

fendant's property without paying for it must have been formed in ignorance of the equitable principles upon which partition proceeds both under the statute and in equity. *Hale v. Jaques*, 69 N. H. 411.

"Where one tenant in common, supposing himself to be legally entitled to the whole premises, has erected valuable buildings thereon, he will be entitled to an equitable partition of the premises, so as to give him the benefit of his improvements; or if that cannot be done, he will be entitled to a compensation for those improvements." 1 Story Eq. Jur., s. 655. This may be the rule even when one co-tenant is ignorant of the improvements made by the other who is also aware of the nature of his own title (*Leavitt v. Locke*, 68 N. H. 17; *Ford v. Knapp*, 102 N. Y. 135, 140; *Crafts v. Crafts*, 13 Gray, 360) and must be so generally for the division to be made is an equitable one, and it is not generally equitable to permit one man's property to be transferred to another without payment of some kind. Under the statute, if  $\frac{7}{32}$  of the land cannot equitably be assigned the plaintiff without serious inconvenience to the occupation by the defendant of the remainder with his building and the parties do not assent to the assignment of the whole to one, with equalization by payment (P. S., c. 243, ss. 24, 25), the property may be sold under the order of the court and the proceeds divided by giving  $\frac{7}{32}$  of the value of the land without the improvements to the plaintiff and the balance to the defendant or such other division made as may be found equitable upon the facts proved. P. S., c. 243, s. 26.

As the case now stands, the plaintiff has not shown himself entitled to partition although he may be able to do so.

*Case discharged.*

All concurred.

Grafton, }  
Dec. 4, 1917. }

TWITCHELL CONSTRUCTION COMPANY v. NELSON S. JOHNSON.

A telephone company's books, containing its toll charges, were outside the jurisdiction: in an action by a subscriber against a third person the bill rendered for tolls was admitted.

ASSUMPSIT, for lumber sold and delivered. Trial by the court and verdict for the plaintiffs. Their agent testified that the sale

was made by telephone and they were permitted to introduce a bill from the telephone company showing a charge for connecting the plaintiffs with the telephone in the defendant's place of business on the day the sale was made. Transferred by *Branch, J.*, from the May term, 1917, of the superior court on the defendant's exception to the admission of the telephone bill and to the denial of his motion for a directed verdict.

*Fred S. Wright*, for the plaintiffs.

*David A. Pingree* (of Vermont) and *David F. Dudley*, for the defendant.

YOUNG, J. It would have been permissible for the plaintiffs to show the charge the telephone company made for connecting them with the defendant's place of business by the books of the company, *Lassone v. Railroad*, 66 N. H. 345; *Roberts v. Rice*, 69 N. H. 472; and since the books were in Vermont the court could permit the plaintiffs to show the charge in the way they did. *Roberts v. Company*, ante, 491. This disposes of both of the defendant's exceptions.

*Exceptions overruled.*

All concurred.

Coös, }  
Dec. 4, 1917. }

JENNIE HANSEN v. GRAND TRUNK RAILWAY COMPANY.

The inadmissibility of documentary evidence for one purpose does not require its exclusion, if admissible for another purpose; and the presumption is that the court has limited the use of such evidence to the point to which it is legally applicable.

A telegram sent by the plaintiff, a passenger, stating why her journey was delayed, and written five hours after the event therein described, being a self-serving declaration, is not evidence of the truth of the facts recited, but is admissible to prove the presence of the sender at the time and place indicated. Foreign law is a question of fact to be determined by the presiding justice; whose decision is not reviewable in the supreme court, if there is evidence to sustain it.

CASE, for negligence. Trial by jury and verdict for the plaintiff. The plaintiff's evidence tended to show that on the 26th day of July,