD.

J. Y. Mugridge, for the plaintiffs.

Sanborn & Clark, for the defendant.

SMITH, J. The defendant having contended, on the former reservation of this case (58 N. H. 296), that he had revoked the plaintiffs' license, the report was recommitted. The case now before us is a copy of a second report of the committee, which does not show any question of law raised by either party. The defendant does not present the question whether the petition can be maintained by a licensee, and does not, by brief or otherwise, insist upon his exception to the order for judgment made at the October term, 1876.

Case discharged.

DOE, C. J., did not sit: the others concurred.

[Hillsborough, December, 1880.]

MITCHELL & a. v. GREEN & a. and Trustee.

FOREIGN ATTACHMENT. The facts appeared in the disclosure of the Indian Head National Bank, trustee. The defendants, being indebted to the bank, assigned to the bank, by a written instrument, all accounts and claims due them, with the right to collect the same in the defendants' names, and apply the proceeds towards the payment of the debt secured by the assignment. The defendants' books of account were delivered to the bank, who made some collections thereon; but the debt secured by the assignment has been paid from other property of the defendants, attached by the bank. On the plaintiffs' motion, the bank was charged as trustee for the books, and the money collected on them by the bank; and a receiver for the books was appointed. The defendants excepted.

Sawyer & Sawyer, Jr., for the defendants.

E. S. & H. A. Cutter, for the plaintiffs. The trustee is chargeable for the books as "chattels," within the meaning of s. 22, c. 249, Gen. Laws, as "personal property subject to * * * pledge or other lien," within the meaning of s. 27, and as "choses in action," which s. 28 authorizes the receiver to collect.

DOE, C. J. The books are within the letter of the law of foreign attachment. The trustee has no claim upon them and no interest in them, and, having no interest in the question whether the trustee is chargeable for them, did not object to the orders made at the trial term; and the defendants have not attempted to maintain their exception. There is a question whether the books