

of sale, signed by him and his wife, would not have transferred the legal title.

If, for the purpose of this case, any intention of Reuben Johnson could have prevented the scales becoming real estate, it does not appear that he had an intention that could qualify the legal effect of his annexation of them to his soil. The opinion of subsequent owners of the land that the scales were not real estate was an error of law that did not change the legal character of the property, and Mr. Gage's intention to convey one half of the scales was not carried into effect by such an instrument as the law requires for the conveyance of realty. If all the signers of all the bills of sale intended to make the purchaser a tenant in common of the land, or owner of an undivided part of the scales constructively severed from the land, and if either of the bills of sale is a memorandum of a contract of which specific performance can be enforced in equity by a decree for a deed making the plaintiff the owner of one half of the scales unsevered or constructively severed, such a deed cannot be given by the defendants; and all the bills of sale without a seal have not carried to the plaintiff the legal title necessary for the maintenance of this action. For the purpose of this case the bills of sale are as immaterial as so many oral sales of unsevered realty. The scales are a part of the land; and the plaintiff, not being a cotenant of the land, is not a cotenant of its income.

Judgment for the defendants.

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

COLE v. GILFORD.

A person entitled to a part of the damages for which judgment should be rendered may be joined as plaintiff by amendment at any time before judgment, and may have judgment for his part, if justice will be done by such procedure.

CASE, against a town, for causing water to be discharged upon the plaintiff's land from a street drain. Facts found by a referee. The defendants' act, causing the discharge of the water, was not a reasonable use of their proprietary rights in the highway, and they are liable for the damage done. One White had the use of the land on condition of paying the taxes, and the crops belonged to him. His damages are \$25, and the plaintiff's damages are \$1.

Barnard & Barnard, for the plaintiff, cited *Gilman v. Laconia*, 55 N. H. 130; *Rowe v. Portsmouth*, 56 N. H. 291; *Parker v.*

Nashua, 59 N. H. 402; *Eaton v. Railroad*, 51 N. H. 504, 534; *Sweet v. Cutts*, 50 N. H. 439; *Barkley v. Wilcox*, 86 N. Y. 140; *Inman v. Tripp*, 11 R. I. 520.

E. A. Hibbard, for the defendants.

DOE, C. J. White, being entitled to damages, can be joined as a plaintiff by amendment, and can have judgment for \$25 without costs, and Cole can have judgment for \$1 and costs. *Chauncy v. Ins. Co.*, 60 N. H. 428.

Case discharged.

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

BROWN & a. v. PRESCOTT & a.

A specific performance of an oral promise to convey land to which the promisee (by reason of his possession and improvements) is entitled as against the promisor, may be decreed against the objection of the promisor's attaching creditors who had knowledge of the possession and improvements, the promise being neither actually nor constructively fraudulent; and the levy of their execution may be prevented by injunction.

BILL IN EQUITY. Facts found by the court.

Barnard & Barnard, for the plaintiffs.

Rogers, for all the defendants except Prescott.

STANLEY, J. The plaintiffs ask for the specific performance of a parol contract made by the defendant Prescott, to convey certain real estate to the plaintiff Mary A. Brown, and for an injunction against the other defendants to restrain them from levying an execution upon it, in their favor, against Prescott.

The contract relied on is, that Prescott, prior to November, 1869, then and for several years after solvent, agreed with the plaintiffs John W. Brown and his wife Mary, who was Prescott's daughter, that if they would return to Sanbornton, they then residing in Charlestown, Mass., Prescott would give to the plaintiff Mary the Abrams farm. Relying upon this agreement they returned, and in November, 1869, moved to that farm, and have ever since resided there. The following spring the plaintiff Amos, who was the father of the plaintiff John, began making repairs