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NEW BRUNSWICK.

SUPREME COURT EN BANC. SEPTEMBER 23RD, 1910.

GIBERSON v. TORONTO CONSTRUCTION COMPANY LIMITED.

Contract—Construction of Section of National Transcontinental Railway—Sub-contractors—Principal and Agent—Authority of Agent—Ratification—Estoppel.

Motion by defendant company to set aside the verdict entered for the plaintiff at the Victoria Circuit Court, and to enter a nonsuit or a verdict for the defendants. Argued June sittings, 1910.

T. J. Carter, for plaintiff.

F. B. Carvell, K.C., for defendants.

The judgment of the Court, (BARKER, C.J., LANDRY, MCLEOD, WHITE and MCKEOWN, JJ.,—BARRY, J., taking no part, being trial Judge), was now delivered by

BARKER, C.J.:—This was a case tried at the Victoria Circuit held in April last before Mr. Justice Barry, who, on the answers to certain questions submitted to the jury, entered a verdict in favour of the plaintiff for $1,098.75, with leave to the defendants to move for a nonsuit or to have the verdict entered for them. The plaintiff is a resident of Arthurette in Victoria county, and carries on the business of farming and lumbering. The defendants are a corporation having their head office in Toronto. They were organised five or six years ago apparently with a view of contract-

ing for sections of the Transcontinental Railway. They have at all events a contract for that portion of the work between Plaster Rock and Chipman, a distance of some one hundred and ten miles. With the exception of a comparatively small portion of the work, the defendants sub-let to contractors under them different classes of it, and among others of these sub-contractors was one C. H. Ferguson, to whom was given contracts for the concrete work over the whole of the New Brunswick section. There are two contracts, both dated June 30th, 1908, one for thirty-nine miles, and the other for sixty-seven miles. Under these contracts, Ferguson was to supply, at his own expense, the labour, tools, machinery, implements, plant, services, and materials, and to complete the work in the most thorough and workmanlike and substantial manner in every respect to the satisfaction and approval of the company and of the chief engineer on or before the 1st of May, 1910. The method of payment was this: Each month as the defendants received from the commissioners a payment on the progress certificate of the chief engineer in charge, they carried to the credit of Ferguson as one of the sub-contractors, his proportion of the amount, and against this he drew orders. The evidence shews that the defendants paid nothing for Ferguson except on his order. By a condition of the award of the contract to him he agreed that fifty cents a month should be deducted from each man's pay to provide for medical attendance, and this sum the defendants paid. In order that men should be paid promptly, and the work be in that way more likely to be prosecuted without delays and all liens of workmen avoided, the defendants on Ferguson's order paid the men and also other accounts for supplies as ordered, so that in June, 1909, when Ferguson gave up the work the defendants had paid him on his orders on account of his contract over $101,000. This method of doing business seems to have been adopted by the company as to all its sub-contractors. At all events, it was so with the plaintiff who himself had a sub-contract for clearing a portion of the right of way in Victoria county. For the purposes of his work Ferguson required lumber cut to certain dimensions. The plaintiff though apparently a stranger to Ferguson, in November, 1908, went to Ferguson's place of business where he kept his office and supplies at Beaver Brook, and he and Ferguson then entered into a contract for the supply by the plaintiff of a quantity of lumber to

be sawed and delivered at the rate of $11 a thousand. There is apparently no question about the delivery of the lumber. The only question is as to the liability. The defendants, say they have nothing whateved to do with it,—that it is Ferguson's liability. The plaintiff claims that the defendants are liable. Ferguson left the province about the time this action was commenced and has not returned. Neither he nor McCartney, who was a clerk of his at the time the agreement was made, was examined at the trial, the latter having left the province some time before Ferguson did. The plaintiff's claim consists: (1) For lumber delivered, $1,375; (2) for the board of some of defendants' men, $13; and (3) for railway ties, $263.90, making in all $1,651.90. From this sum are to be deducted the following: (1) $263.90 the value of the ties in reference to which the jury found against the plaintiff; (2) an order of Ferguson on defendants in favour of Kinney for $38.75; (3) an order of Ferguson on defendants in favour of Crane for $40.35; (4) a bill for goods sold by Ferguson to plaintiff of $147.77; and (5) a cheque for $62.38 sent to the plaintiff, but mislaid until found at the trial. This leaves the balance of $1,098.75 for which the verdict for the plaintiff was entered.

