

Eng. Rep.]

GODWIN V. BRAND—NEEL'S ADMINISTRATOR V. NEEL.

[U. S. Rep.]

partially, as some say, wholly as others say. But now we must hold that it was wholly destroyed, for there was evidence to go to the jury that it was wholly destroyed. The post and the board are erected. Now is this taking possession or is it a mere entry? There had been no adverse possession but the fence. When that was pulled down I cannot see that anything remained to make the possession of the defendant. The case of the plaintiff does not rest wholly on the pulling down the fence, and then erecting the post, but also on this, that there is no evidence from 1848 to 1853 of any act on the land hostile to the title of the true owner. *Doe v. Coombes* seems to me to support the present view. The party was there in possession, and what was held there was that what was done was no divesting of possession. In the case of *R. v. The Inhabitants of Wooburn* there was a hut on the land, and those on the land do not seem to have been turned off.

BYLES, J., concurred, and cited Sir Edward Sugden's commentary on section 10 of 3 & 4 Wm. IV., c. 27.

KEATING and BRETT, JJ., concurred.

Rule refused.

GODWIN V. BRIND AND OTHERS.

Principal and agent—Power "to treat" for sale of land.

A. and B. advertised an estate for sale. The advertisement stated "to treat and view the property applications are to be made to A. or B."

Held, that this did not give A. authority to sell the estate, so as to bind B., without his concurrence.

[C. P., 17 W. R. 29.]

This was an action for breach of contract, tried before Mellor, J., at Salisbury, when the plaintiff was nonsuited on his opening.

The facts stated were that the plaintiff, who was a brewer in Wiltshire, saw in a newspaper an advertisement of an estate for sale; and, in consequence of seeing this advertisement, he went to view the estate, and entered into an agreement to purchase it for about £10,000. The advertisement, which it was admitted was inserted in the newspapers by authority of all the defendants in this action, was, as far as material, as follows:—"To treat, and view the property, applications are to be made to Mr. George Brind, or to Mr. Walter Brind, on the premises; also to Mr. John Brind, of, &c.; or to Mr. Benjamin Francis, of, &c." The defendants were the four persons mentioned in this advertisement, and they were joint owners of the estate.

The contract with the plaintiff was signed by Mr. Francis alone; but the other defendants repudiated the bargain, and sold the estate to another purchaser at a slightly increased price.

H. T. Cole, Q. C., moved for a new trial, on the ground of misdirection, and contended that by the terms of the advertisement any one of the defendants had power to bind the rest of them.

BOVILL, C. J.—I think my brother Mellor construed the advertisement rightly. It authorised persons to view and enter into negotiations with any of these four defendants, but it did not authorise any one of the defendants to conclude the important matter of sale.

BYLES, J.—The words are "to treat and view." Who, then, is to view? The intending purchaser. And so it comes to this, "you, the

intending purchaser, may treat with any one of the four."

KEATING and BRETT, JJ., concurred.

Rule refused.

UNITED STATES REPORTS.

NEEL'S ADMINISTRATOR V. NEEL.

Where a family relationship exists, as, for instance, between father and son or grandson, or uncle and nephew, or even more remotely, no implied promise to pay for services rendered in such relation between the parties, arises.

In such cases a contract or express promise to pay for services, must be established in order to enable the claimant to recover, and the evidence ought to be clear and satisfactory, otherwise the services will be referred to the relationship.

But where there is evidence of a contract, if it be unwritten, it is always for the jury to say whether it establishes the claim of the plaintiff or not.

If the testimony show that the family relation once existing has been changed to a contract to pay wages, the claimant will be entitled to recover; and if no sum be fixed he may recover as per a *quantum meruit*.

Where an amendment to the *narr.* would have been allowed on trial, if objection had been made, after verdict it will be treated as amended in accordance with the evidence and trial.

Error to District Court of Allegheny County.

Woods for plaintiff in error.

Large contra.

The opinion of the court was delivered at Pittsburgh, Nov. 16, 1868, by

THOMPSON, C. J.—There is a well defined line of decision in this Commonwealth, to the effect that where a family relationship exists, for instance, as between father and son, or grandson, or uncle and nephew, or even more remotely, no implied promise to pay for services rendered in such relation between the parties arises. In such cases a contract, or express promise to pay for services, must be established in order to enable the claimant to recover, and the evidence ought to be clear and satisfactory, otherwise the services will be referred to the relationship. But when there is evidence of a contract, if it be unwritten, it is always for the jury to say whether it establishes the claim of the plaintiff or not.

In the case in hand, there was evidence of a promise by the intestate to pay wages to the plaintiff if he would remain and manage the farm for him. No such contract existed when he first went to live with his uncle, but having grown to man's estate he talked of leaving, as he had a perfect right to do, when, it is alleged, a promise to pay was made if he would remain, and it is in full proof that he remained and faithfully attended to the farm, as well as other business of the intestate. One witness testifies that in 1856, the intestate represented to him that the plaintiff talked of leaving him, and requested the witness, the plaintiff's brother, to speak to him and prevail on him to remain. That he did so, and that he remained. The same witness further said, that in 1857 General Neel promised to pay him wages, but did not say what he would give. Another witness testified that in 1864 she heard her grandfather, the intestate, tell the plaintiff he would give him \$1,500 a-year if he would remain on the farm with him. He did remain, although he had been then talking of leaving. Was this a promise to pay wages, or was it a testamentary