

PARSONS, C. J. In the absence of evidence that the disputed line was part of the boundary of an original lot, or an extension of or parallel to such a line, the course of the original lot lines was irrelevant to any issue which could have been before the jury. A verdict is not set aside for the admission of immaterial evidence not shown to be prejudicial or used for a purpose for which it is incompetent. *Rogers v. Kenrick*, 63 N. H. 335. But though having no logical tendency to prove any matter in dispute, the error does not appear to have been harmless. From the manner in which the evidence was introduced and the use attempted to be made of it in argument, to which exception was also taken, the jury may well have thought they were authorized to consider the substantial identity of the course of the line upon which the brush fence was built with the course of lines bounding original lots, as having some tendency to prove that the line so marked was a divisional line. Such use of the evidence would plainly tend to prejudice the objecting party and to render the trial unfair.

*Exception sustained: verdict set aside: new trial granted.*

All concurred.

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Merrimack, }  
Jan. 3, 1911. }

BATES STREET SHIRT CO. v. PLACE.

ASSUMPSIT, for goods sold and delivered. Trial by the court (*Stone, J.*) and verdict for the plaintiff. The defendant excepted to the denial of his motion for a nonsuit. After the decease of the justice who presided at the trial, the case was transferred from the April term, 1910, of the superior court by *Wallace, C. J.*, on a statement of facts prepared by counsel in the case.

*Dudley & Lowe* (*Mr. Lowe* orally), for the plaintiff.

*Remick & Hollis* (*Alexander Murchie* orally), for the defendant.

PEASLEE, J. The controversy concerns the acceptance of a quantity of shirts ordered by the defendant from the plaintiff's

agent. It is admitted that the defendant sold nineteen of the shirts and is liable therefor. From this it follows that there was no error in denying the motion for a nonsuit.

But the case has been argued upon both sides on the theory that it presented some question touching the verdict as to the balance of the goods. If an exception was taken which raises such an issue, it does not appear in the record as made up by counsel. If it did so appear, it would then be necessary, if the issue was on a nonsuit as to these items, to report the substance of the evidence. The statement of such facts as counsel have been able to agree upon does not bring before this court the evidence upon which the verdict was found.

It is stated in the transferred case that the sickness of Judge *Stone* prevented his drawing a case. If this means that it was understood that findings of fact and rulings thereon were to be filed (P. S., c. 204, s. 10), the defendant may be entitled to a new trial on the ground of accident or misfortune. Whether he should be granted such relief for these or other reasons, whether his exceptions should be restated without a new trial, and whether the transcript of the evidence should now be procured (if procurable), are matters to be determined in the superior court. Upon the case as it stands, the plaintiff is entitled to judgment on the verdict; but as it seems probable that justice may require further proceedings in the superior court, the order is

*Case discharged.*

All concurred.

Hillsborough, }  
Feb. 10, 1911. }

MOSES v. BOSTON & MAINE RAILROAD.

CASE, for personal injuries. Trial by jury and verdict for the plaintiff. The plaintiff was injured by the unexpected starting of the defendants' train from which she was alighting. She supposed that the train had stopped at the West Rindge station, where she desired to leave it, but it had in fact stopped just beyond the station. It was dark and the station was unlighted. After the train left the station next before West Rindge, the brakeman announced "the next station will be West Rindge."