

Hillsborough, }
 June 10, 1903. }

BURKE v. ELLINWOOD.

TROVER, by a deputy sheriff against the receptor of the goods attached in *Fairfield v. Day*, *ante*, p. 160. The facts are stated in the report of that case. Upon a trial at the May term, 1902, of the superior court before *Young, J.*, judgment was ordered in favor of the defendant, subject to the plaintiff's exception.

Matthews & Sawyer, for the plaintiff.

Isaac L. Heath and Brown, Jones & Warren, for the defendant.

CHASE, J. The question thus raised was decided in *Fairfield v. Day*.

Exception overruled.

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

Coös, }
 Nov. 3, 1903. }

KNAPP v. MAHURIN.

REPLEVIN, for lambs. Trial at the February term, 1903, of the superior court before *Stone, J.*

The plaintiff's evidence tended to prove the following facts: His farm and the defendant's were situated near each other. He had a large flock of Cheviot sheep, and the defendant had a large flock of Cotswold sheep. There is a marked difference in the form of body and the quality of wool of these breeds. When the plaintiff sheared his sheep, he marked them and the lambs by painting a yellow stripe over the back from hip to hip. He did not cut off the lambs' tails. When the defendant sheared his sheep, he cut off the lambs' tails and cut a notch in an ear to mark them. About October 20, 1901, the plaintiff turned eighteen of his lambs upon land situated near the defendant's premises. About November 13, he missed seven of them. The plaintiff's son told the defendant that his father had lost seven long-tailed lambs marked with yellow paint, and asked the defendant if they were in his flock. The defendant told the son he could look the flock over, but that there were no long-tailed lambs in it as he had cut the tails off when he sheared the sheep. The son looked the sheep