

Carroll, }
 Oct. 7, 1902. }

CASSIDY *& a.* *v.* MUDGETT.

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Where a former adjudication is interposed as a defence to an action of trespass *quare clausum*, it is competent for the plaintiff to show by extrinsic evidence the matters determined by the prior litigation.

If the defendant in an action of trespass *quare clausum* claims title to only a part of the land described in the declaration, a judgment in his favor is not a bar to a similar action against his successors in title as to the remainder of the premises.

TRESPASS *quare clausum*. Plea, the general issue. Trial at the March term, 1902, of the superior court before *Stone, J.*, who ordered a nonsuit, and the plaintiffs excepted.

Arthur L. Foote, for the plaintiffs.

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

WALKER, J. The principal question which the parties have argued relates to the effect of a judgment rendered in 1883; and while the manner in which it is presented is open to criticism, it has been deemed best to consider it as if it were properly raised upon a motion for a nonsuit, which was granted subject to exception. In this view the plaintiffs' evidence tended to show the following facts: In 1881, Hodgdon and others, under whom the plaintiffs claim title, brought an action of trespass *quare clausum* against Mudgett, the defendant's ancestor in title. The description of the *locus* in the declaration covered the same tract of land that is described in the declaration in the present suit. There was judgment upon the report of a referee granting the defendant's motion for a nonsuit. The plea was the general issue. The plaintiffs introduced the deeds used by the plaintiff in the former action, and claimed title by adverse possession as in that action. The plaintiffs' evidence also tended to show, that at the trial before the referee the only land in controversy was a small part of the tract described in the declaration, located south of a certain line on a plan of the land called "the red line"; that no trespass was claimed north of that line; that Mudgett then claimed that was the true line, and verbally disclaimed any right, title, or interest in the land north of it, which was then in the possession of Hodgdon; that in 1894 Hodgdon conveyed the land described in the writ to the plaintiffs; that since 1849, they and their ancestors in title have held adverse

possession of the land north of the red line; that the defendant entered upon this land and committed the trespass complained of.

Upon this evidence it is contended that a verdict for the plaintiffs cannot be sustained, and that the nonsuit was properly ordered. But the argument in support of that contention is founded upon an essentially erroneous assumption, that the point sought to be decided in this case is the same point raised and decided in the former case. If this were true, the plaintiffs would be bound by the former judgment. To determine the truth of that contention, in the present situation of the case, it is only necessary to inquire whether the material facts which the plaintiffs' evidence tends to prove show that the subject-matter of the suit is the same that was litigated and determined by the former judgment. Although the plea was the general issue, it is competent for the plaintiffs to prove by other evidence what the real point in issue was in the former suit. *Morgan v. Burr*, 58 N. H. 470, 472; *Hinckley v. Franklin*, 69 N. H. 614. The extent and effect of the judgment may thus appear to be confined within narrower limits than the declaration and plea might indicate.

Without deciding upon the effect of all the plaintiffs' evidence, if found to be true, it is sufficient that they offered to prove that the matter in dispute in the former suit was the title to the strip of land south of the red line, where the alleged trespass was committed, while their present claim is for a trespass committed north of that line. Assuming that fact to be proved, it follows that the title to the land north of the line was not directly or necessarily involved. Evidence insufficient to support the plaintiffs' title to the land on one side of the line might be sufficient to prove title to the land on the other side. If, as the plaintiffs' evidence tends to show, the defendant at the time of the former trial did not claim any interest in the land north of the red line, but insisted merely upon a possessory title to the land on the south, it is very evident that the judgment, besides establishing the defendant's claim, did not also determine the immaterial question of the plaintiffs' title to land north of the line. In that question the defendant had no interest, if the plaintiffs' evidence is true.

Whether the plaintiffs could maintain their claim to the land now in question, by means of the same evidence which was held insufficient to sustain their claim in 1881 to the land then in controversy, is an immaterial question, in view of the evidence that the defendant then in effect disclaimed title to the land now claimed by the plaintiffs. If Hodgdon's title to the entire tract rested upon the evidence introduced by him, his right as against Mudgett to a part of the land not claimed by Mudgett, and upon which there was no evidence of trespass, would not necessarily be

determined in that suit. In other words, if the parties either by specific pleadings, or by admissions or agreements in the conduct of the trial upon the general issue, limited the controversy to the title to a part of the land described in the declaration, the conclusiveness of the judgment rendered thereon would not be more extensive than the subject-matter actually litigated. *King v. Chase*, 15 N. H. 9; *Moulton v. Libbey*, 15 N. H. 480; *Metcalf v. Gilmore*, 63 N. H. 174, 189.

Exception sustained.

All concurred.

Merrimack, }
Oct. 7, 1902. }

MERRITT v. AMERICAN WOOLEN CO.

In an action to recover for injuries caused by defective machinery, it is sufficient if the allegations of the declaration are so full, clear, and distinct as to furnish reasonably complete and certain information concerning the negligence on which the action is founded.

CASE. The declaration alleges, among other things, that while the plaintiff was employed by the defendants in their mill as a weaver, they carelessly and negligently allowed a certain loom, situated about four yards from the loom upon which the plaintiff was at work, to become out of repair, defective, and dangerous to the plaintiff, and carelessly and negligently used and operated said loom in its defective and dangerous condition, having knowledge thereof, or being in fault for not having such knowledge; and that said loom, "on account of the want of repair, defective and dangerous condition, and the use and operation thereof in its said condition by said defendants as aforesaid, threw one of the shuttles thereof with great force against the plaintiff." The defendants demurred on the ground that the declaration does not inform them of the omissions and neglect with which they are charged, and does not set forth in what the defective condition and lack of repair consisted, and they are not informed thereby of what they are called upon to answer. The demurrer was overruled, subject to exception, by *Stone, J.*, at the October term, 1901, of the superior court.

Martin & Howe, for the plaintiff.

Oliver E. Branch and *William H. Sawyer*, for the defendants.