

highway by prescription, and move that the issue on this averment be tried before sending the petition to the commissioners.

Batchelder & Faulkner, for the plaintiffs.

John T. Abbott, for the defendants.

CARPENTER, J. "If no sufficient objection is made, all petitions relating to highways shall be referred to the county commissioners." P. S., c. 68, s. 5. If, upon a trial of the issue raised by the answer, it should be found that the new highway is laid over an old one, the finding would be a sufficient objection to sending the petition to the commissioners. The plaintiffs would be entitled to no damages (*Pierce v. Somersworth*, 10 N. H. 369), and their petition would be dismissed. If it should be found that there was no existing highway where the new one is laid, the petition must be referred to the commissioners. On the return of their report the plaintiffs would be entitled to, and in order to obtain their rights might be obliged to have, another trial. P. S., c. 68, s. 10. They might thus be subjected to the expense and delay of two trials where one would suffice. What method of procedure in the trial of the several issues presented will be most convenient, expeditious, and least expensive to the parties, is a question of fact to be determined at the trial term. *Owen v. Weston*, 63 N. H. 599.

Case discharged.

All concurred.

Cheshire, }
Dec., 1894. }

STATE v. HITCHCOCK.

Upon the trial of an indictment against a person claiming to be a registered pharmacist for illegally keeping spirituous liquor for sale, the offer in evidence of hand-bills used in advertising certain medicines was properly rejected, in the absence of evidence or the offer of any evidence that liquor was used in compounding them.

INDICTMENT, for illegally keeping spirituous liquor for sale. Trial by jury. Verdict of guilty. The defendant introduced evidence tending to show that he was a registered pharmacist at the time and place it was alleged the offence was committed. He also offered in evidence five hand-bills of different kinds, as samples of those distributed by him for the purpose of advertis-

ing certain remedies. He offered no evidence that he had used spirituous liquors in compounding medicines, nor what the constituent properties of the medicines named in the hand-bills were. The evidence was rejected, and the defendant excepted.

Charles H. Hersey, solicitor, for the state.

Joseph Madden, for the defendant.

WALLACE, J. The question at issue was whether the defendant kept spirituous liquor for sale illegally. On that question it was proper for him to show that the liquor he was charged with keeping for sale was kept by him as a pharmacist in compounding medicines. But his offer to introduce in evidence hand-bills, as samples of those distributed by him in advertising certain medicines, was properly rejected, in the absence of any evidence or the offer of any evidence to show that liquor was used in compounding those medicines.

Exceptions overruled.

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

Sullivan, }
Dec., 1894. }

ALLEN & a. v. BIDWELL & a.

An act of the legislature dividing a town school-district into two taxing districts, for the separate maintenance of schoolhouses in each, is not unconstitutional.

PETITION, for the abatement of taxes assessed in 1894 by the selectmen of Charlestown. Facts agreed. The plaintiffs are taxpayers in the north part of the town, which, prior to 1885, comprised school districts numbered 5, 6, 7, and 12. At the annual school meeting of the town district in 1894, it was voted to build two new schoolhouses in the south part of the town at an aggregate expense of \$6,500. Under this vote the selectmen assessed a tax upon the entire town district. The plaintiffs, claiming to be exempt from the payment of the tax by virtue of chapter 208, Laws 1889, seasonably applied to the selectmen for an abatement, which was refused.