

the Massachusetts statute under which it was held, in *Pratt v. Atwood*, that the bastard's right of inheritance was limited to the mother. In view of the peculiar language of our own statute, the decisions of the supreme court of Massachusetts in the interpretation of a similar statute, and the principle that statutes in derogation of the common law should be construed strictly, we feel bound to hold that the plaintiff is without right in the estate of the defendant's intestate.

Our attention has been called by the plaintiff's counsel to *Goodwin v. Colby*, 64 N. H. 401, as an authority sustaining his contention. The question there was as to the right of a bastard to take a legacy given to the mother, the mother having died before the testator. The court held that the bastard was entitled to the legacy. It is only necessary to say that the decision followed the plain letter of the statutes controlling the question. P. S., c. 186, s. 12; *Ib.*, c. 196, s. 4. It is not authority for the plaintiff's contention here, because she is asking for something in derogation of the common law, by virtue of a statute which will permit it only by a liberty of construction which we do not feel authorized to indulge.

Exceptions overruled.

All concurred.

Sullivan, }
Dec. 1, 1903. }

LAMKIN *g* a v. JOHNSON.

A motion for a nonsuit is properly denied when there is any evidence to warrant a verdict in favor of the party upon whom the burden of proof is imposed.

TROVER, for sixteen cases of rubber boots and shoes. Trial by jury and verdict for the plaintiffs. Transferred from the May term, 1903, of the superior court by *Wallace, C. J.*

The plaintiffs' evidence tended to prove the following facts: In the spring of 1901, Peter S. Laducer was keeping a shoe store in Claremont, and the plaintiffs sold him at that time the property in controversy, to be delivered in the early fall and to be paid for December 1. In June, Laducer sold his business to one Mineau. After Mineau became the owner, Laducer told him of the order he had given, and the understanding between them was that Mineau should have the goods when they arrived. About August 27, the plaintiffs sent a bill of the goods to Laducer and

shipped the goods to him. When he received the bill he took it to Mineau, and on August 28 wrote to the plaintiffs that he wished to be relieved and that Mineau would take the goods and pay for them. The plaintiffs accepted the proposition, charged the goods to Mineau, and on September 3 wrote Laducer to that effect. Mineau notified the defendant on August 28 that he was to have the goods and pay for them; and prior to receiving the bill of the goods from Laducer, he wrote the plaintiffs that he would take them and heard from them to that effect. The defendant, on August 30, after he had been informed that Mineau was to have the goods and while they were on board a car at the railroad station in Claremont, attached them on a writ which he caused to issue against Laducer. After August 30 and prior to September 4, Mineau went to the station to procure the goods, found them attached on the defendant's writ against Laducer, was unable to obtain possession of the goods, and gave up getting them. September 4, the defendant induced Laducer to sign an order to release the goods from the custody of the sheriff. Laducer did not intend to sell the goods to the defendant, and the defendant paid nothing for them. Laducer never took possession of the goods. The defendant gave Laducer money to pay the freight charges, which he did, and the goods were taken by the defendant from the railroad and converted to his use. He gave Laducer credit for their value on a claim of \$1,100 which he had against him. The defendant recovered judgment against Laducer, but never took out execution or made any levy upon the goods, and claims title by virtue of a sale from Laducer to him.

The defendant's motion for a nonsuit was denied, subject to exception. The parties agree that if the motion should have been granted, there is to be judgment for the defendant; otherwise, there is to be judgment on the verdict.

Tra Colby & Son, for the plaintiffs.

Frank H. Brown and Hermon Holt, for the defendant.

BINGHAM, J. "A motion for a nonsuit will not be granted where there is any evidence upon which a jury can properly find a verdict for the party producing it, upon whom the burden of proof is imposed." *Hovey v. Brown*, 59 N. H. 114, 116; *Paine v. Railway*, 58 N. H. 611.

In this case there was evidence from which it could be found that prior to September 4, 1901, the sale of the goods to Laducer had been rescinded by mutual consent; that the title to the goods never vested in Mineau; that on September 4, 1901, when the

defendant converted them to his own use, the title and right of possession was in the plaintiffs; that the lien created by the defendant's attachment, if valid, was abandoned; and that there was no sale of the goods by Laducer to the defendant.

Judgment on the verdict.

All concurred.

Grafton, }
Dec. 1, 1903. }

GORDON v. INTERNATIONAL PAPER CO.

A committee appointed by the court, under chapter 229, Laws 1893, to estimate damages caused by improvements of the Ammonoosuc river and its tributaries, have no jurisdiction to assess damages resulting from the negligent, unreasonable, and unauthorized use of such improvements.

BILL IN EQUITY, praying for the assessment of damages caused to the plaintiff by the flowage of his land. The committee to whom the petition was referred, under chapter 229, Laws 1893, assessed the plaintiff's damages and reported their findings; and the questions of law arising thereon were transferred from the November term, 1902, of the superior court by *Pike, J.*

At the hearing, the defendants moved that the bill be dismissed, on the ground that the committee had no jurisdiction. The motion was denied, and the defendants excepted. The allegations of the bill and the findings of the committee sufficiently appear in the opinion.

In two other cases brought against the defendants for the assessment of damages caused by flowage, and referred to the same committee, the allegations and findings were the same in legal effect as in Gordon's action, and the same exception was taken.

Batchellor & Mitchell and *William H. Cotton*, for the plaintiff.

Drew, Jordan & Buckley, Smith & Smith, and *Scott Sloane*, for the defendants.

REMICK, J. In granting to the Fall Mountain Paper Company, by chapter 229, Laws 1893, the right "to remove rocks, floodwood, and other obstructions from the bed and banks of that portion of the Ammonoosuc river and its tributaries that are in the