

defendant's fault, and the remainder sold by the defendant on the writ. The crops when attached were growing, and were harvested by the defendant at a reasonable expense, which was more than the value of the portion sold. Judgment having been ordered for the defendant, the plaintiff excepted, and moved to amend by inserting a count in assumpsit.

Harry G. Sargent, for the plaintiff.

Sylvester Dana and Bingham & Mitchell, for the defendant.

WALLACE, J. Tort cannot be maintained. A majority of the court are of the opinion that justice does not require the allowance of the amendment.

Exceptions overruled.

CLARK, J., did not sit.

Grafton, }
Dec., 1894. }

WHITCHER & a. v. STATE.

WARDEN v. SAME.

RANDALL & a. v. SAME.

GRAFTON COUNTY v. SAME.

WALKER v. SAME.

PETITIONS, under Laws 1893, c. 94, for the reward offered for the arrest or causing the arrest of Almy. The court found that Whitcher and Brown, and Warden, through information furnished by them, caused Almy's arrest; that none of the other petitioners arrested him or caused his arrest; awarded a part of the reward to Whitcher and Brown and a part to Warden, if it could lawfully be apportioned, otherwise the whole to Whitcher and Brown; and dismissed the other petitions. Each of the parties, including the state, excepted to all the court's findings and orders not favorable to it, him, or her. No ground being stated or appearing on which any of the exceptions could be sustained, they were overruled, and the reward adjudged in part to Whitcher and Brown, and in part to Warden.

SMITH, J., did not sit.

Samuel B. Page, John Kivel, William H. Cotton, and Bingham & Bingham, for Whitchee and Brown.

Charles A. Dole, for Warden.

John L. Spring and James G. Harvey (of Vermont), for Randall and others.

Albert S. Batchellor, for Grafton county.

Mary E. Walker, pro se.

Edwin G. Eastman, attorney-general, and John E. Young, for the state.

Coös, }
Dec., 1894. }

BENTON & a., Adm'rs, v. HOPKINS & a.

ASSUMPSIT, upon a promissory note payable to the order of M. V. Hopkins and bearing the following indorsements: "M. V. Hopkins, J. M. Hopkins. Waiving demand and notice. M. V. Hopkins, J. M. Hopkins." The plaintiffs are administrators of the estate of Jacob Benton, indorsee of the note. At a hearing before a referee, the defendants moved that J. M. Hopkins be discharged, on the ground that successive indorsers cannot be joined as defendants, offered his evidence in regard to the note, and excepted to a denial of the motion and the exclusion of the evidence. The plaintiffs did not elect to testify.

Drew, Jordan & Buckley, for the plaintiffs.

Ladd & Fletcher, for the defendants.

CLARK, J. The question in this case is one of procedure for the trial term. It does not appear whether the defendants are not jointly liable to Benton, the indorsee. If they are, there is no question that the action can be maintained.

As the plaintiffs did not elect to testify, the defendants could not testify to any facts occurring in the lifetime of Benton. P. S., c. 224, s. 16.

Case discharged.

All concurred.