

[Coös, December, 1889.]

HEBBARD v. BERLIN.

DOE, C. J. The case falls within the general principle of *Knowlton v. Pittsfield*, 62 N. H. 535.

*Case discharged.*

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

*Twitchell & Goss*, for the plaintiff.*R. N. Chamberlin and Drew & Jordan*, for the defendants.

[Sullivan, June, 1890.]

STATE v. LEWIS.

DOE, C. J. It is not advisable to examine the law of the case until the question whether the defendant in *State v. Cornish* (*ante*, p. 329) acted as the agent or servant of this defendant in bringing the pauper into this state, and until other questions of fact are determined by agreement or trial.

*Case discharged.*

ALLEN and SMITH, JJ., did not sit: the others concurred.

*Attorney-General and Solicitor*, for the state.*W. L. Foster and A. S. Wait*, for the defendant.

[Coös, June, 1890.]

HOPKINSON, *Ex r.*, v. BENTON & a.

BILL IN EQUITY, to foreclose a mortgage. Facts found by referees.

*W. & H. Heywood and F. Ladd*, for the plaintiff.*O. Ray*, for Benton.

DOE, C. J. The mortgage was given by the defendant Hodgdon to the defendant Benton in 1876, to secure six notes. In April, 1884, Brown and the plaintiff's testate, Hopkinson, recovered

judgments against Benton, and Hodgdon was charged as trustee for the amount of the judgments. In payment of the judgments, four of the notes (reduced to the amount of the judgments by an endorsement of a partial payment, which was adjusted by Benton and Hodgdon) were transferred and delivered with the mortgage by Benton to Brown and Hopkinson. Hopkinson afterwards bought Brown's interest in the four notes and the mortgage. Benton still holds the other two notes. Hopkinson, Brown, and Benton understood that if a foreclosure of the mortgage should be necessary to obtain payment of the four transferred notes, those notes should be fully paid before any proceeds of the foreclosure should be applied to the payment of the other two notes. The competent proof that this understanding was a part of the transaction is conclusive. A finding against Hopkinson's prior right would be set aside as against the evidence.

*Decree for the plaintiff.*

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

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[Belknap, December, 1890.]

EASTMAN & a. v. JEWETT.

GREENOUGH & a. v. JEWETT.

PETITIONS, for writs of *mandamus*, requiring the defendant to place the names of the plaintiffs and others upon the roll of the house of representatives of 1891, for its organization. The petitions were filed and heard with the bill in equity, *Bingham v. Jewett*, ante, p. 382, and were dismissed with the bill on the ground stated in the report of that case.

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[Merrimack, March, 1891.]

LANG v. GAGE.

ASSUMPSIT, on a promissory note signed by the defendant and payable to the plaintiff on demand. Plea, the general issue and a brief statement of the statute of limitations. Upon trial of the case after the decision reported 65 N. H. 173, the plaintiff testified to statements of the defendant to her, acknowledging the debt and assuring her of its payment. The following special questions were submitted to the jury, who with their answers returned a general verdict for the plaintiff: Has the defendant, in words, expressly