

him back the money, which the defendant refused to do, and has never since done. The defendant knowingly and fraudulently misrepresented the condition of the horses, and knew he had not delivered all the property he had had of Hall, which he agreed to deliver. If upon the foregoing facts the plaintiff is entitled to recover, the damages are one hundred dollars, with interest from February 3, 1891.

*Joseph C. Story*, for the plaintiff.

*E. A. & C. B. Hibbard*, for the defendant.

CLARK, J. The only question is, whether the notice to the defendant by the plaintiff, the next day after the delivery of the property, that one of the horses was lame, that they were not fit to work, that the defendant had not delivered all the property, and that he should not accept the property delivered, requesting him to take it away, was a sufficient revocation of the contract. The fact is found that the defendant knowingly and fraudulently misrepresented the condition of the horses, and knew that he had not delivered all the property which he agreed to deliver. The fraud of the defendant vitiated the sale, and it was not binding upon the plaintiff. The plaintiff, not having an opportunity to examine for himself, relied upon the statements of the defendant, which were false. Upon ascertaining the facts, all that was necessary to revoke the contract was to notify the defendant that he should not accept the property. Such notice was given seasonably, and the contract was avoided.

*Judgment for the plaintiff.*

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

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BAILEY v. BAILEY.

A husband's connivance at his wife's adultery for the purpose of procuring direct proof, he having had at the time suspicions, but not proof, of previous acts of adultery, is not a bar to his obtaining a divorce for her previous adultery with a different man.

A husband's cohabitation with his wife after he had suspected her of adultery, but before he had had proof of it, is not a condonation.

Conduct of the husband which might have justified his wife's leaving him, but was not a ground for divorce, is not a bar to his obtaining a divorce for her adultery.

LIBEL FOR DIVORCE, for adultery. Facts found by the court. The parties were married in June, 1884, and lived together until

January 31, 1892. In May, 1889, the defendant committed adultery with one Gray, and in February, 1892, with the plaintiff's brother. The plaintiff had no knowledge of the first act, nor power to prove it before the second was committed; but he suspected his wife of adultery. On January 31, 1892, the brother, by procurement of the plaintiff, carried the defendant from her home to his mother's house where he was living. She remained there a week, during which the act last named occurred. The plaintiff went there for a visit soon after his wife was taken there, and when he returned home he did not ask her to accompany him nor wish her to do so. His purpose in leaving her there was to afford her an opportunity to commit adultery with his brother, so that he might have direct proof of the fact. The plaintiff has used cider habitually and spirituous liquor occasionally, and has been intoxicated, but is not an habitual drunkard. He has been unkind and ill-natured in conduct towards his wife, and indifferent to her comfort and happiness, and on two occasions did her personal violence, but his treatment did not amount to extreme cruelty. A divorce was denied because of the plaintiff's connivance at the adultery with his brother, and the plaintiff excepted.

*Kenson E. Dearborn and Frank N. Parsons*, for the plaintiff.

*Fling & Chase*, for the defendant.

CHASE, J. The evidence was sufficient to support the finding of connivance by the plaintiff at the defendant's adultery with his brother. It tends to show that he assented to the act, and passively, if not actively, aided in its accomplishment. 2 Bish. Mar. & Div., ss. 4 *et seq.*; *Morrison v. Morrison*, 136 Mass. 310. This finding defeated the plaintiff's claim to a divorce on account of that adultery. *Masten v. Masten*, 15 N. H. 159, 161. But it is no answer to the claim founded on the act of adultery committed with Gray nearly three years earlier. *Woodward v. Woodward*, 41 N. J. Eq. 224; *Morrison v. Morrison*, 142 Mass. 361. The connivance proved could have had no influence in causing that act. It had no tendency to show that the plaintiff assented to that intercourse, or that he unreasonably exposed his wife to temptation at that time. As the plaintiff, while he cohabited with his wife, had no knowledge of this adultery, but only a suspicion of her infidelity, such cohabitation was not a condonation of the wrong. *Quincy v. Quincy*, 10 N. H. 272. The defence of recrimination also fails, because the acts proved in support of it would not amount to causes of divorce in favor of the defendant if she were innocent and the complaining party. P. S., c. 175, s. 5, pp. III, VIII; 2 Bish. Mar. & Div., ss. 78 *et seq.*; *Hall v. Hall*, 4 Allen 39, 40; *Clapp v. Clapp*, 97 Mass. 531; *Cumming v. Cumming*, 135 Mass. 386, 389. While his conduct might have

justified her leaving him (*Lyster v. Lyster*, 111 Mass. 327), it did not justify or excuse her adultery. *Morrison v. Morrison*, 142 Mass. 361. The plaintiff is entitled to a divorce for the defendant's adultery with Gray.

*Exception sustained ; divorce decreed.*

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

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DEMARS v. GLEN MANUFACTURING COMPANY.

A master may be liable for injuries sustained by his servant in consequence of apparent defects in a machine which the latter is using, if on account of his inexperience he does not know the peculiar dangers incident to its use, and if the master cannot reasonably assume that he has such knowledge.

An incompetent and prejudicial suggestion of counsel, contained in a question addressed to a witness without any purpose to render the trial unfair, may not result in a mis-trial, when the fact is found that the verdict was not affected thereby.

CASE, for personal injuries. Verdict for the plaintiff. The plaintiff was employed by the defendants as a carpenter to make repairs about their mill, and occasionally he used a saw which was propelled by power transmitted to it from a large pulley upon the main shafting of the mill by means of belts, pulleys, and shafting. At one side of the large pulley was a device called a belt-catcher, the purpose of which was, like that of a loose pulley, to receive the belt running over the driving pulley when not in use. The belt was shifted back and forth between the driving pulley and the belt-catcher by means of a horizontal bar located just above the belt at the top of the pulley and at right angles with it, having a pin projecting from its under surface on each side of the belt, and a lever connected with its opposite end by which it was moved. While using the saw the plaintiff noticed that the belt was running off the large pulley on the side opposite the belt-catcher, and he attempted to push it back with a stick held in his hands, when the stick was hurled against his shoulder and side, causing the injury complained of. He contended that he could not have got the belt back on to the pulley by using the lever, and that the belt-catcher, bar, and lever were not reasonably adapted to the uses for which they were intended. There was evidence tending to show that the plaintiff was inexperienced in the use of machinery; that during his employment by the defendants he had shifted the main belt a few times with-

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72	45
72	269
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72	303
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