

the purchase of the car comprised wages which the plaintiff owed her as housekeeper and her promise to work for the plaintiff for the ensuing six months. She stated in express terms that she had fully performed her part of the bargain. The evidence was clearly sufficient to support the verdict.

2. The plaintiff further claims that the court had no power to render a verdict for the value of the car. P. S., c. 241, ss. 7, 8 (P. L., c. 352, ss. 7, 8, 9). The claim is untenable. It has been repeatedly held that one who wrongfully brings an action of replevin cannot complain because he is required to pay the value of the property instead of being permitted to return it. *Ramsey v. Landry*, 78 N. H. 612, 613, and cases cited.

3. The plaintiff also contends that certain evidence relating to the value of the car was inadmissible. This testimony was given by a witness who examined the car at about the time it was replevied and who was qualified to testify on the subject. He stated that the car was worth \$700 when he saw it, and that its value at the time of the trial, assuming it to be in good running condition, would be about \$350. The impropriety of the testimony is not apparent, but even if it were, no question would be presented for this court to consider, since the evidence was admitted without objection or exception.

*Exceptions overruled.*

All concurred.

Merrimack, }  
Jan. 4, 1927. }

WILLIAM WILSON *v.* GEORGE R. TAYLOR COAL CO.

In case by a servant against his master for injuries received from the breaking of a wooden railing on which the servant was standing while at work, evidence that the foreman and other workmen used the railing in the same way to the plaintiff's knowledge and that a rule forbidding such use had never been brought to his notice warranted a submission to the jury of the issues as to defendant's negligence, plaintiff's assumption of the risk and his due care.

CASE, for negligence. Trial by jury and verdict for the plaintiff. A bill of exceptions was allowed by *Branch*, C. J., to the denial of motions for a nonsuit and directed verdict. The action is at common law. The facts are stated in the opinion.

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

*Doyle & Doyle (Mr. Paul J. Doyle orally), for the defendant.*

PEASLEE, C. J. The plaintiff was injured by a fall, which was caused by the breaking of a spruce railing upon which he was standing, while at work unloading coal cars in the defendant's coal sheds. The railing was two by five inches, and of sufficient size to sustain his weight, if straight grained. It had knots in it which made it unsuitable for this use and because of which it broke. This condition could have been discovered upon an inspection, but was not apparent without one.

The defendant claimed to have a rule forbidding workmen to stand on the railing; but there was evidence that the plaintiff never heard of the rule, that he was given no instructions upon the subject, and that other workmen, and also the foreman, used the railing in this way, to the plaintiff's knowledge.

The defendant's claim at the trial that it had a rule was an admission from which it could be found that a rule was reasonably required. *Lane v. Manchester Mills*, 75 N. H. 102. Taken in connection with the evidence of non-communication to the plaintiff, and of the practice which was carried on by the foreman and the other workmen, it made a case for the jury. It could be found from this evidence alone that the defendant failed to perform the duty owed to the plaintiff, that the plaintiff did not assume the risk, and<sup>2</sup> that his negligence was not proved.

*Exceptions overruled.*

BRANCH, J., did not sit: the others concurred.

Merrimack, }  
Jan. 4, 1927. }

WALTER H. SARGENT *v.* CANTERBURY MUTUAL FIRE  
INSURANCE CO.

In the absence of misrepresentations an assured is presumed to know the provisions, terms and conditions of his policy.

An estoppel cannot arise from silence if the party asserting the estoppel is not misled thereby.

Silence when there is no duty to speak is no evidence of a waiver.

A waiver by either words or conduct does not extend beyond their fair meaning.

Where a fire insurance policy contains a forfeiture clause in case of double insurance, the silence of the insurer and its retention of a deposit note, when told