The plaintiff places his right to retain his verdict on three grounds. First: he says his contract was made with the defendants by Ferguson who was their authorised agent. Second: he says, if Ferguson was not the defendants' agent he professed to act as such and they ratified the contract; and third: he says, that the defendants are estopped from denying such agency because they by their acts represented him to be their agent and on these representations he acted. Reliance is placed on the answers to the first three questions to sustain all or some of these propositions. Before referring to the evidence upon which the plaintiff relies it will be as well to point out that by their answer to the fourth question the jury say that in the work which Ferguson did on the railway he was acting as a sub-contractor with the defendants. And there is no doubt whatever that this very lumber supplied was ordered and used, so far as it was used, by Ferguson for the purposes of that sub-contract, and that the men to whom the meals were supplied were his men and not the defendants' men, for at that time they had no men at work there at all. The first question and answer are as follows: Q. "Was Ferguson in entering into the contract which he did with the plaintiff acting as agent for the Tor-

onto Construction Co., or on his own behalf? A. As agent." Assuming that the answer is intended to convey the idea that Ferguson was not only acting as the defendants' agent but that he was in fact their agent duly authorised to make this contract, it will be seen on an examination of the evidence that there is really none to support the finding. As the same evidence refers to the second question, it will be convenient to discuss the two together. The question is as follows: "Did Ferguson in entering into the contract with the plaintiff profess to act as the agent of the Toronto Construction Co.? A. He did." It is admitted that whatever contract was made arose out of a conversation between the plaintiff on the one side and Ferguson on the other. Ferguson was not an official of the company. He had nothing whatever to do with the defendants, except what arose out of his contract. The conversation alluded to took place at Ferguson's office or store at Beaver Brook, apparently in the presence of McCartney his clerk. He made no inquiry as to whether it was the office of the defendants, and there is absolutely nothing in the evidence that I can find to lead the plaintiff to suppose he was either conducting a conversation with an agent of the defendants or that the place where the conversation took place was in any way under the control of the defendants or other than it really was, that is, the place of business of Ferguson. In order, apparently to give some evidence connecting the defendants with the place and Ferguson with them as their agent, the plaintiff gave the following testimony, which for accuracy I will quote from the record. He says that in August, 1908, he saw a man by the name of McCartney get off the Tobique train at Arthurette siding. He says: "He" (McCartney) "got off the Tobique train, he called out and wanted to know if there was any teams there to hire; some of the crew asked him what to do, what the work was. He said it was to haul gravel for the Toronto Construction Company, and named the wages. That day he wanted to hire teams to haul gravel for the Toronto Construction Company." Mr. Carvell: "Was Mr. Ferguson present? A. "No." Mr. Carter: "At this time McCartney was employed in this office,—the office of the Toronto Construction Company?" A. "Yes." Q. "Which was spoken of?" A. "I had not met him in the office; but it was after that that I saw him in the office." Q. "Subsequently to

this occasion did you go to the office that you have spoken of as the office of the Toronto Construction Company?" A. "I did." Q. "When did you go there?" A. "The month of November, 1908." Q. "How long was that after you heard Mr. McCartney make this statement at Arthurette, about how long?" A. "I think it was over two months,"—two and one-half months, I could not tell exactly." Q. "You went there?" "Who did you find there?" A. "In the office I found Ferguson and McCartney." Q. "Tell us what took place there?" The witness then goes on to give the conversation which ended in the contract. Before going into that I must refer to a previous part of his testimony. After speaking of the office at Beaver Brook, to which he went in order to sell his lumber, his examination proceeds thus: Q. "At that time was there an office known as the Toronto Construction Company office there, at the time you were clearing?" (The plaintiff had before this had a contract with the defendants for clearing up a portion of the right of way for the railway). A. "You mean on the same track?" Q. "On the road." A. "Yes, at Beaver Brook." Q. "Known as the Toronto Construction Company's office at Beaver Brook?" The Court: "Was there an office at Beaver Brook known as the Toronto Construction Company's office, that is the question?" A. "I don't know as it was known; there was no sign over the office." Mr. Carter: "Was it known as that or not?" A. "It was generally understood that the people,—it was the Toronto Construction Company office." This evidence, irrelevant and inadmissible, as much of it is, is all that, up to the time of making the contract the plaintiff has to rely on in support of his first contention that Ferguson was in fact the defendants' agent. He then proceeds to give an account of the conversation between him and Ferguson. At first he said: "I made a trade with Ferguson. I asked him about lumber." That is no doubt exactly what he did do. When directed to give the conversation itself, he proceeded thus: "I asked Ferguson if he wanted to buy any lumber; he said he did. Then we talked about the price." The plaintiff, it seems, wanted $12 per M., whereas Ferguson was only willing to pay $11, and said he purchased from other parties at that price. The plaintiff says that Ferguson then took down from a nail in the office some bills from the Tobique Manufacturing Company to the defendants in which lumber was charged at $11 per M. This was strongly relied on as shew-

