

question of fact, whether the use of the water made by a riparian owner for his own purposes, or for sale to others, is, under all the circumstances, a reasonable use. *Jones v. Aqueduct* and *Rindge v. Sargent, supra*. And in view of the finding that the sale of the water to the defendants by Winn is a reasonable use of his right as a riparian owner, the plaintiff has no standing on this branch of the case.

Judgment for the defendants.

CLARK, J., did not sit: the others concurred.

HARTSHORN, *Ex'r*, v. HARTSHORN.

A void note is not a payment of the debt for which it is given, and the acceptance of it is not a discharge of the maker from his liability.

ASSUMPSIT, upon the defendant's promissory note, with counts for money had and received, goods sold, labor and services, and for use and occupation. The note was given for the amount due from the defendant to the testator on a former note then surrendered, for the use and occupation of the testator's lands, and for an agreed balance of accounts. The note was made and delivered on Sunday. The defendant claims that the plaintiff is not entitled to recover, under the general counts, the several demands for which the note was given.

George B. French, for the plaintiff.

Robert M. Wallace and *Charles J. Hamblett*, for the defendant.

CARPENTER, J. Giving a void note (*Allen v. Deming*, 14 N. H. 133) did not pay the debt for which it was given, nor discharge the defendant from his liability. *Shaw v. Spooner*, 9 N. H. 197; *Burnham v. Spooner*, 10 N. H. 165; *Walker v. Lovell*, 28 N. H. 138; *Carleton v. Woods*, 28 N. H. 290; *Pecker v. Kennison*, 46 N. H. 488.

Judgment for the plaintiff.

CLARK, J., did not sit: the others concurred.

PARSONS v. MANCHESTER.

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In an action by a traveller against a town for injuries from a defective highway, a motion for a nonsuit for want of notice of the defect is properly denied, if there is evidence tending to show that the town ought to have discovered and remedied the defect before the accident.

CASE, for injuries occasioned to a traveller by a pile of dirt in a street. Verdict for the plaintiff. The evidence tended to show that the defect had existed about ten hours before the accident, that the highway officers had no knowledge of it, and that the street was much travelled. The defendants moved for a nonsuit on the ground that they had no notice of the defect.

Burnham, Brown & Warren, for the plaintiff.

Edwin F. Jones and Sulloway & Topliff, for the defendants.

CHASE, J. It might properly be found by the jury that such an obstruction, continuing about ten hours in such a street, would attract attention, and that, in the exercise of ordinary care, the defendants would have discovered and remedied it before the accident.

Judgment on the verdict.

CLARK, J., did not sit: the others concurred.

STATE (*ex rel.* BEEBE & a.) v. WILKINS.

A petition for the abatement of a liquor nuisance, signed and filed, gives jurisdiction which extends to the final judgment, and is not affected by any change in the residence or condition of the petitioners.

PETITION, signed by twenty-two legal voters and filed September 2, 1889, for the abatement of a liquor nuisance in Fitzwilliam. The solicitor has not had charge of the case, and does not appear. There has been no trial. At this term Beebe and three other petitioners declined to prosecute further, and by leave of court withdrew their names from the petition. Thereupon the defendant moved that the petition be dismissed.

Silas Hardy, for the plaintiffs.

Don H. Woodward, for the defendant.

CLARK, J. By s. 1, c. 77, Laws 1887, "Any building, place, or tenement in any town or city that is resorted to for prostitution, lewdness, or illegal gaming, or that is used for the illegal sale or keeping for sale of spirituous or malt liquors, wine, or cider, is declared to be a common nuisance." Section 2 provides that the supreme court shall have jurisdiction in equity, upon information filed by the solicitor for the county, or upon petition of not