

of contemporaneous construction. It appears more probable than otherwise that this construction was in accordance with the intention of the city councils.

Exceptions overruled.

All concurred.

Hillsborough, }
Dec., 1898. }

LITTLE, *Adm'r*, v. HEAD & DOWST Co.

In an action for injuries occasioned by the fall of a staging, evidence that the hooks from which it was suspended were recommended by the owner, who had practical knowledge of their use and from whom they were borrowed, is competent upon the question of the defendant's care in selecting them.

The opinion of a witness as to the sufficiency of iron hooks to sustain a given weight is competent, when there is evidence to warrant the finding that he possessed the special skill and knowledge required of an expert.

Evidence as to the cost of a mechanical appliance is admissible to prove its quality.

CASE, for negligence. Trial by jury and verdict for the defendants. The plaintiff's intestate, an employee of the defendants, was at work upon a staging suspended from iron hooks placed on the roof of a building, when one of them broke, allowing the staging to fall and causing the death of the intestate. The defendants borrowed the hooks of one Gannon, who had been engaged in the business of house painting twenty to twenty-five years and had frequently used such hooks for suspending stagings by the sides of buildings. He was not a machinist and never worked on, or experimented with, iron. He testified that he procured the hooks in question to be made for his use some fourteen years previously; that he had used them upon several jobs, with two or three, and sometimes four, men upon the staging; that he had tested them by having three or four men pull upon a rope attached to a hook in position so as to cause a steady strain upon it and thereby set it into the roof and make it firm; that he had taken the very best care of them; and that he was at work on the building on which they were to be used and was informed of the use for which they were wanted. Subject to the plaintiff's exception, he further testified that he recommended the hooks to the defendants' fore-

man, who came to borrow them; that he paid more for them than he ever did for other hooks; and that they were sufficient to sustain a staging weighing 324 pounds with two or three men upon it.

A witness called by the defendants testified upon direct examination that a test of the hooks was made before they were used at the time the intestate was injured, and he described it particularly. Upon cross-examination, he testified that it was the only test that was made. To rebut this evidence, the plaintiff introduced witnesses who worked about the building and who testified that they saw no test made before the accident. The plaintiff's offer to show by them that they saw one made after the accident was denied, subject to exception.

Cyrus H. Little and Oliver E. Branch, for the plaintiff.

Burnham, Brown & Warren and George B. French, for the defendants.

CHASE, J. A person seeking hooks of the kind in question for use in his business would naturally and properly rely more or less upon the recommendation of a person having practical knowledge of the uses for which such tools are designed and of the manner in which those under consideration answered the purpose while in actual use. The fact that a recommendation from such a person was made has a bearing upon the question whether ordinary care was exercised in making the selection in a given case, the same as it would have if the recommendation was based upon knowledge acquired by working iron and studying its properties. The object of the testimony is to prove, not the character of the hooks, but the extent of the care exercised in selecting them. Its office is like that of testimony showing that the tool or machine in question was purchased of a reputable maker. *Reynolds v. Woolen Co.*, 168 Mass. 501, 503.

Gannon's opinion as to the sufficiency of the hooks to sustain a given weight was also competent. Men in general would not understand what form and size of hook would be required for the purpose. That is a matter requiring special skill. There was evidence from which it might properly be found that Gannon possessed the skill required to make his opinion competent evidence. *Jones v. Tucker*, 41 N. H. 546; *Dole v. Johnson*, 50 N. H. 452.

The fact that these hooks cost more than others had some tendency to show that they were of a good quality. The weight of the testimony would depend largely upon the circumstances.

The testimony offered by the plaintiff that a test of hooks was made after the accident related to a collateral issue, and the

offer was addressed to the sound discretion of the court. The exclusion of the testimony is not subject to revision here.

Exceptions overruled.

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

Hillsborough, }
Dec., 1898. }

STATE (*ex rel.* BORTHWICK *§ a.*) v. HARRINGTON *§ a.*

A verdict will be directed where only one conclusion can fairly be drawn from the evidence and it is plain a different verdict would be set aside.

PETITION, alleging that on July 19, 1897, the defendant Henry C. Fife was the occupant of premises on Nutfield lane in Manchester, and maintained a liquor nuisance therein; that the other defendants were the owners of said premises and suffered and permitted him so to do, and praying for an injunction to restrain and abate the nuisance.

The following issues were submitted to the jury: Did said Fife, on July 19, 1897, use the said premises for the sale, or the illegal keeping for sale, of spirituous or malt liquors, wine, or cider? Did each of the other defendants, on July 19, 1897, suffer or permit said Fife to use said premises for the illegal sale or keeping for sale of spirituous or malt liquor, wine, or cider? Upon these issues the jury found verdicts in favor of each of the defendants.

The plaintiffs introduced evidence showing that the defendant Fife had paid a United States revenue tax as a retail liquor dealer in Nutfield lane, Manchester, from July 1, 1894, to July 1, 1898; that he pleaded *nolo contendere*, to a charge of the offence of keeping spirituous liquor for sale, second offence, was found guilty and fined, upon November 16, and December 16, 1896, January 27, March 4, April 23, June 3, and July 19, 1897, and that he pleaded guilty to a like charge upon August 20, 1897. They also introduced evidence tending to show that he was the occupant of the premises on the date of the filing of the petition and for some years prior thereto; that the place had all the paraphernalia of a saloon, including bottles that contained liquids that looked like whisky, rum, ale, and lager beer; that he had frequently been seen behind the bar with the bartenders; and that people had been frequently seen in the premises drinking. The defendants introduced no evidence. There was evi-

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