ing Ferguson to be the general agent of the defendants at the time. That is to say, because the Tobique Manufacturing Company made out an account against the defendants in which was included the price of some lumber purchased by Ferguson, it established him as the defendants' agent authorised to contract for them with any one who happened casually to see the account. There is nothing to sustain any such proposition. The plaintiff further says after he had sawn and delivered the lumber which was about the fifteenth of March, 1909, he went to the same office where he met Ferguson, told him that he wanted to be paid for the lumber, and that Ferguson replied: "I am going to the head office to-morrow. I will look right after it. Ferguson went away the next day, and the plaintiff has not seen him since. The plaintiff's method of dealing with Ferguson as to the lumber is only consistent with the theory that the contract was with Ferguson himself. The memos of lumber delivered from time to time, with the exception of one or two, are made out to Ferguson. And the only payments made on account are the orders given by Ferguson on the defendants to pay Kinney and Crane amounts due them by the plaintiff, and the bill for goods sold from the same office or store to the plaintiff and charged him. And in a letter written by him to the defendants less than a month before this action was brought, the plaintiff said as follows: "Is there anything due me at your office from Mr. Ferguson? If there is, please send it as soon as you can." On his cross-examination, the plaintiff was asked as to this letter the following questions: "What did you mean by that. Didn't you mean you had been working for Mr. Ferguson." A. "I wanted pay for my lumber." Q. "You wanted your pay from him?" A. "That is what I wanted." Q. "That is why you wrote that letter?" A. "Yes." "Q. "You knew the Toronto Construction Company had been in the habit of paying Ferguson's bills for goods shipped and for labour?" A. "Yes." Q. You thought if there was anything belonging to Mr Ferguson you wanted your money out of it?" A. "I wanted my pay."

It is impossible to construe this letter as a demand made by a creditor upon his debtor. It not only recognises the direct liability of Ferguson, but it shews the knowledge the plaintiff had as to the mode of dealing between the defendants and their sub-contractors, of which the plaintiff had himself been one, and seeks only to get such money as

might be in the defendants' hands available for Ferguson on account of his contract. When the plaintiff wished to make a contract with the defendants in January, 1909, for ties, he wrote them direct.

So far I have dealt altogether with the plaintiff's own evidence. It appears, however, from the evidence of Deakes, the president of the defendant company, and of McLean, its superintendent of construction in this province, the only two officials of the company who had any personal knowledge of the work in the province, that they had nothing to do with Feguson except as to his contract. that they knew nothing of the plaintiff's dealings with him, or of his contract with him, and had nothing to do with it. It appears from their evidence that in May Ferguson became dissatisfied with the way his work was getting on, and that they were dissatisfied also, and that as a result they had an inventory of his plant, house supplies, and property connected with his work with the exception of some few articles, and they paid him on the 5th of June, 1909, in cash, $10,000, taking over his plant and supplies and releasing him of his contract and taking upon themselves the completion of the concrete work, and that since that time they have had nothing to do with him. They also state that they knew nothing of the plaintiff's claim until this action was brought, or about that time. In view of this evidence, it seems impossible to say there was any ground whatever, for the finding of the jury in answer to the first question. There is nothing whatever, in my opinion, to sustain the contention that Ferguson in making the contract was acting as the defendants' agent. Neither do I think there is the slightest evidence to sustain the second finding. In Keighley Maxted & Co. v. Durant (1901), A. C. 240, will be found very fully laid down what is necessary to be proved in order to hold a party liable on a contract made by a person without authority; but acting professedly for him and afterward ratified.

To apply the principle to this present case it would be necessary to shew that Ferguson professed to the plaintiff that he was acting for the defendants. There is really not a trace of any evidence to sustain this view. In the whole interview that took place the defendants' name is not mentioned except in connection with the Tobique Manufacturing Company account. What the evidence of ratification is, I have not been able to ascertain. All they ever did, so

far as the plaintiff is concerned was to pay him the amounts on Ferguson's order which they charged to Ferguson on his contract.

