

of the father for the trust, the condition of the child, the fitness of the persons in whose custody it is sought to place her, and whether her permanent interests will be sacrificed by remanding her to the custody of her natural guardian. *State v. Libbey* and *State v. Richardson, supra*.

The facts show the defendant Prime and his present wife to be unsuitable persons to have the custody and nurture of his infant daughter. His character and his means and surroundings disqualify him for that responsible trust; and she is an unsuitable person to have the care and training of any child. The appellant and her husband, whom she asks to have appointed guardian, are persons of respectability, of good character and industrious habits, attached to the child, desirous to keep and educate her, and suitable persons to be entrusted with her care and training.

In England the power of displacing a natural guardian for unfitness, and conferring the trust upon another, is exercised by the king as *Parens Patrie*, acting through a court of chancery. *De Manneville v. De Manneville*, 10 Ves. 51. In this state a court of chancery has probably a like power, notwithstanding the jurisdiction conferred upon the probate court by statute to appoint guardians whenever there shall be occasion. *State v. Richardson, supra*; 2 Sto. Eq. Jur., s. 1341. In this appeal the court is acting as the supreme court of probate. There is occasion for the appointment of a guardian, and the petition ought to be granted. The order in the appeal is,

Decree of probate court reversed,

and in the second case,

Writ dismissed.

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

STRAFFORD.

PAGE v. HODGDON & a.

An oral agreement of two land-owners for the division and maintenance of a partition fence for the season, executed by one of them and not rescinded, is valid.

CASE. In 1883 the parties owned and occupied adjoining pastures, and by a parol agreement divided their partition fence for the season. The plaintiff performed his part of the agreement; but, in consequence of the defendants' neglect to repair their part of the fence, the plaintiff's horse escaped into the defendants' pasture, fell into a ditch, and died. The court ordered judgment for the plaintiff, and the defendants excepted.

Copeland & Edgerly, for the defendants. By the common law, the defendants were not bound to build any partition fence, and the plaintiff was bound to keep his horse on his own land. The fence duties of the owners of adjoining lands depend upon the statute. Partition fences are, in law, undivided, unless a division is made in a statutory method by written and recorded agreement, prescription, or decision of fence-viewers. The statute does not provide for a division by parol.

Worcester & Gafney, for the plaintiff, cited *York v. Davis*, 11 N. H. 241, and *Hitchcock v. Tower*, 55 Vt. 60.

DOE, C. J. The agreement of the parties, dividing the fence for the season, included an implied stipulation that each should maintain the part accepted by him. By the common law of New Hampshire, established by common custom and understanding, the unrescinded, oral contract, executed by one party, bound the other. The statute of fences does not expressly prohibit a parol division for the season; and the construction of the statute, settled by long usage, is, that it does not relieve the defendants from liability for the damage caused by the non-performance of their agreement.

Exception overruled.

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

RAFFERTY v. LOUGEE and PERKINS.

The memorandum required by the statute of frauds of an agreement for the sale of land must be sufficient to identify the parties, land, and price, without resort to parol evidence.

An unsigned memorandum of an auctioneer, unconnected by annexation or reference with any writing duly authenticated by the signature of the party sought to be charged, or his duly authorized agent, is not a part of the memorandum required by the statute.

BILL IN EQUITY. The defendant Lougee owned a tract of woodland in Rochester, and verbally employed one McDaniel, an auctioneer, residing in Dover, to sell it for her at public auction. McDaniel duly advertised, and sold the land for \$370. The defendant directed McDaniel to get out the auction bills for her. One of the bills was sent to her by McDaniel before the sale, and she expressed her entire satisfaction with it. The terms of sale were