

[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

which may never arise on a trial. It is not advisable to pass upon unnecessary cases. *State v. Stevens*, 36 N. H. 59, 60; *Sceva v. True*, 53 N. H. 627; *State v. Baron*, 64 N. H. 612.

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

Case discharged.

[Rockingham, June, 1889.]

COBURN v. STORER.

SAME v. SAME.

ASSUMPSIT and TROVER. Tried by the court, who found the facts and assessed damages. The defendant excepted.

A. C. Osgood and *David Cross*, for the defendant.

Wiggin & Fernald, for the plaintiff.

CARPENTER, J. The plaintiff's right to judgment is not contested.

Exceptions overruled.

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

[Strafford, June, 1889.]

COOK v. NEW DURHAM.

After the decision of this case (reported 64 N. H. 419) a further statement by way of amendment was obtained from the justice who tried it, by which it appeared that the evidence offered was excluded on the ground that it was legally inadmissible and not in the exercise of discretion, and thereupon the verdict was set aside.

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

G. E. Cochrane and *J. Kivel*, for the defendants.

E. F. Cloutman and *Worcester & Gafney*, for the plaintiff.