The third question and answer are as follows: "Did the Toronto Construction Company knowingly permit Ferguson to so deal with the public as to lead the plaintiff to infer that he had authority to make contracts binding on the company?" A. "Yes." This question in its present form seems to me altogether irrelevant to the issues involved. How the public are interested in this simple transaction between two private individuals, I cannot see. There is really no evidence to sustain an estoppel; but if there was, the question omits an essential and important element. No estoppel in pais can arise unless the person to whom the representation is made acts upon the faith of its being true, and is prejudiced. There is no finding as to that, and the question and answer are therefore valueless. In Carr v. London & N. W. Ry. Co. (L. R. 10 C. P. 307) Brett, L.J., has formulated the question of estoppel in pais in four propositions. In all of them whether the representation is made expressly or arises from acts or conduct, there must be an intention by the party making it that it shall be acted upon by the party to whom it is made and he must act upon it on the belief that it is true. The representation relied on here arises out of dealings between Fraser & Sons and one or two others with Ferguson acting, as they say, on the defendants' account. These were private transactions with which the plaintiff had nothing whatever to do, of which he knew nothing when he made the contract, and the most of which he only heard of after this action had been brought.

It seems difficult to see how any intelligent jury, properly instructed, could have answered these questions as this jury did. There has been a gross miscarriage of justice; so gross that it can only be attributed to some strong bias on the part of the jury, or a misconception of the real points for their consideration, or a want of appreciation of the true effect of the evidence. I have discussed the evidence at much greater length than was necessary for the determination of the case, but I was desirous of ascertaining whether there was anything in it that would justify the charge made at the argument and also on the trial that the defendants had used the plaintiff and other creditors of Ferguson harshly, and that they were seeking to avoid a liability

which justice and fair dealing required them to recognise. I can find nothing in the whole case to warrant any such charge.

There will be a nonsuit entered pursuant to leave reserved.

NEW BRUNSWICK.

SUPREME COURT, EN BANC. NOVEMBER 18TH, 1910.

REX v. MATHESON, EX PARTE BELLIVEAU.

Intoxicating Liquor—Selling to Indian—R. S. C. 1906 c. 81—Magistrate — Jurisdiction — Irregularity in Conviction not Including Certain Costs—Amendment.

Conviction of the defendant, Belliveau, by Police Magistrate Matheson, for selling intoxicating liquor to an Indian in violation of "The Indian Act," before this Court on certiorari and order nisi to quash, granted on the following grounds:—

1. The magistrate had no jurisdiction to hear the matter and adjudicate thereon, inasmuch as the warrant under and by virtue of which the applicant and accused was arrested was issued by the magistrate without authority nor jurisdiction on his part, he, the magistrate, not having conformed himself to section 655 of the Criminal Code.

2. The warrant for the arrest of the defendant and applicant, Frank Belliveau, was issued on the information of the informant, Robert Crawford, pledging his belief only as to the facts therein set forth, as appears by the evidence; therefore the defendant having been brought before the magistrate under a warrant issued improperly and without jurisdiction, the magistrate acquired no jurisdiction over the person of the accused.

3. The magistrate had no jurisdiction nor authority to enter up the conviction he did, inasmuch as the costs of commitment are not included in said conviction.

4. The conviction is not authorized by any Act, inasmuch as it does not follow the form prescribed by the Criminal Code, and it does not state to whom the costs shall be paid.

Argued during September sittings, 1910.

A. E. G. McKenzie, for the informant, shews cause against the order nisi to quash.

J. D. Phinney, K.C., for the defendant, in support of the order nisi.

The judgment of the Court (BARKER, C.J., LANDRY, MCLEOD, WHITE, BARRY and MCKEOWN, JJ.) was now delivered by

