

[Merrimack, December, 1888.]

BROWN v. ELA.

ASSUMPSIT. A referee found due to the plaintiff, among other items, \$180 for a quantity of hay. It appearing that at the date of the plaintiff's writ no cause of action in contract or in tort had accrued to him for the hay, he was permitted to withdraw the item, and take judgment on the report for the remainder.

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

R. E. Walker, for the plaintiff.

S. Dana and *C. P. Sanborn*, for the defendant.

[Hillsborough, December, 1888.]

COLBY & a. v. CATE & a.

BINGHAM, J. It was decided in this case, 64 N. H. 476, that c. 41, Laws 1872, did not repeal Gen. St., c. 183, s. 7. This leaves the rights of Hepzibah Cate as if the act of 1872 had not been enacted, and her rights in the estate of her husband, she having waived the provisions made for her in his will, are as provided in section seven, above cited. No difficulty now appears to prevent going forward with the proceeding for partition. *Hall v. Smith*, 59 N. H. 315.

Case discharged.

DOE, C. J., was absent: SMITH and CLARK, JJ., did not sit: the others concurred.

David Cross and *R. E. Walker*, for the plaintiffs.

J. P. Bartlett and *J. H. Andrews*, for the defendants.

[Hillsborough, December, 1888.]

STATE v. JOSEPH A. MORIN & a.

R. M. Wallace, solicitor, for the state.

Sulloway & Topliff and *G. B. French*, for the defendants.

BINGHAM, J. The case in its present form presents questions