

Belknap, }  
June 7, 1904. }

## COX v. COX.

Evidence that money held by a married woman to her separate use was delivered to her husband at his request for the purpose of paying his indebtedness to a third person, that she considered the funds to be borrowed, expected them to be repaid, and did not know how he could entertain an opposite view, warrants a finding of a mutual understanding between the parties that the transaction was a loan.

ASSUMPTI, for money had and received and for money loaned. Trial by jury and verdict for the plaintiff. Transferred from the November term, 1903, of the superior court by *Peaslee, J.*

The defendant is the plaintiff's husband. The evidence bearing on the question transferred is stated in the opinion. The defendant's motion for a nonsuit was denied, and he excepted.

*Jewett & Plummer*, for the plaintiff.

*Beckford & Hibbard*, for the defendant.

BINGHAM, J. The question presented in this case is not whether a promise can or cannot be implied as a matter of law from the mere fact of benefits received (*Concord Coal Co. v. Ferrin*, 71 N. H. 33, 36), nor whether the law will or will not presume from the delivery of money that the transaction was a loan, rather than a gift or the payment of a debt (*Coburn v. Storer*, 67 N. H. 86, 87), but is whether there was any evidence from which the jury could reasonably infer that it was a loan.

There was evidence that in 1898 the plaintiff received from her sister's estate \$525, which under our statute she was entitled to hold to her separate use, free from the interference or control of the defendant (P. S., c. 176, s. 1; *Clough v. Russell*, 55 N. H. 279; *Houston v. Clark*, 50 N. H. 479, 482); that the defendant had previously purchased a farm for a home, which was subject to a mortgage; that at the time in question there was due on the mortgage debt about \$1,300; that at the defendant's request the plaintiff let him have the \$525 received from the sister's estate, for the purpose of making a payment on this debt; that she understood it was a loan, expected the money would be repaid, and did not know how the defendant could understand it in any other way.

From this evidence the jury could find that there was a mutual understanding between the husband and wife that the transaction

was a loan. *Bickford v. Dane*, 58 N. H. 185, 186; *Page v. Snell*, 59 N. H. 531; *Clark v. Samborn*, 68 N. H. 411, 412. The motion for a nonsuit was properly denied.

*Exception overruled.*

All concurred.

Merrimack, }  
June 7, 1904. }

DOLBEER, *Guardian*, v. SUNCOOK WATER-WORKS Co.

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By the common law of this state, a natural, fresh-water pond containing more than ten acres is a large or great pond, and is public.

Where an aqueduct company, in pursuance of authority granted by its charter and by an exercise of the right of eminent domain, enters upon land abutting on public water, builds a dam for the purpose of flowage, and otherwise appropriates the pond and adjoining premises to the uses of its business, the owner is entitled to compensation for the land and rights therein actually taken, for any injury to adjoining land, and for any damage resulting from an interference with his right as a littoral proprietor to a reasonable use of the water.

PETITION, for the assessment of damages under the provisions of the defendants' charter (Laws 1891, c. 158). The plaintiff owns a tract of land in Allenstown which entirely surrounds a natural pond containing fifteen to eighteen and a half acres. The only outlet of the pond is by percolation through the ground. In 1897, the defendants entered upon the land without the plaintiff's leave, dug up the soil, built a dam by means of which about ten acres of land are flowed, laid pipes in the land, and appropriated the pond and the land flowed to the uses of their business.

At the April term, 1903, of the superior court, it was ruled by *Peaslee, J.*, subject to the plaintiff's exception, that the pond was public water, and that the plaintiff's damages were limited to compensation for the trespass and flowage.

*Martin & Howe*, for the plaintiff.

*Page & Bartlett* and *Mitchell & Foster*, for the defendants.

CHASE, J. The defendants' charter authorizes them to enter upon and appropriate any pond not belonging to an aqueduct company, to secure it by fences or otherwise, and to make such excavations upon any land as may be necessary for obtaining and con-