BARKER, C.J.: — On an information laid before the magistrate against Belliveau, he was convicted and fined for a violation of section 135 of "The Indian Act (cap. 81, Rev. Stat. Can. 1906). That the offence was actually committed there does not seem to be any doubt. The first objection raised was that the magistrate was without jurisdiction because the information was in fact based only on information and belief, and the magistrate made no preliminary examination into the facts as is necessary in such a case to justify the issue of a warrant. The distinction between an illegal procedure by which the accused is brought before the magistrate and the jurisdiction to hear the charge after he is there is pointed out in Rex v. Hughes (4 Q. B. D. 614) in which case the conviction was sustained though the accused had been brought before the magistrate on a warrant issued without any information or oath of any kind on which to found it. In the present case, it is not necessary to go that far, for the information was in fact positive on its face and not on information and belief at all. It is true that at the hearing the informant admitted that he really had no personal knowledge of the commission of the offence and that he, in fact, based the charge on his information and belief. The magistrate, however, acquired the jurisdiction to issue the warrant by a sworn and positive information, and he could not lose it by any such evidence as that which is relied on. The informant may have incurred some liability or penalty by his carelessness or recklessness, but the magistrate's jurisdiction to hear the charge would not be taken away.

Another objection is that the conviction does not order the costs of commitment to be paid, or direct to whom the costs ordered to be paid are to be paid. In this case we are, by consent of the parties, dealing with a copy of the conviction furnished to the accused for his motion for a certiorari, the original minute, connection and papers having all been destroyed in the fire which occurred in Campbellton in

July last, before any return had been made to the certiorari. Under these circumstances I should not give undue weight to objections more or less technical in their character and which, in the case of what on their face seem to be mere clerical errors, might very well have been corrected in the conviction when sent here under the writ. That part of the conviction to which objection is taken reads thus:—"And I adjudge the said Frank Belliveau, for his said offence, to forfeit and pay the sum of fifty dollars to be paid and applied according to law, and also to pay the sum of seven dollars and twenty-five cents, for costs, in this behalf; and if the said several sums are not paid forthwith, I adjudge the said Frank Belliveau to be imprisoned in the common gaol of the said county at Dalhousie, in the said county of Restigouche, for the term of one month, unless the said sums and the costs and charges of conveying the said Frank Belliveau to the said common gaol be sooner paid." Comparing this with the form 62 of the Criminal Code, which is the form the magistrate was following, it will be seen that the costs are to be paid to the informant, and that if the words, "of the commitment" are inserted, as they are in the form immediately before the words "of conveying," &c., and also the informant's name in the order for costs, the conviction would be perfectly right in point of form, and would carry into effect what was clearly the intention of the magistrate. In amending these errors, as we are asked to do, we are not in any way exercising a discretion which the legislature has conferred upon the magistrate. The contention here is, by the offender, that the justice is bound to make him pay these costs of commitment. If that be so, the amendment only carries out his contention. The informant is also entitled to his costs. The minute of conviction awarded costs which could only be paid to the complainant, for it was his costs which were awarded, and the minute also states that the defendant was in default of payment—that is, of the penalty and costs —to be imprisoned for one month unless the fine and all costs were sooner paid. These words are comprehensive enough to include all costs which the justice could give or was compelled to give. Any intention to omit the costs of commitment, if he had any discretion in the matter, seems to me to be entirely negatived. I think these are omissions which it is quite within our power to amend. There will therefore be an order amending the conviction by adding the words "of the commitment" and making the words

"and also to pay the sum of seven dollars and twenty-five cents for costs in this behalf" read thus "and also to pay to the said Robert Crawford"—the complainant—"the sum of seven dollars and twenty-five cents for his costs in this behalf." With that amendment the order nisi to quash will be discharged: Ex parte Nugent, 33 N. B. R. 22.

Conviction amended; order nisi to quash discharged.

NOVA SCOTIA.

SUPREME COURT.

JUNE 13TH, 1911.

CAMERON v. SPARKS.

Marriage—Breach of Promise—Seduction—Damages.

R. G. McKay, for plaintiff.

Graham, K.C., for defendant.

RUSSELL, J.:—The plaintiff, suing for breach of promise of marriage, is corroborated by her mother, while the defendant is content with a general denial of the specific and circumstantial statements of the plaintiff.

There was some attempt to attribute previous unchastity to the plaintiff, but there was nothing approaching to proof beyond her own affirmative reply to a question which she did not understand in reference to her relations with an earlier lover. The question could easily have been misunderstood. The examining counsel's proper delicacy of feeling led him to use vague terms in framing it.

The parties are both in humble circumstances and the defendant should not, I feel, be loaded down with damages which he can have no hope of ever paying, but he should be made to bear a reasonable share of the burden, the heaviest part of which must, under the social conditions of the present, fall in any case on the plaintiff, and would fall on her no matter how heavy the damages awarded.

