

Rockingham, }
May 4, 1915. }

DAVID URCH v. MARIA RAND.

TRESPASS *quare clausum*. Trial by the court. Transferred from the October term, 1913, of the superior court by *Branch, J.*, on the plaintiff's exception to an order of nonsuit.

Thomas H. Simes and *William E. Marvin*, for the plaintiff.

Kelley & Hatch and *Page, Bartlett & Mitchell*, for the defendant.

PARSONS, C. J. The plaintiff's evidence tends to prove his possession of the tract of flats upon which the defendant trespassed. Possession is sufficient evidence of the right of possession in issue in trespass *quare clausum*, in the absence of proof of title in the defendant. The facts, if established, that the premises may be entirely covered by tidewater and that the plaintiff does not own the adjoining upland, do not conclusively controvert the plaintiff's possession or establish the defendant's title.

Exception sustained.

All concurred.

Grafton, }
May 4, 1915. }

FRED L. PATTEE v. JOHN MOORE.

BILL IN EQUITY, to determine the location of a divisional line. The case was originally heard in the superior court before *Mitchell, J.*, and on October 31, 1911, a decree was filed establishing the boundary. February 9, 1912, the plaintiff filed a motion for a modification of the decree, and a hearing was had thereon before Mr. Justice *Mitchell*, who died before taking any action. At the October term, 1914, of the superior court, there was a hearing on the motion before *Sawyer, J.*, who entered up a new decree in accordance with the prayer, and the defendant excepted.

John H. Noonan, for the plaintiff.

Hugh Moore and *David F. Dudley* (both by brief and orally), for the defendant.