

whole. If necessary or desirable to a just division, a right of way may be given to one cotenant over the share assigned to another. *Cheswell v. Chapman*, 38 N. H. 14. In every case, what will be a fair partition is a question of fact for the committee, to be determined upon a consideration of the value of the entire property, of the several parts into which it may be separated, of the interests and convenience of the parties concerned, and of all other evidence. *Doughty v. Little*, 61 N. H. 365; *Holbrook v. Bowman*, 62 N. H. 313, 321.

Case discharged.

BLODGETT and CHASE, JJ., did not sit: the others concurred.

BROWN v. ELA.

A distinct act of dominion wrongfully exerted over another's goods in denial of his right, or inconsistent with it, is evidence of a conversion.

TROVER, for twelve tons of hay. Facts found by a referee. In the spring of 1886 the defendant leased to the plaintiff by parol his farm in Allenstown for the term of five years from April 1, 1886. It was a part of the agreement that the hay crop be divided equally between the parties, but to be spent on the farm, the plaintiff having the right to sell a portion of his share provided he should put an amount of fertilizers on the farm equal to the amount which the hay sold would make, or should bring to the farm an equivalent in feed for the hay sold. The lease was terminated at the end of a year by mutual consent, and the plaintiff left the premises.

In October, 1886, the hay was divided by the plaintiff, with the knowledge of and without objection from the defendant, who after the division recognized it, and the plaintiff thereby became the absolute owner of a divided half, subject to the restriction that it be fed out upon the farm. When the plaintiff left the farm he left twelve tons of hay, part of his half, which he attempted to sell to be used off the farm. The defendant declined to assent to the sale, and after the plaintiff left instructed his employé to feed his cattle from the plaintiff's hay. A portion of it was fed out to the defendant's stock, and the balance, with the barn, was burned in September, 1887. Upon the foregoing facts the referee found a conversion by the defendant of the whole twelve tons, and assessed the plaintiff's damages at \$180; and the defendant excepted.

Sylvester Dana, for the defendant.

Streeter, Walker & Chase, for the plaintiff.

SMITH, J. The defendant knew of the division of the hay, made no objection to it, and after it was made recognized it. From these facts it was competent for the referee to find that the plaintiff became the owner of a divided half, subject to the restriction that it was to be consumed upon the farm, or to be replaced by an equivalent in feed or by an amount of fertilizers equal to what would be made by the hay sold.

The defendant's direction to his employé to feed his cattle from the plaintiff's hay was an act of dominion wrongfully exerted over the plaintiff's property, inconsistent with his right. It is not necessary, in order to constitute a conversion, that there should be a manual taking of property. *Baker v. Beers*, 64 N. H. 102, 105; *Evans v. Mason*, 64 N. H. 98, and authorities cited. In this case there was a manual taking of two tons of the hay, and the evidence was sufficient from which to find a conversion of the whole. The plaintiff is entitled to judgment for \$180 and interest.

Exception overruled.

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

WEBSTER v. BOSCAWEN & a.

Recitals in ancient records and grants are competent evidence of the laying out of ancient highways.

BILL IN EQUITY, under c. 43, Laws of 1883, alleging that the plaintiff is in possession of a tract of land described in Boscawen, claiming a freehold therein. The defendants claim that the land is a legally existing highway. The plaintiff prays that the title be determined by the court, and for an injunction. Facts found by the court. The land described in the bill has been known for more than one hundred years as the old ferry road, which originally ran from King street on Boscawen plain to Clement's ferry on the Merrimack river. The ferry ceased to be used about 1804. The plaintiff acquired the title and possession of the farm, which includes the disputed tract, January 2, 1889, by warranty deed from Lucia Webster, which reserves "all rights which the town of Boscawen may have in a highway across the northerly portion of said land as now laid out and known as Ferry street." Prior conveyances of the farm back to 1821 contain no reservation or mention of the ferry road. The defendants put in evidence a transcript of the town records: "A return of a highway laid out