I find for the plaintiff with $400 damages.

NOVA SCOTIA.

COUNTY COURT FOR DIST. NO. 5. JUNE 30TH, 1911.

SILLERS v. OVERSEERS OF POOR SECTION 26.

Pauper—R. S. N. S. 1900 c. 50—Application for Relief — Request Made to One Overseer of Poor—Relief Furnished by Grandson of Pauper — Suit by Grandson's Wife — Separate Property—Voluntary Conveyance—"Expense."

Ross, K.C., and Ives, for plaintiff.

Turner, K.C., and McDonald, for defendants.

PATTERSON, Co.C.J.:—This is an action brought under sec. 29 of The Poor Relief Act (Rev. Stat. 1900, c. 50) by Annie Sillers, wife of Lang Sillers, for the maintenance and support of an aged pauper, Agnes Sillers, grandmother of the plaintiff's husband. Lang Sillers is a farmer, and at one time owned and worked the farm, title to which is now in his wife's name, and in and upon and from which, under the provisions of the Married Women's Property Act, she purports now to carry on the business "of farming, buying and selling of horses, cattle, sheep and farm products," separate from her husband (see exhibit G. P. 1). He had obtained the farm from his grandmother in 1898, and payment of it had been secured to her by a mortgage (G. P. 13) and collateral promissory notes of $100 each payable with interest at three months, at fifteen months, etc. When the last of these notes was about due, Lang says he had not the money to pay it (or them rather, for some of the others apparently were still unpaid) and upon being threatened with legal proceedings he went to a neighbour and sold him the property for $650. This was in April, 1903. In September of same year, his wife suddenly discovers she is a lady of means and buys back the farm for $800 taking the deed to it, of course, in her own name. Two years or so later Agnes Sillers came back to her old home to live. Neither Lang nor the plaintiff made any claim to be assisted in supporting her until the end of February, 1907. Then plaintiff sent her husband to notify Hector McDonald, one of the overseers of the poor, and ask relief. On March 1st, 1909, McDonald visited the pauper along with a justice of the peace to take her deposition, and

again McDonald was notified that plaintiff would look to overseers for assistance. None was furnished by the overseers, and after roughly a year and a half action was brought. Since the writ was issued the pauper has died. Such very briefly are the facts. I may say at once that nearly all the defences raised fail. I find that Agnes Sillers during all the period for which plaintiff claims was a pauper, having a legal settlement in defendant section and being properly chargeable thereto. Said section is a poor district expressly so made by statute. I find further as a fact that plaintiff did for herself request Hector McDonald, one of defendant overseers, to furnish pauper with relief—whether as a matter of law such request is sufficient under the statute to bind defendants is a question I will refer to later. In the view I take it is not necessary to decide whether the defences raised in paragraph 1—as to the certificate of doing business separately not being filed until long after the date from which plaintiff claims, or as not covering such a business as that of keeping boarders or lodgers—are good in law or not. I perhaps ought to say in passing that I regard the filing of the certificate and the alleged carrying on of a separate business by plaintiff as a mere device to enable her to bring this action.

Is a request made to one overseer sufficient? The language of the section is "requested such overseers." On general principles I cannot think it should be, but I can find no direct authority on the point. I notice that in the Naas case, 35 N. S. R. 316, care was taken to serve each of the three overseers with a written request. In Peters v. Westborough, 20 Pick. 506, the point is mentioned but left undecided. In Rogers v. Newbury, 105 Mass. 533, the Court held that a request to one overseer if intended to be communicated to the others was sufficient. There is nothing in the report to shew on what evidence they based the finding that plaintiff intended request to be communicated. Here there is nothing at all to shew plaintiff's intentions, but assuming that she did intend McDonald to tell his fellow overseers, I should think his practically telling her that she must see the others—for so I understand his warning to her that "he was only one of three"—would render her intention ineffectual. So then if I followed the inference from Rogers v. Newbury I would have to hold she had not done enough. I am, however, deciding against her claim upon another and entirely different ground to which I now come.

