

engaged in it tradesmen in the statutory or any other just sense; and if they commit the custody of the common property to one of their number, who may chance to be such a tradesman, merely for the purpose of being marketed by him for their joint benefit, it will stand no differently in respect of valuation for taxation than it would if it had been committed to the other owners, or either of them, for the like purpose. In each case alike, the statute, as well as manifest justice, requires its taxation, not as stock in trade but at "its full value." P. S., c. 56, s. 16; *Ib.*, c. 58, s. 1. Exception sustained.

Petition dismissed.

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

Hillsborough, }
June, 1898. }

MARTIN *v.* BATCHELDER *et al.*

An oral agreement which may be fully performed within a year, although it can be done only by the occurrence of some improbable event, is not within the statute of frauds.

REPLEVIN, for a horse. Trial by the court. The plaintiff's evidence tended to show that he delivered the horse to the defendant Herman, May 28, 1895, under an oral agreement made prior to May 1, by which Herman was to keep the horse a year for the use of it. Herman used it awhile and then caused it to be pastured, and afterward to be kept by the defendant Charles. The defendants claimed a lien upon the horse for its keeping. There was a finding in favor of the plaintiff, subject to the defendants' exception.

John P. Bartlett, for the plaintiff.

Burnham, Brown & Warren, for the defendants.

CHASE, J. As the exception was general and no brief has been furnished, the error which the defendants intended to allege by the exception is a matter of conjecture. If it was that the agreement set up by the plaintiff was within the statute of frauds because it was not to be performed within one year from the time it was made (P. S., c. 215, s. 2), the exception must be

overruled. "If by its terms, or by reasonable construction, the contract can be fully performed within a year, although it can only be done by the occurrence of some contingency by no means likely to happen,—such as the death of some party or person referred to in the contract, the statute has no application and no writing is necessary." *Blanding v. Sargent*, 33 N. H. 239, 245; *Gault v. Brown*, 48 N. H. 183, 189. If the horse—the subject of the contract in this case—had died within the year after the agreement was made, the agreement would have been fully performed. Upon the happening of this event, Herman would have had the use of the horse as long as the contract entitled him to it under the circumstances, and the plaintiff would have received full compensation therefor. Nothing would remain to be done by either party. The expectation of the parties when the contract was made, that more than a year would elapse before it would be fully performed, was immaterial, since their intent allowed of its complete performance within a year if the horse died within that time. In this respect, the contract does not differ from those considered in the cases cited. See, also, *Peters v. Westborough*, 19 Pick. 364.

Exception overruled.

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

Hillsborough, }
 June, 1893. }

SHEA, *Adm'r*, v. CONCORD & MONTREAL RAILROAD.

A railroad company is not required to anticipate the presence of chance or casual trespassers upon its tracks and take precautions for their safety.

CASE, for injuries to the plaintiff's intestate, a trespasser upon the defendants' railroad track, by being run over by a coal car, September 25, 1894, through the defendants' negligence. Trial by jury and verdict for the plaintiff.

The evidence tended to prove that at the time of the accident, and for some years prior thereto, there was a tract of land south of Auburn and west of Elm streets in Manchester, extending to the defendants' railroad tracks, which was unfenced and, in the main, unimproved. On this land, near the east side of the railroad, there was a lumber yard, a stable, and a storehouse in which old machinery was stored. Between the east and west tracks there was a coal shed and an oil shed. Merchandise was carried to and from these sheds by teams passing between the

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