

ance of his claim, that is, for the items of \$50.34 and \$19.74, the plaintiff is entitled to judgment on the report.

Ordered accordingly.

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

[Merrimack, December, 1877.]

SHERBURNE v. TEBBETTS.

One may break his covenant by disabling himself to perform it.

DEBT, on a bond conditioned to convey to the plaintiff a tract of land. Plea, *non est factum*, with a brief statement of performance. Facts found by the court.

I. A. Eastman and T. Cogswell, for the defendant.

J. Y. Muiridge, for the plaintiff.

SMITH, J. The defence was performance. The defence set up was the conveyance by the defendant to one Lamprey, at the request of the plaintiff's father, the plaintiff's agent. But the court having found the fact to be that the plaintiff's father was not authorized to make the request or to assent to the conveyance, the defence fails on the facts. Whether proof of such a conveyance, assented to by the plaintiff or by his authorized agent, would be admissible under the plea of performance, we need not inquire.

Exceptions overruled.

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

[Hillsborough, June, 1879.]

SCHEER v. BEDFORD.

SMITH, J. The declaration alleges that the plaintiff's wife was injured in June, 1875, in consequence of a defective highway, and that he suffered damage from loss of her society and services, and incurred expenses for physicians' bills, nursing, and board, while she was disabled. The case comes to the law term upon an agreement of the parties: but the only fact admitted is the immaterial one that the plaintiff's wife has commenced an action to recover