

*William Wright and Henry D. Yeaton*, for the plaintiff.

*Snow, Snow & Cooper*, for the defendant.

YOUNG, J. As the case is understood, the court found that the chattels in question belonged to the defendant, and as the evidence warrants that finding, the plaintiff's exception raises no question for this court.

*Exception overruled.*

All concurred.

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Grafton, }  
April 6, 1920. }

SMITH SHOOK & LUMBER CO. *v.* FRED PERKINS.

ASSUMPSIT. Trial by jury, verdict for the plaintiffs. Their evidence tended to prove that one Patten, the defendant's father-in-law, spoke to them in March, 1917, about buying a lot of lumber belonging to the defendant, and that they offered him twenty dollars a thousand for it delivered to their mill and subsequently wrote the defendant to that effect. They could not agree, however, on the details of the trade and the matter dropped until the following November, when Patten asked them if they still wanted the lumber. They said they did, and the next week he delivered two loads and refused to deliver any more because their measure was unsatisfactory. Transferred from the May term, 1919, of the superior court by *Branch, J.*, on the defendant's exception to the denial of his motion for a directed verdict.

*Alvin F. Wentworth and Walter M. Flint*, for the plaintiffs.

*Nathaniel E. Martin and William W. Thayer*, for the defendant.

YOUNG, J. The evidence warrants the jury's finding that Patten sold the lumber in question to the plaintiffs. The only question, therefore, for this court is whether the evidence warrants a finding that Patten was authorized to sell it. The evidence relevant to that issue all comes from him and from the defendant, and is in substance that the defendant asked him sometime in October, 1917, if he thought the plaintiffs still wanted the lumber and told him

that if they did he could haul them one or two loads and that if the measure they gave was not the same as the marks on the loads to let him know. It is clear that this evidence will not sustain a finding that Patten was authorized to make the trade the jury found he made with the plaintiffs.

*Exception sustained: judgment for the defendant.*

PEASLEE, J., was absent: the others concurred.

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Grafton, }  
May 4, 1920. }

DAVID L. QUIMBY v. BOSTON & MAINE RAILROAD.

CASE, for personal injuries. Verdict for the plaintiff.

The defendant's motions for a nonsuit and for a directed verdict were denied and the defendant excepted. The essential facts are stated in the opinion. Transferred from the September term, 1919, of the superior court by *Sawyer, J.*

*Murchie & Murchie* (Mr. Alexander Murchie orally), for the plaintiff.

*Leslie P. Snow, Alvin Burleigh and Jewett & Jewett* (Mr. Theo S. Jewett orally), for the defendant.

WALKER, J. From the plaintiff's evidence the following facts might reasonably be found. On the day he was injured he was working for the Parker-Young company in Lisbon driving a horse attached to a tip-cart which he had loaded with slab-wood, and was about to transport it across the defendant's track over a private crossing which was maintained there for the convenience of the Parker-Young company. He had been engaged in this work for several days and knew that a train was due at the crossing. Before attempting to drive over the crossing, he stopped his team near it, and walking onto it looked down the track to see if the train was in sight, but on account of a dense bank of steam escaping from a building near the track he was unable to see the train. The steam extended some forty feet below the crossing. The locomotive