On the only other defence raised defendants must succeed. Put shortly, that defence is, that it was not plaintiff, but plaintiff's husband who furnished the relief. At first blush one would think this defence could be simply met by an amendment joining the husband. But to do that would be to permit the raising of that other defence that plaintiff's husband is the grandson of the pauper, and of sufficient means to support her. And so the action had to be brought in plaintiff's name alone if there were to be any hope of success. More at length, what defendants say is, that transfer of Lang Sillers' property to plaintiff was a voluntary one made to defeat his creditors, that the property is still really his, and that out of it and by it and from it, came the relief furnished Agnes Sillers. I have no doubt whatever that the transfer to plaintiff was voluntary and made with the intention of defeating the old lady who was then threatening him with suit. Plaintiff had practically no money at the time of her marriage. Her husband said she had from $50 to $80, she swears she had between $400 and $500 in money and presents. Frankly I do not believe her, and her explanation of how she secured the additional amount required to make up the $800 she said she paid was a pitiable failure. Unquestionably I think this $800 was received by her entirely from her husband or from the sale of stuff off his place, the profits of his labour. It must be remembered that when his wife is said to have bought back the farm, he had not parted with any part of the money he received from the alleged sale of it, not until months after his wife bought it back did he pay the old lady what was coming to her to secure which he says he sold the place. So that all that had to be made up was $150 which could be easily done. Were this the common case of a creditor of the husband claiming that the farm or the cattle or hay or implements on it were his. I should not have the slightest hesitation in holding that they were. It is only, I think, carrying the principle of such cases a little further and to its logical conclusion to hold, as I do, that if the farm, cattle, etc., are Lang Sillers' the relief derived and furnished from and by means of that farm was his, not his wife's, and that he, not his wife, must sue for it. That there need be no new trial in the event of an appeal from this decision being successful, I desire to make a finding as to the value or amount of the relief furnished. If plaintiff is entitled to claim from the defendants for the services rendered Agnes Sillers and

for the use of the room she occupied, $2.50 is not too much. But the language of section 29 is peculiar. It says: "The overseers shall pay any expense which has necessarily been incurred for the relief of any pauper entitled to relief from such overseers, by any person who is not liable for the support of such pauper if he has before incurring such expense requested such overseers to furnish such relief, and no provision has been made for such pauper, provided that the overseers should not be liable for the rent or for the use and occupation of any house, or other building leased or occupied by any pauper." Does the word "expense" cover and include reasonable charges for looking after and waiting upon the pauper? Or does it only mean what was actually paid out for her relief and keep? It is clear any charge for room occupied must go. I suppose plaintiff in making up her claim included at least 50 cents a week for use of that room (according to her own evidence she gave up her very best room to the pauper) and that sum must be deducted in any event. If then we take "expense" to cover attendance and looking after the pauper, the plaintiff if entitled to anything is entitled to $2.00 per week. But if on the other hand "expense" has the narrower, and I am bound to say its, to me, natural meaning—the meaning too, I think of the decisions (Jones v. Carmarthen, 8 M. W. 605) — it is very difficult to estimate what sum the plaintiff should recover. Clothing, food and tobacco were supplied. There would be very little clothing and it of the cheapest. The food would be a small portion of what plaintiff and her husband were themselves having, would be nearly all raised on the farm and cost but a trifle. The amount for tobacco would be infinitesimal. I cannot be far wrong in saying $1.00 a week or $78 in all would be sufficient. I arrive at this conclusion in this way: Plaintiff for everything including room asks only $2.50 a week. The room I have placed at 50c. The plaintiff's main claim it is clear from her evidence was for attendance upon and looking after the pauper. The food and clothing were only secondary, so when I allow her $1,00 a week for these I am doing her I believe more than justice. The defendants will have judgment, and of course with costs.

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2. Crown Grant — Water Lot—Trespass — Public Harbour — Navigation: Zwicker v. Lahave Steamship Co. (N.S.), 114.

3. Cumberland Sewers Act—Acts N. S. 1893, c. 30—The Marsh Act—Construction of Dyke and Aboiteau—Prescription — Lost Grant: Corbett v. Pipes (N.S.), 127, 532.

4. Blocking Stream by Dam—Riparian Rights — Obstruction to Mill —Damages — Injunction: Crosby v. Yarmouth Street Ry. Co. et al. (N.S.), 330.

5. Riparian Rights — Using Water for Manufactory Purposes — Injunction: Bras D'or Lime Co. v. Dom. Iron & Steel Co. (N.S.), 348.

See Land, 2.

WILL.

1. Construction — Charitable Bequest — Uncertainty — Intention:

WINDING-UP.

WITNESSES.

WORDS AND TERMS.

WORKMEN.