

the position of a witness, with all its rights and privileges, and subject to all its duties and obligations. If he gives evidence which bears against himself, it results from his voluntary act of becoming a witness, and not from compulsion. His own act is the primary cause, and, if that was voluntary, he has no reason to complain." *State v. Ober*, 52 N. H. 459, 463; *State v. Danforth*, 73 N. H. 215.

The general exception "to the charge as given," presents no question for the consideration of this court. *Edgerly v. Railroad*, 67 N. H. 312, 317, and cases cited.

Exceptions overruled.

All concurred.

Rockingham, }
Oct. 3, 1916. }

ALBERT W. MARSTON v. PORTSMOUTH.

The master's duty to an inexperienced servant may require that he be warned in respect to dangers incident to the use of even simple appliances.

The duty rests upon an employer to do whatever the ordinary man would do to enable his employee to do his work in safety.

CASE, to recover for an injury to the plaintiff's eye. Trial by jury and verdict for the plaintiff. The defendants employed the plaintiff in constructing a public sewer, and, as he was striking a drill, the head of which was "mushroomed," a piece of steel struck him in the eye. Transferred from the January term, 1916, of the superior court by *Kivel, J.*, on the defendants' exceptions to the denial of their motions for a non-suit and for a directed verdict.

Samuel W. Emery and Albert R. Hatch, for the plaintiff.

Ernest L. Guptill and Jeremy R. Waldron, for the defendants.

YOUNG, J. It would serve no useful purpose to consider the defendants' contention that it cannot be found they failed to provide suitable drills, for it can be found that the drill the plaintiff was striking had been used so long when the accident happened that the head was badly mushroomed, and that it is dangerous to use a drill with such a head. It can also be found that the defendants either knew or ought to have known of this danger and that the plaintiff neither knew nor was in fault for not knowing of it. It can

be found, therefore, that the defendants were in fault for not instructing the plaintiff as to when a drill needed to be repaired; for it is an employer's duty to do whatever the ordinary man would do to enable his employees to do their work in safety; and, if it is true as the defendants contend that the duty of doing what the ordinary man would do, does not make it an employer's duty to inspect the tools and other simple appliances he provides for the use of experienced employees or to maintain them in any particular condition or state of repair (*Sanborn v. Railroad*, 76 N. H. 523; *Hilton v. Railroad*, 73 N. H. 116), that is not decisive of the plaintiff's right to recover, for it can be found that he was inexperienced and all fair minded men will agree that the ordinary man is accustomed to instruct such employees in respect to the dangers incident to the use of even simple appliances when that is the reasonable thing to do. *Buell v. Company*, 77 N. H. 55..

Exceptions overruled.

All concurred.

Belknap, }
Oct. 3, 1916. }

HERBERT J. JONES, *Ex'r* v. HERBERT C. BENNETT & a.

Though evidence of a testator's habitual use of words may be received as indicating what he meant by their use on a particular occasion, his intention must be gathered from the words used in the will and not from his declarations made before, at the time, or after the will was made.

When no ambiguity exists as to the sense in which a testator's language was used, either in the language itself or in its application to surrounding circumstances, proof by extrinsic evidence that he used it in a peculiar or unusual sense, will not be received to defeat his expressed intent found from the common and usual meaning attached to ordinary language.

The usual meaning or sense of the words or terms used in a will, cannot be contradicted in a proceeding for its construction, by extrinsic proof of an unusual or peculiar sense attached to them by the testator when making his will.

The words in a will, "heirs of my late husband", adequately describe a class and present no difficulty in ascertaining the person intended; and the fact that the testatrix at the time she executed her will, orally gave to the words an unusual meaning, is immaterial upon the question of their interpretation.

PETITION, by the executor of Sarah J. Clark's will for advice as to the construction of the residuary clause, which is as follows: "the