

one due is no discharge of the larger. *Blanchard v. Noyes*, 3 N. H. 519; *Mathewson v. Bank*, 45 N. H. 104, 107. But payment by a third person at the request of the debtor, either in money or by a note, accepted by the creditor in full satisfaction and discharge of the debt, is an exception to the rule, and extinguishes the debt. *Brooks v. White*, 2 Met. 283. The assignee of the defendant's firm received their property for the express purpose and on the express consideration of obtaining a discharge of their indebtedness by the payment of forty-five *per centum* of the same; and when the plaintiff accepted from the assignee that sum in full satisfaction, his demand against the defendant was extinguished. His debt being satisfied and extinguished, there was no consideration for the note in suit. It is not the case of a debt discharged by the order of a court in bankruptcy proceedings. In a case of that kind a new promise to pay the debt, made after discharge, revives the debt which is not extinguished by the discharge, and the consideration for the original demand is a good consideration for a new promise. *Bank v. Wood*, 59 N. H. 407; *Wiggin v. Hodgdon*, *ante* 39.

The assignment of the plaintiff's demand to the assignee was in writing, under seal; and if, as the plaintiff claims, this was only formal and intended as a receipt to the defendant and a voucher for the assignee, it was certainly a valid as well as formal transfer of the claim, with all rights of action upon it, to the assignee. The plaintiff, having parted with all interest in the claim and all right of action upon it, nothing remained to him which could be treated as a consideration for the note in suit, and there can be no recovery upon it.

*Judgment for the defendant.*

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

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MT. WASHINGTON HOTEL CO. v. MARSH & a.

A lease of the land of a corporation, made without authority by the president and treasurer of the corporation to the president, may be ratified and affirmed by the stockholders.

A deed, whereby a tenant for years undertakes to convey the fee, will pass the term to the grantee.

BILL IN EQUITY, set down for hearing on bill and answer. The bill alleges that on the 28th day of June, 1875, the plaintiff corporation was seized in fee of a certain piece of land in Carroll; that on that day the defendant Marsh, acting as president, and Henry L. Tilton, acting as treasurer of the corporation, without

lawful authority, executed to Marsh a lease for 199 years of said land, and Marsh, on the 7th day of April, 1880, executed and delivered to the defendant Sands a deed of warranty of the same land; and praying that the cloud thus placed on the plaintiffs' title be removed.

The answer sets forth, that on Oct. 25, 1875, the stockholders by vote authorized the directors to "take such action in regard to the lease of land belonging to the corporation upon which Sylvester Marsh has built a cottage near the Fabyan House as they may deem best," and that four of the five directors soon after indorsed their consent upon the lease as follows: "We consent to the foregoing lease, and hereby approve the same;" that Marsh, before conveying the premises to Sands, relying upon the lease, built a cottage thereon at an expense of \$2,500; and that all the covenants of the lease have been kept on the part of the lessee.

*Ladd & Fletcher*, for the plaintiffs.

*Bingham, Mitchells & Batchellor* and *Drew, Jordan & Carpenter*, for the defendants.

CLARK, J. This cause being heard on bill and answer, the allegations of the answer are to be taken as true (*Rogers v. Mitchell*, 41 N. H. 154), and upon the facts alleged in the answer the plaintiffs are not entitled to the relief prayed for.

If the lease from the Hotel Company to Marsh was originally unauthorized, the subsequent ratification by the directors under the authority specially conferred by the vote of the stockholders at the annual meeting in October, 1875, with full knowledge of all the facts, made it binding in equity upon the corporation. It is immaterial that the endorsement of the directors approving the lease was not under seal;—equity regards the intent rather than the form. 1 Pom. Eq. Juris., ss. 379, 383.

If, as alleged, Marsh, relying upon the agreement of the company and upon the validity of the lease, was induced to take possession of the land and make permanent improvements upon it at great expense, it was such part performance of the contract by him as would entitle him to maintain a bill for specific performance against the company; and equity requires the affirmance of the lease rather than its cancellation.

The deed from Marsh to Sands conveyed to the latter the interest of Marsh in the premises, which was a leasehold estate. G. L., c. 185, s. 18. The plaintiffs are not estopped from objecting that the deed purports to convey an estate in fee by the fact that several if not all of the directors and stockholders of the corporation knew that Marsh contemplated the sale of the cottage, and knew of the conveyance at or about the time it was made, and did not object. They were not called upon to object unless they knew

that Marsh intended to sell and convey a greater interest than he possessed or could lawfully convey, which is not alleged.

*Case discharged.*

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

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JAQUES v. BENTON.

A hearing before the fence-viewers of L., in reference to a division fence on the line between the towns of L. and N., may lawfully be had in the town of N.

ASSUMPSIT, to recover under the statute double the cost of building a division fence, and the fees of the fence-viewers. Facts found by the court. The division fence in question is on the line between Lancaster and Northumberland. The plaintiff living in Northumberland and the defendant in Lancaster, the fence-viewers of the latter town were called out; and they notified the defendant of hearings at the plaintiff's house in Northumberland, about twenty rods from the fence. The defendant moved for a nonsuit on the ground that the fence-viewers of Lancaster had no jurisdiction outside of Lancaster. The motion was overruled, and the defendant excepted.

*Drew, Jordan & Carpenter and W. & H. Heywood*, for the defendant.

*D. C. Pinkham and Ladd & Fletcher*, for the plaintiff.

BLODGETT, J. Chapter 142 of Gen. Laws, in relation to partition fences, enacts (s. 18) that "If the fence in controversy is situate on the line of two towns, the application shall be made to the fence-viewers of the town in which the parties reside; if they reside in different towns, to the fence-viewers of that town in which the applicant does not reside;" and also (s. 15) that "The fence-viewers shall be paid each two dollars per day for his services by the party making the application, who may recover one half thereof of the other party, unless the fence-viewers otherwise apportion the costs; but in case of neglect by such other party to make or repair the part of the fence which he is bound to maintain, the whole costs may be recovered of him."

The facts before us bring this case directly within the statute provisions; and we see no reason, nor has any been assigned, why the judgment ordered at the trial term was not correct.

*Exceptions overruled.*

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