

December 30, 1869, that Brackett "is treasurer," can refer to no other term than the indefinite one he was then holding. The provision of the charter, that he and others "shall hold their office for one year, and until others are chosen and have accepted in their stead," excludes the fiction that his non-election, after 1857, was an annual election. The bond covers any default that occurred during the continuance of the indefinite term for which it was given. *Mayor v. Wright*, 16 Q. B. 623; *Curling v. Chalklen*, 3 M. & S. 502; *Dedham Bank v. Chickering*, 3 Pick. 335; *Amherst Bank v. Root*, 2 Met. 523; *Chelmsford Co. v. Demarest*, 7 Gray 1, 6; *Cambridge v. Fifield*, 126 Mass. 429; *Com. v. Reading Bank*, 129 Mass. 73; *Richardson v. Dean*, 130 Mass. 242, 244; De Col. Guar. (Am. ed. 1875) 260; Murf. Off. Bonds, s. 632.

There are authorities in conflict with *Exeter Bank v. Rogers*, 7 N. H. 21 (Thomp. Liab. Off. 515), but it is the settled law of this state that the liability of the sureties was not limited by the expiration and extension of the bank's charter.

*Case discharged.*

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

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BEMIS & a. v. MOREY, *Ex'r.*

All, or a part only, of the issues in a case are tried at one time, according to the requirements of justice and convenience.

PETITION, for leave to appeal from a probate decree allowing a will.

*W. L. Foster*, for the plaintiffs.

*Bingham, Aldrich & Remick*, for the defendant.

DOE, C. J. The issues are, whether the testator was sane, whether the will was obtained by undue influence, whether the plaintiffs were prevented from appealing within sixty days through mistake, accident, or misfortune, and whether they have an interest that may be concluded by the probate of the will. Whether the issue on the plaintiffs' interest should be tried first, or whether all the issues should be tried together, is a question of justice and convenience, which is generally a question of fact, determinable at the trial term. This appeal is taken to the law term. As a matter of fact, justice and convenience require that the issue on the

plaintiffs' interest should be tried and decided before the trial of the other issues, and such will be the order of procedure.

All concurred.

The issue on the plaintiffs' interest was subsequently tried, and determined adversely to them, and their petition for leave to appeal was denied.

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OSGOOD *v.* EATON.

The legal title to land, bought and paid for by A, who takes the deed to B, but does not intend it as a gift, vests in A by the statute of uses, and passes by his deed to a third person.

WRIT OF ENTRY. The question was reserved whether evidence offered by the defendant is admissible to show that John B. Eaton (under whom the defendant claims) bought the land, paid for it with his own money, and took the deed to a third person.

*F. B. Osgood and Copeland & Edgerly*, for the plaintiff.

*E. A. Hibbard*, for the defendant. Under the statute of uses the *cestui que use* becomes the legal owner of the land in such a case. As the use and the land became now convertible terms, they became liable to dower, courtesy, and escheat. 2 Bl. Com. 333. John B. Eaton obtained "the legal estate. The use was executed in him by the statute." *Upham v. Varney*, 15 N. H. 467. "In such cases the statute of uses, which is in force in this state, executes the use, and the legal estate, by force of said statute, vests in the *cestui que use*." *Hayes v. Tabor*, 41 N. H. 521, 526. If it is suggested that the equitable title held by the demandant in *Hutchins v. Heywood*, 50 N. H. 491, was derived under a levy of an execution against the *cestui que use*, instead of under a conveyance from him, it may be answered that there is no reason why that circumstance should alter the rule of evidence. There would be no more necessity for equitable proceedings in one case than in the other.

STANLEY, J. The evidence is competent. *Hutchins v. Heywood*, 50 N. H. 491.

*Case discharged.*

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

62	512
68	600
62	512
69	410
62	512
72	182