

sewer is covered, will, as the witnesses expressed it, plug the catch-basin so that no water will pass. The plaintiffs, standing upon the proposition that the catch-basins were plugged at the time of the earlier shower and alleging negligence in the city from failure to clean them out before the shower of September 22, assumed the burden of proving such negligence. Whether they were in fact filled with sand September 22 was a fact easily susceptible of proof. The defendants' evidence was that an examination made immediately after September 22 showed the catch-basins in proper condition while the plaintiffs offered no evidence whatever except their statement that the water did not pass off through them. There was evidence, and it is perhaps matter of common knowledge, that at times during heavy showers the litter of the street will wash over the grating covering openings into water channels provided beneath the street, and form a sort of blanket over the opening which will prevent the water entering. Whether this is the explanation of the alleged failure of the catch-basins in this instance or not is immaterial; the plaintiffs, relying upon the failure of the defendants to correct a claimed defect in the condition of the system as negligence, cannot recover without offering some proof in support of such claim.

As the plaintiffs failed to offer proof of improper construction, or in support of the only ground of negligence in maintenance claimed, the order of nonsuit should have been made.

Exception sustained: verdict and judgment for the defendants.

All concurred.

Hillsborough, }
June 6, 1916. }

JAMES G. FELLOWS & a. v. BOSTON & MAINE RAILROAD & a.

REPLEVIN, for a car of box boards. Trial by jury and verdict for the plaintiffs. Transferred by *Sawyer, J.*, from the September term, 1915, of the superior court, on the defendant Eaton's exception to the denial of his motion for a directed verdict. The facts appear in the opinion.

George I. Haselton and Martin & Howe, for the plaintiffs.

Ivory C. Eaton, for Eaton.

YOUNG, J. The plaintiffs bought and paid for the boards in question in February, 1913, but left them with the vendor, and Eaton contends that their title failed for that reason. *Twyne's Case*, 3 Co. 80; *Coburn v. Pickering*, 3 N. H. 415; *Parker v. Pattee*, 4 N. H. 176; *Trask v. Bowers*, 4 N. H. 309; *Paul v. Crooker*, 8 N. H. 288; *Page v. Carpenter*, 10 N. H. 77; *Coolidge v. Melvin*, 42 N. H. 510; *Shaw v. Thompson*, 43 N. H. 130; *Putnam v. Osgood*, 51 N. H. 192; *Putnam v. Osgood*, 52 N. H. 148; *Lang v. Stockwell*, 55 N. H. 561; *Cutting v. Jackson*, 56 N. H. 253; *Plaisted v. Holmes*, 58 N. H. 293; *Flagg v. Pierce*, 58 N. H. 348; *Parker v. Marvell*, 60 N. H. 30; *Sanborn v. Putnam*, 61 N. H. 506; *Parsons v. Hatch*, 63 N. H. 343; *Janelle v. Denoncour*, 68 N. H. 1; *Baker v. Tolles*, 68 N. H. 73; *Thompson v. Esty*, 69 N. H. 55; *Harrington v. Blanchard*, 70 N. H. 597.

In order to avail himself of such a defect in the plaintiffs' title he must show that he purchased these boards without knowing that they were the plaintiffs' property. The question, therefore, and the only question raised by his exception is whether there is any evidence tending to prove, either that he did not buy these boards, or, that he knew of the sale to the plaintiffs. While it seems to be conceded that he bought a car of boards from the same vendor in March, 1913, the plaintiffs' evidence tended to prove that the boards he bought were not the ones that were replevied. Since this is so, the jury was warranted in finding that these boards did not belong to Eaton. In other words, the jury was warranted in finding that, even if the plaintiffs' title was defective as to subsequent purchasers for value, it was good as against Eaton; or that if there was a defect in the plaintiffs' title he was not in a position to take advantage of it.

Exception overruled.

All concurred.

Carroll, }
Oct. 3, 1916. }

DANA J. BROWN, *Guardian*, v. OLIVER P. BERRY & a.

PETITION, by the owner of the grist-mill to modify the receiver's instructions. The proceeding is a branch of the same litigation heretofore before the court and reported in 71 N. H. 117, 128; 72 N. H. 77, 211; 73 N. H. 310, 603, 611; 74 N. H. 225, 598; 75 N. H.