

Rockingham, }  
 June, 1894. }

## LEAVITT v. LOCKE &amp; a.

It is error for a committee to make partition without taking into consideration the claim of one of the cotenants to certain buildings erected by him upon the common property.

PETITION for partition. Facts found by the court. The petition was filed at the October term, 1892, when the defendants were defaulted and a decree for partition was made, and a committee appointed to make the division. One of the defendants, John W. Locke, while in the occupation of the common estate, built upon it a portion of the buildings at his own expense, by which the property was enhanced in value. He did this without obtaining the plaintiff's consent and without her knowledge until after the work was done. At the hearing the committee informed him that they had no authority to consider his claim for these buildings or their value, but must divide the property as they found it, and a division was made upon this basis.

The report of the committee was filed at the April term, 1893, when the defendant, Locke, moved to set it aside for the reason, among others, that the committee, by a mistake of law, understood they were bound to make, and did make, partition of the land without regard to his right or title to the buildings erected by him. Judgment was ordered on the report, to which the defendants excepted.

*John S. H. Frink, Eastman, Young & O'Neill, and Thomas Leavitt, for the plaintiff.*

*Charles H. Knight, for the defendants.*

WALLACE, J. The committee erred in ruling that they had no authority to consider the claim of the defendant, Locke, to certain buildings erected by him on the common property, and in making the division in accordance with that ruling. *Ford v. Knapp*, 102 N. Y. 135, 140; *Crafts v. Crafts*, 13 Gray 360; *Holbrook v. Bowman*, 62 N. H. 313, 321; *Gage v. Gage*, 66 N. H. 282, 288.

The defendants were not negligent in not objecting to the report of the committee before the first term at which it was returned to court. The report of the committee is set aside.

*Exceptions sustained.*

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