

unable to pay when called upon by the plaintiffs' agent, offered his notes, and delivered them to the agent. That the agent had no authority to accept them does not alter the case. It does not appear whether he assumed to accept them, or whether he informed the defendant that he was not authorized to receive them; and whether he did or not is immaterial. The agent's lack of authority did not change the nature and effect of the contract between the maker and the payee of the notes. Under the law of New Hampshire, the notes, executed and payable in New Hampshire, did not operate as payment of the indebtedness for which they were given, and no additional force or effect was acquired by the acceptance in Massachusetts. In the absence of any agreement of the parties, the acceptance was an acceptance of the notes as New Hampshire notes,—contracts to be performed in New Hampshire and governed by the law of New Hampshire; and by the law of New Hampshire the notes were not a payment of the plaintiffs' account. The defendant cannot set up the defence that the notes were payment of the plaintiffs' claim; and subsequent attaching creditors can make no defence which the defendant cannot make.

*Judgment for the plaintiffs.*

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

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CARROLL.

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PARSONS v. HATCH & a.

A sale of goods is not rendered void by the want of a change of possession as against a creditor who has knowledge of the sale, and assents and becomes a party to it by deriving from it a valuable security.

TROVER, for machinery and other property attached in a mill, by the plaintiff, a deputy sheriff, as the property of Beck & Mitchell, who had sold it to the defendants. The attaching creditors, who are the plaintiffs in interest, claim there was not a sufficient change of possession. A verdict was ordered for the defendants.

*Worcester & Gafney*, for the plaintiff.

*E. A. Hibbard* and *J. H. Hobbs*, for the defendants.

DOE, C. J. The plaintiffs in interest had been employed by the vendors as workmen in the mill. Having knowledge of the sale, and being informed by the vendees that they took possession and

would run the mill, they continued their work, upon the faith of the vendees' promise to be responsible for future wages, and to pay wages previously earned if there should be a profit. They had the benefit of all the notice any change of possession could have given, and were so far parties to the sale as to have no cause to complain of any want of completeness in the change of possession. There was no need of a more thorough change to inform them of a contract of which they had all the knowledge they could desire, and to which they assented by deriving from it a valuable security. *Coburn v. Pickering*, 3 N. H. 415, 426.

*Judgment on the verdict.*

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

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WELCH & a., *Ex'rs*, v. ADAMS, *App't*.

It is not necessary to the legal execution of a will that it be signed or sealed in the presence of the subscribing witnesses, nor that the witnesses sign in the presence of each other, though such a course is usually advisable.

On the trial of an appeal from the probate of a will, the appellant cannot be a witness unless the executor testifies.

APPEAL from a decree of the probate court allowing the will of Isaac Adams. The only issue joined was, whether the testator was of sound and disposing mind. Verdict for the appellees, which the appellant moved to set aside. Neither of the appellees testified.

The appellant, by the exercise of discretion under the statute, was permitted to testify generally, but, subject to exception, was excluded as to conversations and matters occurring between himself and the deceased, and as to which the latter, if alive, could have testified, it not appearing to the court that injustice was done thereby, but quite the contrary. Neither of the executors testified, and no devisee or legatee was called by them as a witness.

The appellant requested the court to instruct the jury as follows:

1. There is no legal definition or test of insanity, or soundness of mind, or of the mental capacity to make a valid will. Soundness of mind, such as will enable a person to make a will, has reference to the business to be transacted, namely, the disposition of property by will: his mind must have been sound with reference to whatever is involved in this transaction. If it shall appear that he is able to understand the nature and situation of his property, and his relations to those persons in whom and those things in which he has been mostly interested, the nature of the act he was doing, and the relations in which he stood to the natural objects of