

Sullivan, }
June, 1894. }

68 603
Case 1
71 397

PATTEN v. PATTEN & a.

ASSUMPSIT, for fees paid to fence-viewers and for services in building a fence. Facts agreed. November 26, 1863, John S. Sanborn conveyed one acre, parcel of his farm, to Thomas Eastman, by a deed containing a clause as follows: "The conditions of this deed are that the said Thomas Eastman, his heirs and assigns, shall build and forever keep in repair the line fence between said Thomas Eastman and the said John S. Sanborn on the land above described." The title to the farm has come to the plaintiff and that of the acre to the defendants, in each case through several mesne conveyances, in none of which is the condition mentioned or referred to. The defendants deny that they are bound by the condition.

Judgment for the plaintiff.

All concurred.

Hosea W. Parker and Ira Colby, for the plaintiff.

George R. Brown, for the defendants.

Strafford, }
Dec., 1894. }

JEWELL v. ROCHESTER.

PETITION, for the assessment of damages for the taking of certain water rights. Facts found by the court. The defendants purchased of the Rochester Aqueduct and Water Company, under the authority of c. 253, Laws 1891, the flowage and drainage rights in question, after the appropriation of the same by the Aqueduct company. In 1885 that company filed a bill in equity against the plaintiff and other landowners for an assessment of the damages occasioned by the taking of said water rights. Subsequently, on motion of the Aqueduct company, the bill was dismissed as to the plaintiff. The assessment of damages was then referred to the county commissioners, who awarded to the plaintiff \$82.33. She declined to accept the award, on the ground that she was not a party to the proceedings before the commissioners.

Felker & Pearl, for the plaintiff

George E. Cochrane, for the defendants.

Per Curiam.* As the plaintiff was not a party to the proceedings before the commissioners, she is not bound by the award, and is entitled to maintain the present petition.

Case discharged.

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

Strafford, }
Dec., 1894. }

BOSTON & MAINE RAILROAD v. UNION STREET RAILWAY Co.

ASSUMPSIT, for eighty-four tons of iron rails. The court ordered a verdict for the defendants, and the plaintiffs excepted. It appearing that one C. bargained with the plaintiffs for the iron, that he was not the defendants' agent and had no authority from them to make the purchase, and there being no other evidence tending to show that the defendants contracted for the iron, the exceptions were overruled.

SMITH, J., did not sit.

Worcester, Gafney & Snow and *John Kivel*, for the plaintiffs.

William F. Nason and *Robert G. Pike*, for the defendants.

Merrimack, }
Dec., 1894. }

McCONNELL v. FLANDERS.

TRESPASS, with a count in trover, for the plaintiff's crops, attached in a suit against him by the defendant as a deputy sheriff, the greater part of which were destroyed without the

* See foot-note on page 22.