

Hillsborough, }
 June, 1900. }

COLBY v. CAMPBELL.

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REPLEVIN, for certain articles of personal property. Trial by the court. December 17, 1897, when the defendant and his son were boarding with the plaintiff, the defendant conveyed to her a pair of horses as security for all money he was then owing or might at any time thereafter owe her. The property replevied subsequently came into the plaintiff's possession, and she claimed to hold it by virtue of a lien, under the provisions of section 1, chapter 141, of the Public Statutes, for the board of the defendant and his son. There was due her on the date of the writ \$90 on this account, but the horses conveyed to her as security for the board were of sufficient value to pay that claim. The court found a verdict for the defendant, and the plaintiff excepted.

Osgood & Osgood, for the plaintiff.

David W. Perkins, for the defendant.

WALLACE, J. If the taking of security was intended as a waiver of the lien, the verdict must stand. Whether the acts of the parties and the other evidence established a waiver was a question of fact to be decided at the trial term (*Pickett v. Bullock*, 52 N. H. 354; *Fuller v. Brown*, 67 N. H. 188; *Estes v. Insurance Co.*, 67 N. H. 462), and the case presents no question of law.

Exception overruled.

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

Hillsborough, }
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FOURNIER v. COLUMBIAN MANUFACTURING CO.

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CASE, by the plaintiff, whose right hand was injured by the gears of a spinning-frame in the defendants' cotton mill. The plaintiff was a doffer in the defendants' employ. It was her duty to clean or wipe the gears on the spinning-frames at the cleaning hour, which was from 3.30 to 4.30 o'clock on every Saturday afternoon. For this purpose the frames were stopped by throw-

ing a belt from a fixed to a movable pulley. It was the spinner's duty, at this hour, to tie together the ends of threads broken during the process of cleaning; also, to start the frames in order to get the work in running order, first giving notice of her purpose to the doffer. While the plaintiff was cleaning the gears from which she received her injury, the spinner who ran the frame connected with the gears, and who was a competent and ordinarily careful employee, started the machinery without notice to the plaintiff, thus causing her injuries to be inflicted.

The grounds upon which the plaintiff claimed negligence in the defendants were: (1) Permitting the cleaning with the speed on without removing the belt or securing the shipper, (2) not providing brushes for cleaning the gears, and (3) the character of the instructions given to the plaintiff. At the conclusion of the testimony, the defendants' motion that the court direct a verdict for them was denied, and they excepted.

Joseph W. Fellows, David A. Taggart, and William G. Buteau,
for the plaintiff.

Burnham, Brown & Warren and John H. Riedell, for the defendants.

PIKE, J. The cause of the plaintiff's injury was the negligence of a fellow-servant, who was competent and ordinarily careful, in starting the frame without notice while the plaintiff was cleaning the gears.

If the injury had resulted from the running of the belt from the movable to the fixed pulley and thus starting up the frame, or from the plaintiff having been required to clean the gears while they were in motion, the questions of law which the plaintiff discusses would be before the court. But it did not, and those questions are not here for consideration. The motion to direct a verdict for the defendants should have been granted.

Verdict set aside: judgment for the defendants.

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