

ment. The fact the improvement in the condition of the horse had proved to be only temporary on several former occasions, when taken in connection with the veterinary's advice and the fact the price for which the horse was sold was only about half the price of a sound horse, warrants the conclusion that the defendant feared the horse might never recover. In other words, it warrants the conclusion that he was not telling the truth when he said he thought the horse would recover. A false statement as to what a person thinks (*Sleeper v. Smith*, 77 N. H. 337, 339), as well as one as to what he knows in respect to a particular matter (*Stewart v. Stearns*, 63 N. H. 99) is actionable, if it is made to defraud. *Shackett v. Bickford*, 74 N. H. 57.

Exception overruled.

All concurred.

Hillsborough, }
Feb. 5, 1918. }

CHARLES W. LAPHAM *v.* ELEANOR C. COLLINS.

A verdict for work done upon the defendant's house by the plaintiff was sustained upon evidence that the defendant ordered him to do the work, though the plaintiff understood he was to be paid therefor by the defendant's husband.

ASSUMPSIT, for work done and materials furnished. Judgment for the plaintiff on the report of an auditor. The auditor found that the defendant's husband asked the plaintiff to make a price for painting a house, telling him that it belonged to his wife, that the work was nothing to him and that any agreement she made would be satisfactory to him. The plaintiff told him he would like to do the work but that it was too large a job for him to figure. The plaintiff saw the defendant the next day and told her the same thing and she told him to do the work. He understood, however, that he was to be paid by her husband. Transferred by *Allen, J.*, from the May term, 1917, of the superior court, on the defendant's exception to the denial of her motion for judgment on the report.

Wason & Moran and *Martin & Howe* (Mr. Howe orally), for the plaintiff.

Doyle & Lucier and *Bernard W. Carey* (Mr. Lucier orally), for the defendant.

YOUNG, J. The only question of law raised by the defendant's exception is whether the general finding for the plaintiff is inconsistent with the special findings. It does not necessarily follow from the finding that the plaintiff understood he was to be paid by the defendant's husband that he cannot maintain this action. If the minds of the parties did not meet on this point, that is, if the plaintiff understood he was to be paid for the work by the defendant's husband while she understood he was to be paid by her, he can recover and that is the effect of the general finding. In other words, the finding that the plaintiff understood he was to be paid by the defendant's husband is not inconsistent with a finding that the work was done for her and that her husband was merely acting as her agent in what he did in the matter.

Exception overruled.

All concurred.

Hillsborough, }
Feb. 5, 1918. }

ROBERT S. MORRISON v. ALBERT W. NOONE.

A finding on the *voir dire*, that a witness is competent to judge of the value of land, is not subject to exception if based on evidence.

Counsel may assert *arguendo* that the false testimony comes from the opposite party.

An exception to the refusal of the presiding justice to set aside a verdict as against the evidence presents no question of law.

PETITION, under the flowage act, being the same case reported *ante*, 338. Trial by jury and verdict for the plaintiff.

Subject to exception, one Moore was found qualified to testify as to his opinion of the value of farm land upon evidence that he had resided in the vicinity seventy-three years, had worked on the land, owned some 300 acres in the vicinity, had bought a few pieces of real estate and tried to buy others, had charge of various lands in the neighborhood as executor, and was somewhat familiar with land values.

The declaration of Gallup that Joseph Noone was present when the letter H was cut, was excluded, subject to exception.

In the closing argument to the jury, counsel for the plaintiff said: "Mr. Noone may be the most public spirited man in Peterborough, but I have got this to say to you, Mr. Noone: You stand here con-