

within the state, upon whom service of process could have been made, the writ could have been served upon Wilson, its agent in charge of the business of operating the wood-lot in Chichester, and was properly served upon him by leaving an attested copy thereof at his place of abode in Concord. P. S., c. 219, s. 2. Prior to the revision of our statutes in 1891, the chapter on service of writs contained an express provision that service upon counties, cities, towns, school and village districts, and other corporations, except manufacturing corporations, should be made by giving an attested copy to the officer, agent, or person designated in the statute, or by leaving it at his place of abode. It read as follows: "Such service shall be made, in the cases mentioned in the four preceding sections, by an attested copy of the writ or other process given to or left at the abode of each of said officers, members, inhabitants, or persons, in the respective cases aforesaid; but service may be made upon a manufacturing corporation by leaving such copy at the office or counting-room of such corporation." G. L., c. 223, s. 14; G. S., c. 204, s. 14; C. S., c. 194, s. 11; R. S., c. 183, s. 9; Laws, *ed.* 1830, p. 87, s. 1. But in the revision of 1891, the retention of this provision was regarded as unnecessary, as section 2, chapter 223, General Laws, was amended in section 2, chapter 219, Public Statutes, so that "all writs and other processes" could be served "by giving to the defendant or leaving at his abode an attested copy thereof." P. S., c. 219, s. 2; Laws 1893, c. 67, s. 6.

*Motion denied.*

All concurred.

Cheshire, }  
April 5, 1910. }

---

HADLOCK v. JAFFREY.

An owner of land to which a water right was originally appurtenant cannot maintain a petition for an assessment of damages caused by a diversion of the water under statutory authority prior to his acquisition of title.

PETITION, for an assessment of the value of the right to divert water from a natural stream which the defendants took in in 1902, under chapter 265, Laws 1901. In 1905, the plaintiff bought the land to which this right was originally appurtenant. At the request of the parties, the question whether the plaintiff can maintain this proceeding was transferred without a ruling from the April term, 1909, of the superior court by *Pike, J.*

*Doyle & Lucier*, for the plaintiff.

*Cain & Benton*, for the defendants.

YOUNG, J. *Eastman v. Company*, 44 N. H. 143, on which the plaintiff seems to rely, is not in point; for that was case, and the plaintiff was the owner of the land to which the right was appurtenant, both when the defendants attempted to take it and when the action was begun.

In an action of case, the plaintiff may contest the validity of the taking (*Littleton v. Company*, 73 N. H. 11); but in a proceeding of this kind he admits the validity of the taking. *Wright v. Company*, ante, 3. Consequently, if the plaintiff can recover anything in this action, it must be the value of the right at the time it was taken (*Chapman v. Company*, 67 N. H. 180); but he cannot recover the value of that, for it never belonged to him. *Hodgman v. Concord*, 69 N. H. 349.

*Case discharged.*

All concurred.

Cheshire, }  
April 5, 1910. }

---

TAGGART *v.* JAFFREY.

Where the waters from a pond have for more than sixty years flowed in an artificial channel which was prepared for them with the intention of permanently altering the course of the stream, a landowner on such channel is entitled to all the riparian rights of an owner on a natural water-course.

Where the bed of a stream from a great pond has been conveyed to private proprietors, the water of the pond cannot be diverted for a public use without compensation to a riparian owner who is damaged thereby.

Where an offer of proof is ambiguous and the evidence is erroneously excluded through a misunderstanding of the presiding justice, the remedy of the party aggrieved is an application to the superior court for a new trial, on the ground of accident or mistake.

PETITION, for the assessment of damages caused by taking water from Bullet pond. Facts agreed.

Prior to 1902, water from Bullet pond, after passing through Grassy pond and along a natural stream, flowed in an artificial channel cut through some rising ground and thence along a natural depression past the plaintiff's premises. The water was diverted to this channel by a dam across the natural water-course, and has flowed in this artificial channel for over sixty years. Who