

than the plaintiff's husband had. To have acquired a better title he must have become possessed of it before it was overdue, or received it from one who became a *bona fide* holder for value before it was due." See 1 Dan. Neg. Ins., ss. 724, 782; 2 Pars. Notes and Bills 279, notes, and cases cited; *Foley v. Smith*, 6 Wall. 492; *Wetherell v. Smith*, 9 Texas 622; *Farrington v. Bank*, 39 Barb. 645; *Osborn v. McClelland*, 43 Ohio St. 284; *Towner v. McClelland*, 110 Ill. 542; *Greenwell v. Haydon*, 78 Ky. 332; *Chase v. Whitmore*, 68 Cal. 545; *Clark v. Sigourney*, 17 Conn. 511.

*Clement v. Leverett*, 12 N. H. 317, and *Trucker v. Bank*, 58 N. H. 83, are not in conflict with *Emerson v. Crocker* and *Farnham v. Fox*, but, on the contrary, confirm the doctrine of those cases. In the first case the bills of exchange entrusted to Burley, and in the second the bond entrusted to Cogswell, had not matured when negotiated by them in fraud of the respective owners, and of course the purchasers, having no notice of the want of title in Burley and Cogswell, and taking the securities in the due course of business, were entitled to hold them against the real owners under the law as recognized everywhere.

In this case Williams was a mere naked depositary of the notes, holding them merely for safe keeping. The plaintiff taking them long after they had become discredited, although, as the referee finds, without any notice of the infirmity in Williams's title, was put upon inquiry, and if she had inquired either of Stoddard or of Mrs. Titus, she would have discovered Williams's entire want of title to the notes. She acquired under the settled law of this state no greater title than he had, and as he had none, she acquired none as against the payee.

Whatever considerations may have led to the adoption of a different rule in some other jurisdictions, no sufficient reason has been shown for departing from the law as it has been established in this state for more than sixty years, and which has worked practical justice to its inhabitants.

*Judgment for the defendant.*

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

#### GRIFFIN v. GLEN MANUFACTURING CO.

A direction by an employer, given in a harsh and loud tone of voice, to his employé to do a lawful and proper act within the scope of his employment, who thereupon does the act improperly whereby a fellow servant is injured, is not such negligence in the employer as will entitle the person injured to maintain an action against him for damages.

CASE, for injuries from the alleged negligence of the defendants. The plaintiff's evidence tended to show the following facts: No-

67	287
71	295
171	307
171	310
67	287
67	83
172	86

vember 26, 1889, the defendant corporation was building a branch railroad from its mills to the Grand Trunk Railway's road, employing some eighty men, twenty of whom were working in a rock-cut. James Perry was superintendent of the work and of the men. The plaintiff with others was engaged in raising stone blasted in the cut to the bank above, eight or ten feet. The machinery used consisted of a portable steam engine stationed on the bank and managed by an engineer, a derrick supplied with ropes, chains, and hooks, and a scale-board with rings of iron for connecting it with the derrick. The hooks were two and a half or three inches long and slightly rounding, and had to be held in place when hooked to the rings in the scale-board till "the ropes took the strain," or they would become unhooked. The machinery was operated by power from the engine. The method of using the machinery was as follows:

The scale-board was lowered into the cut, where it was filled by men stationed there for that purpose. When filled, they adjusted the hooks in the rings and signaled the engineer by raising a hand to hoist it, who did so slowly until the ropes became taut and the hooks were made tight in the rings, when the scale-board was taken up, unloaded, and returned. On the day of the accident, the plaintiff with three others was in the cut loading the scale-board. When loaded, the hooks were inserted in the rings and held in place by the workmen. The plaintiff, holding a hook in place with his left hand, gave the signal to the engineer with his right. While he was in this position, Perry came along, and in a loud and harsh voice halloed to the engineer, with an oath, "Hoist her! hoist her! there is a team waiting!" The engineer applied the steam, and the scale-board went up on a jump, without the ropes' "taking the strain," or the plaintiff's having time to get out of the way. The hook opposite him became unfastened, and the scale-board coming in contact with the plaintiff, he was thrown against the wall and injured.

No question was raised but that the engineer and the four men in the cut were co-servants. The defendants moved for a nonsuit, which was denied, subject to exception. At the close of the evidence, a motion that a verdict be ordered for the defendants was also denied, subject to exception. Verdict for the plaintiff, which the defendants moved to set aside.

*Twitcheil & Goss and Robert N. Chamberlin*, for the plaintiff.

*Drew & Jordan, Ladd & Fletcher, William P. Buckley, and Daniel J. Daley*, for the defendants.

SMITH, J. The question has been elaborately argued whether Perry, in giving the order to the engineer for hoisting the scale-board, was acting as vice-principal, or as a fellow-servant of the

plaintiff. In the view we take of this case that question need not be considered. Assuming as most favorable for the plaintiff that he was vice-principal, there was no evidence of negligence on his part competent to be considered by the jury. No question is made of the competency of the fellow-servants, and there is no allegation of defective machinery or appliances, nor of lack of instruction of the plaintiff as an inexperienced employé. The only negligence claimed is the harsh and loud tone of voice in which the direction to the engineer was given.

The direction to the engineer was not a command to hoist the scale-board improperly, nor more quickly than usual. He could not reasonably understand he was to act in such manner as to endanger the safety of others. He was not commanded to do an unlawful act, nor a lawful act in an improper manner. There was nothing in the fact that a team was waiting that required undue haste in hoisting the board. That was the only reason given by Perry to the engineer to attend to the duty assigned to him. There was no danger of injury to the team nor from it, by collision or otherwise. The negligent manner of hoisting the board was the act of the engineer, and not of Perry.

The motion for a nonsuit should have been granted.

*Exceptions sustained.*

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

HOWES v. FISK & a.

A person not in fact a partner with another, is not estopped to deny it, in a suit by a third person against both for the breach of a written contract between the plaintiff and the other defendant, if the plaintiff was not induced by the defendant who denies the partnership to enter into the contract relying upon him as a principal.

ASSUMPSIT, to recover damages for the breach of a written contract executed December 2, 1889, between the defendant Fisk and the plaintiff, whereby Fisk agreed to haul 200 cords of bobbin-wood into the mill-yard of the Groveton Wood Manufacturing Company for the sum of \$1.25 per cord; and the plaintiff agreed to pay that price, one half as the wood was hauled, and the balance April 15, 1890. Facts found by a referee. About three weeks after the execution of the contract, the defendant Hanson went to the plaintiff and objected to that part of the contract which postponed payment of one half the price for hauling until April. Thereupon the plaintiff and both defendants went to-