

Coös, }
March 4, 1913. }

JOHN BUELL v. BERLIN MILLS Co.

In an action for personal injuries against employers, certain evidence deemed sufficient to warrant a submission of the questions whether the defendants performed their duty of care in providing a safe work-place and whether the plaintiff knew and appreciated the danger to which he was exposed.

CASE, for personal injuries sustained by the plaintiff while in the defendants' employ. Trial by jury and verdict for the plaintiff. Transferred from the April term, 1912, of the superior court by *Wallace, C. J.*, on the defendants' exceptions to the denial of their motions for a nonsuit and the direction of a verdict in their favor.

Goss & James and *Matthew J. Ryan* (*Mr. Goss* orally), for the plaintiff.

Daniel J. Daley and *Drew, Morris & Shurtleff* (*Mr. Daley* and *Mr. Morris* orally), for the defendants.

PARSONS, C. J. The plaintiff, while wheeling a barrow in the defendants' service, upon a runway seven feet above the ground, fell from the runway and was injured. There was evidence that the runway was constructed for the plaintiff's use by the defendants before he was put to work upon it; that it was improperly constructed in that it was only two feet wide, when a width of four or five feet was necessary for safety, and that it was not as firm and rigid as it should have been; that the plaintiff had no experience in such work and was injured after he had been at work about thirty minutes. Upon this evidence it cannot be said, as a matter of law, that the master had performed the duty of care in providing a safe work-place assumed by him in this case, or that the plaintiff knew the danger attending the wheeling of a barrow upon so narrow a platform, disclosed by the testimony of the witness experienced in such work. Just how the fall was brought about is not very clear; but there was evidence that the plaintiff lost his balance either when attempting to dump the load of concrete he was wheeling, or by slipping upon the planks afterward. It could be found in either event that this occurred without fault on the plaintiff's part, and that the narrowness of the runway—the defendants' fault—was a contributing cause without which the accident would not have

happened. The plaintiff had had some experience in wheeling a barrow on the ground, but it does not conclusively follow that he knew without experience the danger from which it could be found his injury resulted. The case was properly submitted to the jury.

Exceptions overruled.

All concurred.

Strafford, }
April 1, 1913. }

JOSEPH E. M. SMART & a. v. DURHAM.

Where a devise in trust directs that an ascertainable portion of the income shall be expended for the care and repair of a private cemetery and that the residue shall be applied to the support of public schools, the provision in favor of the burial place, if invalid, does not affect the trust as to the residue of the estate.

A trust otherwise valid is not defeated by the incompetency of the trustee named in the will.

A direction that land devised in trust for the support of public schools shall in no event be sold creates a perpetuity which is allowable in the case of a charitable trust; and a court of equity has power to direct a conveyance of the estate whenever such course becomes necessary.

WRIT OF ENTRY. Transferred without ruling from the September term, 1912, of the superior court by *Plummer, J.*, on an agreed statement of facts.

The plaintiffs are heirs-at-law of Olinthus Doe. The defendants' title is derived from Doe's will, which directs his executors to pay his just debts and funeral expenses and then provides as follows: "All the rest, residue, and remainder of all the property of which I may die seized, whether real, personal, or mixed, wherever found and however situate, I give, bequeath, and devise unto the town of Durham aforesaid in trust for the following purposes and uses, to wit: To forever hold and improve all of said property and never under any circumstances to expend any portion of the principal thereof, and first, out of the net income, to use and appropriate so much as shall from time to time be needful, fitting, and proper to care for and keep in repair the cemetery or burial place on my homestead farm in said Durham in good and neat condition, including the graves and gravestones in said burial place, and in all re-