

*Railroad v. State*, 62 N. H. 648, 649. On this ground *c.* 108, Laws 1895, is valid so far as its validity is a question in this case.

*Tax abated.*

All concurred.

Strafford, }  
Dec., 1895. }

GALE v. DOVER.

A town is liable, under Laws 1893, *c.* 59, *s.* 1, for damages happening by reason of the defective condition of a sewer covering located in a highway.

CASE, for damages to the plaintiff's horse from a defective highway. Trial by jury and verdict for the plaintiff. If the defect from which the damage arose is one for which the defendants are liable, the plaintiff is entitled to judgment; otherwise, there is to be judgment for the defendants.

*W. S. & D. R. Pierce*, for the plaintiff.

*William F. Nason*, for the defendants.

PARSONS, J. The plaintiff's horse stepped upon the covering of an opening in the highway designed to admit the surface water into the sewer beneath the street, and because of a defect in such covering was injured, as the plaintiff claimed. The only question reserved is whether the defect in the covering of the opening into the sewer is a defect for which the city is liable under *c.* 59, *s.* 1, Laws 1893. By that statute towns are made liable "for damages happening to any person, his team or carriage, traveling upon a bridge, culvert, or sluiceway, . . . upon any highway, by reason of any obstruction, defect, insufficiency, or want of repair of such bridge, culvert, or sluiceway," which renders the highway unsuitable for the travel thereon. There is no distinction material in this case between a sewer and a culvert. A sewer is a drain or passage to carry off water or filth underground, a subterraneous channel through which water runs off. Webster Inter. Dict., *ed.* 1894. A culvert, as used in the statute, is a covered drain under a road designed for the passage of water. *Boyd v. Derry*, *ante*, *p.* 272. The hole into which the plaintiff's horse thrust his foot was over such a drain, and the injury was caused by the defective covering of a portion of the underground passage designed to carry off the surface water of

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68	403
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the street. Such a defect is within the statute, and according to the reserved case there should be judgment for the plaintiff.

*Case discharged.*

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

Belknap, }  
Dec., 1895. }

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MALTAIS v. FOSS.

One who has agreed to pay a stipulated price per cord for the cutting and peeling of bark on a certain farm is liable for similar labor performed on adjoining land if he has accepted the benefit of the services.

ASSUMPSIT, for cutting lumber and peeling bark. Trial by jury. Verdict for the plaintiff. By an agreement in writing the plaintiff was to peel all the hemlock bark standing on the Tuttle farm in Lincoln that the defendant might require, and receive therefor \$1.87½ per cord. The plaintiff's evidence tended to prove the following facts: The plaintiff cut and peeled 420 cords of bark. The defendant paid him for 333 cords, and refused to pay for the balance on the ground that it was cut on land of an adjoining owner. The plaintiff supposed he was cutting on the Tuttle farm, but he did in fact cut lumber producing eighty-seven cords of bark on other land. The defendant did not point out the lines, nor did the plaintiff request him to do so. No one had demanded damages of the plaintiff for the trespass. The defendant had the lumber and bark for the cutting of which suit was brought. The defendant excepted to the denial of his motion for a nonsuit.

*Frank M. Beckford and Edwin H. Shannon, for the plaintiff.*

*Jewell, Stone, Owen & Martin, for the defendant.*

CLARK, J. The only question is whether there was error in the denial of the motion for a nonsuit. The plaintiff's evidence tended to show that "the defendant had the lumber and bark for the cutting of which suit was brought." From this, the jury could properly infer that the defendant accepted and took the benefit of the plaintiff's labor at the agreed price; or at its value, if, as the plaintiff in his brief asserts, there was a *quantum meruit* count.

*Judgment on the verdict.*

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