

and is not chargeable unless the defendant could recover. *Forist v. Bellows*, 59 N. H. 229, 232, and cases cited. The question of his liability is determined upon the same principles of law, and, if a trial by jury or court is elected, upon the same evidence as it would be in such an action. The trustee cannot in general adduce any testimony against the plaintiff which would be inadmissible against the principal defendant. *Currier v. Taylor*, 19 N. H. 189, 191, 192; *Heywood v. Brooks*, 47 N. H. 231, 235. If the law were otherwise it might in many cases, as it would in this case (assuming the alleged parol contract to be valid — *White Mts. Railroad v. Eastman*, 34 N. H. 124), practically nullify the statutes of foreign attachment. A judgment discharging these trustees would not affect their liability to the principal defendants. In an action subsequently brought by them on the contract of subscription the parol evidence could not be received, and they would be entitled to recover.

*Exceptions sustained.*

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

[Rockingham, December, 1891.]

LYNCH v. STOTT & a.

ASSUMPSIT, to recover the price of four barrels of rum. Facts agreed. An order for one barrel of rum was solicited and taken in December, 1888, and for another barrel in February, 1889, at the defendants' place of business in Portsmouth, by the plaintiff's travelling salesman, and by him carried to the plaintiff's place of business in Boston. Orders for the other two barrels were sent by the defendants, one in January and the other in March, 1889, to the plaintiff in Boston. The liquor was shipped to the defendants at the dates named from the plaintiff's store in Boston by express, and delivered to the defendants at Portsmouth in the same packages it was in when shipped, the express charges being paid by the defendants. The plaintiff had a license to sell intoxicating liquors in Boston.

*Calvin Page*, for the plaintiff.

*C. E. Batchelder*, for J. W. Stott.

*Samuel W. Emery*, for George Stott.

SMITH, J. The plaintiff is entitled to judgment. *Durkee v. Moses*, ante, p. 115.

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