

owned by her to her lot on Spring street in Concord. After the plaintiff had performed the greater part of the work, an injunction was issued, on petition of the city, restraining the defendant from locating the building on the lot until permission was granted by the mayor and aldermen as required by a city ordinance relating to the moving of buildings. Permission was applied for and refused. In consequence of the injunction the plaintiff did not complete his contract. For the part of it performed by him the court ordered judgment in his favor, and the defendant excepted.

Defendant, pro se.

Albin & Martin, for the plaintiff.

CARPENTER, J. Had the plaintiff without cause abandoned the work and refused to complete the contract, he could recover what the services performed were reasonably worth, less the damages occasioned by his breach of the contract. *Britton v. Turner*, 6 N. H. 481. The question intended to be raised is, whether the defendant is entitled to damages for the plaintiff's failure to complete the contract. It was not the plaintiff's business to obtain permission for the defendant to place the building on her Spring street lot. He was not employed for that purpose. His performance of the contract was interrupted and made impossible either by the defendant's fault in neglecting to procure the consent of the mayor and aldermen, or by the act of the law without the fault of either party. In neither case is the defendant entitled to damages for the plaintiff's non-performance of the contract. *Blake v. Niles*, 13 N. H. 459, 460; *Kimball v. Railroad*, 23 N. H. 579, 582; *Harvey v. Coffin*, 44 N. H. 563, 567; *Melville v. De Wolf*, 4 E. & B. 844; *Mill Dam Foundery v. Hovey*, 21 Pick. 417, 441; *Walker v. Fitts*, 24 Pick. 191, 195; *Jones v. Judd*, 4 N. Y. 411, 413, 414; *Heine v. Meyer*, 61 N. Y. 171.

Exceptions overruled.

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

HILLSBOROUGH.

LOGAN & a. v. EATON & a.

66	575
72	214

A grantor's statement, in a conveyance of his interest in a tract of land, that his interest is five twelfths of the land, and his covenant to warrant and defend said premises against all persons claiming by, from, or under him, estop his denial of the fact that the deed conveyed five twelfths.

PETITION FOR PARTITION. Issue as to title. The plaintiff, Mrs. Logan, had quitclaimed to Chase, the defendant's grantor,

her interest in a tract of land by a deed containing this clause, "my interest in the same being one undivided half of the interest of the said Samuel Greeley at his decease, which interest was five undivided sixth part," and a covenant to warrant and defend "said premises" against all persons claiming by, from, or under the grantor.

H. B. Atherton, for the plaintiffs.

G. B. French, for the defendants, cited *March v. Railroad*, 43 N. H. 515, 521; 3 Smith Ld. Cas. (ed. 1889) 2,108, 2,109; Rawle Cov., ss. 245, 247, 248, 255; *Fletcher v. Chamberlin*, 61 N. H. 438, 474, 476; *Bensley v. Burdon*, 2 Sim. & St. 524; *Bowman v. Taylor*, 2 A. & E. 278; *Reynolds v. Cook*, 83 Va. 817-821; *French v. Spencer*, 21 How. 228; Big. Est. 332; *Carver v. Jackson*, 4 Pet. 1; *Batchelder v. Lovely*, 69 Me. 33, 38; *Magruder v. Esmay*, 35 Ohio St. 221; *Clark v. Baker*, 14 Cal. 612-629; *Nixon v. Carco*, 28 Miss. 414, 426; *Bush v. Person*, 18 How. 82, 85; *Goodtitle v. Bailey*, Cowp. 597, 600; *Gibson v. Chouteau*, 39 Mo. 536, 567; *Moore v. Crawford*, 130 U. S. 122, 130; *Smith v. Williams*, 44 Mich. 242; *Smith v. Pendell*, 19 Conn. 107.

DOE, C. J. The plaintiff is estopped to deny the truth of the deed by which she undertook to convey five twelfths of the land.

Case discharged.

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

SHELTERS v. BOUDREAU & a.

66 576
71 141

In a trustee process, an attachment of funds in the hands of a partnership trustee may be made, as against a claimant, by service of the writ on one of the partners.

FOREIGN ATTACHMENT. The trustees, Morin and Lucier, are partners and are so described in the writ, and are indebted as partners to the defendants. The officer returns that he attached, &c., and summoned the trustees by giving an attested copy of the writ to Morin. The trustees do not object to the service. Lanzon, a claimant, moved that the trustees be discharged.

J. J. Doyle, for the plaintiff.

W. W. Bailey, for the claimant.