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REPLEVIN.

1. Replevin will not lie for logs cut by defendants on lands purchased by plaintiff on their joint account, and of which they have had a joint possession which has not been regularly terminated, although the deed of the land was to plaintiff alone, and defendants had not paid their share of the purchase money, according to the agreement.—*Freeman v. Harrington et al.* 352
2. Where the defendant in replevin justifies the taking as a distress for rent, the alleged tenancy must be clearly proved precisely as laid in his avowry.—*Ladds v. Elliott et al.* 703
3. Plaintiff, who was the owner of an *American* fishing vessel, enrolled at the port of *Vinal Haven*, in the State of *Maine*, put the defendant in possession of her as master, for a fishing voyage from that port. The shipping articles provided that the defendant and the crew should be paid with, and interested in the fish to be caught in the prosecution of the voyage, in certain specified proportions thereof. Plaintiff, becoming dissatisfied with the defendant, through an agent demanded possession of the vessel and fish. Defendant replied: "There is the vessel on the flats, you can take her; but as for the fish, neither you (the agent) nor *Lane* (plaintiff) shall have it. I am going to sell it to pay myself and crew." Plaintiff thereupon brought replevin for both vessel and fish. Defendant in his pleadings, and at the trial, insisted on a right to retain possession of the vessel from the date of the writ (9th *October*) until the 31st *December*, when the fishing season closed for the year. The jury found for the plaintiff. Held: *First*, by *Johnston E. J.*, *Dodd*, *DesBarres*, and *Wilkins*, JJ., (*Young C. J.* dissenting), that there must be a new trial. By *Young C. J.*, that the action was maintainable for both vessel and fish. By *DesBarres J.*, that it was maintainable for the vessel, but (by *Dodd* and *DesBarres JJ.*) not for the fish, the parties being tenants in common of the fish, and the plaintiff never having been in actual possession thereof. *Secondly*, by *Young C. J.*, *Dodd*, and *DesBarres JJ.* (*Johnston E. J.* and *Wilkins J.* dissenting), that section 171 of chap. 130, *Revised*