

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

Josiah H. Hobbs and *Fred B. Osgood*, for the plaintiff.

John B. Nash and *Walter D. H. Hill*, for the defendants.

Carroll, }
June, 1900. }

ALDRICH & a., Adm'rs, v. WHITAKER & a.

BILL IN EQUITY, to foreclose a mortgage given by the defendants to the plaintiffs' testator to secure their joint note. Trial by the court. Subject to exception, the defendants were permitted to show that there was no consideration for the note. The court found that the note was without consideration and ordered the bill dismissed, and the plaintiffs excepted.

Josiah Hobbs and *John C. L. Wood*, for the plaintiffs.

James A. Edgerly and *John B. Nash*, for the defendants.

YOUNG, J. The question the plaintiffs have discussed is not in the case, for this is an action to collect a note. Want of consideration is a defence to such an action when it is brought by the original payee of the note or his personal representatives (*Murray v. Whitecomb*, 58 N. H. 50), and may be shown by parol evidence. *Bigelow v. Bigelow*, 93 Me. 439. No question of law is raised by the other exception.

Exceptions overruled.

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

Merrimack, }
June, 1900. }

CONCORD LAND AND WATER POWER CO. v. CLOUGH.

PETITION, under the flowage act, for the assessment of damages to the defendant's land.

The plaintiffs excepted to the following statement in the argument for Clough: "My brother Sargent made an excuse. He said

70	627
	Case 2
70	887
70	627
71	274
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72	450