

v. *Chase*, 61 N. H. 135; *Douyette v. Railway*, 69 N. H. 625; *Wheeler v. Railway*, 70 N. H. 607; *Saucier v. Company*, 72 N. H. 292; *Hart v. Railroad*, 72 N. H. 410; *Terrell v. Payne*, 81 N. H. 164, 168), the failure to transfer the evidence leaves the propriety of the requests incapable of decision, and examination of their validity as legal propositions is therefore uncalled for.

*Exceptions overruled.*

Municipal Court }  
of Manchester, }  
May 4, 1926. }

WLADJASK MOSKWA v. NICHOLAS J. NASSIKAS & a.

ASSUMPSIT, for milk sold and delivered. Trial by the court. Verdict for the plaintiff.

During October, November, and the first five days of December, 1924, the plaintiff delivered one hundred and fifty-four cans of milk to the defendants, who are dealers in milk. The agreed price was fifty cents per can.

On December 2, a milk inspector took a sample of the plaintiff's milk at the defendants' plant, and upon the following day he took a second sample. Tests showed that both samples were adulterated with water. The defendants mixed the plaintiff's milk with other milk and sold it in the usual course of business. They did not know that any part of it was adulterated, until the above tests were made. There was no evidence as to the number of cans delivered by the plaintiff upon December 2 and 3.

Upon the foregoing facts the court found a verdict for the plaintiff for seventy-seven dollars. "The question whether upon the foregoing facts, the verdict for the plaintiff can be sustained" was reserved and transferred from the municipal court of Manchester by *Perkins, J.*

*Timothy J. Howard*, for the plaintiff.

*James A. Broderick*, for the defendant.

*Per Curiam.* There can be no recovery for the purchase price of goods which the vendor could not legally sell. *Albertson v. Shenton*, 78 N. H. 216; *Dunbar v. Locke*, 62 N. H. 442; *Bliss v. Brainard*, 41 N. H. 256; *Lewis v. Welch*, 14 N. H. 294; *Roby v. West*, 4 N. H. 285. Adulterated milk could not legally be sold. Laws 1917, c. 156, s. 1.

At least two cans of the milk sold by the plaintiff to the defendants, *i. e.*, those from which the samples were taken, were watered. For the price of these two cans, amounting to one dollar, there can be no recovery. A verdict for the plaintiff for the balance of his claim would be sustainable upon the reported facts.

*Case discharged.*

Grafton, }  
June 24, 1926. }

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RICHARDSON & CAMERON CO., INCORPORATED, v.  
HERBERT LAHOUT.

ASSUMPSIT, to recover the balance due on a contract for the installation of a heating plant, and for extras. Trial by the court and verdict for the plaintiff.

The plaintiff agreed to install a steam boiler and 400 square feet of radiation in the defendant's store and dwelling-house in Littleton. The contract contained a warranty that the apparatus specified would heat the rooms to 70 degrees in coldest weather.

After the plaintiff had begun work under the contract, the defendant decided to have radiators placed in two rooms which were not included in the contract, and to install a hot-water tank. This additional radiation amounted to 145 square feet. In December the defendant complained that the boiler was insufficient to heat the premises, whereupon the plaintiff installed a larger boiler.

The court found as a fact that the first boiler was sufficient to satisfy the warranty with only 400 feet of radiation, but was not sufficient with 545 feet. It was further found that the radiation specified in the contract was sufficient to properly heat the premises. The court ruled as a matter of law that the warranty did not apply to the installation as completed, and the defendant excepted. Transferred by *Sawyer, J.*

*Henry A. Dodge and Edgar M. Bowker, for the plaintiff.*

*George W. Pike, for the defendant.*

*Per Curiam.* By the terms of the contract the warranty was expressly limited to 400 feet of radiation, and no evidence is reported from which any extension of this warranty could be found.

*Exception overruled.*