

State, supra. The court therefore had power to make the part of the order complained of; but if that were not the fact, it would not authorize the discharge of the petitioners.

Concede that the court had no authority to suspend the sentences, and the fact still remains that it had power to impose them; and as the two parts of the order are separate and distinct, the illegality of the last part would in no way affect the validity of the first part. *Sylvester v. State, supra.* That is, if the part of the court's order complained of were illegal, the part of which no complaint is made would still be valid, and it would be the duty of the court to enforce it; for as was said in a recent case (*Petition of Moebus*, 73 N. H. 350, 352), "the sentence of the law is to be satisfied only by the actual suffering of the imprisonment imposed, unless remitted by death or by some legal authority." Section 3, chapter 122, Laws 1903, does not purport to confer authority on the court to suspend sentences, but merely limits the court's exercise of its common-law power in cases of this kind.

Although it is true that if the petitioners had been committed to jail at the time their sentences were imposed, the sentences would long since have been executed, that fact furnishes no legal reason for their discharge. They were legally sentenced to be confined in jail for sixty days. "Neither the date of its commencement nor its expiration is fixed by the terms of the sentence" (*Dolan's Case*, 101 Mass. 219, 222), and they have not suffered the imprisonment. Consequently they must suffer it; for, as has been seen that is the only way a legal sentence can be satisfied.

Exceptions overruled.

All concurred.

Coös, }
Dec. 7, 1909. }

SMYTH, *Adm'r*, v. BURGESS SULPHITE FIBRE CO.

In an action against an employer for injuries alleged to have been caused by defective premises, a motion for a nonsuit should be granted when the evidence conclusively shows that there was no concealed danger, and that a person of ordinary prudence would not have deemed a warning necessary for the protection of one possessing the experience of the person injured.

CASE, for negligently causing the death of Achille Oulette, an employee of the defendants. Trial by jury and verdict for the plaintiff. Subject to exception, the defendants' motion for a non-

suit was denied and the case was submitted to the jury upon the issue whether the defendants furnished the plaintiff's intestate a reasonably safe work-place. Transferred from the April term, 1909, of the superior court by *Plummer, J.*

Matthew J. Ryan, Thomas F. Johnson, and Herbert I. Goss (Mr. Goss orally), for the plaintiff.

Merrill & Merrill (of Maine), Sullivan & Daley, and Drew, Jordan, Surtleff & Morris (E. N. Merrill orally), for the defendants.

PEASLEE, J. The only defect in the premises complained of is the presence of from four to seven pieces of hard pine joists, at a point on the floor just in the rear of where the deceased was standing. He was a millwright with seven or eight years' experience in these mills, and the place was not one where employees would go except to remedy defects in the wet machines. The place was well lighted, the sticks were in plain sight when the deceased took his position close by them, and the claim was that he was injured by stepping upon or against them when he moved back suddenly upon the unexpected starting of the machine.

Unless this was a danger which the ordinary man might think was such as to call for warning to Ouilette, the defendants' motion should have been granted. *Willis v. Telephone Co., post.* That no ordinary person would think of giving such warning to an experienced repair man seems plain. There was no concealed danger. Everything was open to observation. As Ouilette must have known, the locality was not a regular work-place, nor one where people customarily went. It was clearly his duty to use his senses when going into such a place for the temporary work of making repairs. The defendants had the right to assume that he would do so, and to take that into account in determining whether it was necessary to warn him.

The plaintiff's claim that there should have been rules to prevent the starting of the machinery without warning to the repair man is not open for consideration here. Upon that issue the presiding justice ruled in favor of the defendants, and no exception to the ruling appears in the record.

Verdict set aside: judgment for the defendants.

All concurred.