

Society, and devoted to the uses of said church, continuously, uninterruptedly, and peacefully, from December, 1852, to the spring of 1893, the time when they were dispossessed by the defendants, except so far as the repairs made in 1870, voted at the meeting held December 18, 1869, may have been an interruption of possession." The repairs upon the meeting-house in 1870, pursuant to the vote of the meeting held December 18, 1869, must be held to have been made by the permission of the church and society, and do not constitute an interruption of the plaintiffs' possession. For forty years prior to 1893, no church, or society, or organization of any kind, had held any meetings, or exercised any control or dominion over the property, other than the First Presbyterian Church and Society. Their title to the property and their right to sell the same in accordance with their votes are indisputable.

Nor have the defendants any right to the property as pew-holders. A pew-holder's right is only a right to occupy his pew during public worship, a right of occupancy subject to the superior right of the society owning the pew. *Jones v. Towne*, 58 N. H. 462. It is a qualified ownership, subject to the superior title included in the ownership of the house. A pew-holder cannot remove the pew, nor use it for any purpose except occupancy when the house is open for use, and pew tenancy is as accurate a designation of his interest as pew ownership. *Colby v. Society*, 63 N. H. 63. Whoever purchases a pew, purchases it subject to the right of the society or church to have the meeting-house where it will best accommodate the whole. *Fisher v. Glover*, 4 N. H. 180. "Pews or seats in a meeting-house or a place of public worship shall be deemed personal property." P. S., c. 220, s. 14.

Case discharged.

All concurred.

Hillsborough, }
June, 1895. }

BRYSON v. HALEY.

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It is no defence to an action for work done and materials furnished in fitting up a barroom, that the plaintiff knew the premises were to be used for the illegal sale of liquor.

ASSUMPSIT, for labor and materials. Facts found by the court. The plaintiff, a painter, furnished to the defendant, at his request, labor and materials in painting and decorating a bar and the room containing it. The plaintiff knew that it was the pur-

pose of the defendant to use the room and bar in illegally selling intoxicating liquors; and after their completion they were so used. The plaintiff took no part in their illegal use. It was held that the defendant was liable, to which ruling he excepted.

O'Connor & Shea, for the plaintiff.

Sulloway & Topliff, for the defendant.

BLODGETT, J. The plaintiff is not precluded from a recovery of the value of his labor and materials upon the bar and the room containing it by his knowledge that the defendant intended to use them for an unlawful purpose. The case is not distinguishable in principle from *Delavina v. Hill*, 65 N. H. 94. See, in addition, *Tracy v. Talmage*, 14 N. Y. 162,—67 Am. Dec. 132, and note; *Tyler v. Carlisle*, 79 Me. 210,—1 Am. St. Rep. 301, and note; *Michael v. Bacon*, 49 Mo. 474,—8 Am. Rep. 138, and note; *Webber v. Donnelly*, 33 Mich. 469; *Hubbard v. Moore*, 24 La. An. 591,—13 Am. Rep. 128; *Mahood v. Tealza*, 26 La. An. 108,—21 Am. Rep. 546.

Exception overruled.

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

Hillsborough, }
June, 1895. }

FAUCHER v. WILSON.

A truckman who is not a common carrier is bound to exercise ordinary care in respect to goods entrusted to him; and if a common carrier, is not liable for losses happening from the operation of natural causes.

CASE, against the defendant as a common carrier of goods, for the loss of a hogshead of molasses. Facts found by the court.

The defendant was engaged in the business of trucking goods for hire from the railway freight station in Manchester to different stores in the city. On one of the warmest days in the summer of 1891, he transported a hogshead of molasses from the freight station to the plaintiff's store on Elm street, a distance of a little over half a mile. By reason of the fermentation of the molasses, the hogshead burst while being unloaded. The plaintiff's loss was not caused by any want of ordinary care on the part of the defendant. Each party moved for judgment in his favor.