

with any reason to doubt the testimony of plaintiffs' witnesses, I would have so found myself. The wife had a separate estate; she carried on the plantation for which supplies were bought; she shipped the crop with her own marks; the credit was given to her; the accounts were kept in her name; the husband was absent on other business, and was without property and means. Under this proof it is easy to see how the jury refused to find that the husband carried on the place, with his wife as agent, and that the debt contracted for supplies was the husband's debt, which the wife gave the draft to pay. But be this as it may, the verdict of the jury on the issue submitted was supported by evidence, and cannot be said to be either against the law or the evidence.

Nor can the verdict be said to be against the charge of the judge, given in these words: "Unless you are satisfied that the debt for which this paper was given was contracted for the benefit of the separate estate of the defendant, who is a married woman, which latter fact is not controverted, you should find for the defendant." Undoubtedly the jury was satisfied that the debt was contracted for the benefit of the separate estate of the defendant, for there was evidence submitted which, if credited, tended to show that fact. This case turned on a question of fact, and came within the province of the jury. There is evidence to support the finding; the verdict ought not to be disturbed by the court. The motion for a new trial will be overruled.

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PAINÉ v. NORTHERN PAC. R. CO.\*

(Circuit Court, D. Minnesota. December Term, 1882.)

TRESPASS FOR CUTTING TIMBER—INSUFFICIENT DEFENSE.

In a suit by the owner of land for damages for timber cut thereon by the licensee of the vendor, and for the vendor's use, the unrevoked parol license given by the vendor prior to the purchase by complainant is no defense.

Motion for New Trial.

*Ensign & Cash* and *Wilson & Lawrence*, for plaintiff.

*W. P. Clough*, for defendant.

NELSON, D. J., (*orally*.) A bill of exceptions was settled and signed for the purpose of allowing a writ of error to the supreme court of the United States. A motion is made by the defendant, the Northern Pacific Railroad Company, for a new trial. Suit was brought by Paine

\*Affirmed. See 7 Sup. Ct. Rep. 323.

against the Northern Pacific Railroad Company to recover the value of a large amount of timber that was cut upon land owned by plaintiff and sold to him by the Northern Pacific Railroad Company.

The principal defense set up by the Northern Pacific Railroad Company is that before they sold to Paine a parol license was given to the Knife Falls Water-power Company to cut upon this specific property, the latter agreeing to cut timber to a certain amount, and deliver to the former at a certain price. The Knife Falls Water-power Company went upon this land and cut the timber. Subsequent to this parol license the land was sold unconditionally to Paine. There is no question but that the timber was cut upon Paine's land after he purchased the property unconditionally. The defense is that this parol license previously given to the Knife Falls Water-power Company was never revoked, and, that being so, it was a defense in this suit of Paine against the railroad company to recover the value of the timber.

I held on the trial that such parol license was no defense to this action.

A writ of error will be allowed, and the case may go to the supreme court upon the bill of exceptions as settled and signed.

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### THE FLORENCE P. HALL.

(District Court, S. D. New York. December 8, 1882.)

#### 1. COLLISION—INEVITABLE ACCIDENT—BURDEN OF PROOF.

Where, in case of a collision at sea at night, the defense of inevitable accident is raised, and the main issue is whether the weather was such that the lights of one vessel could be seen in time by the other to enable her by due nautical skill to keep out of the way, *held*, that the burden of proof is upon libelants to show, not only that their lights were burning, but also that the weather was such that they could be seen a sufficient distance to avoid the collision.

#### 2. CONFLICTING EVIDENCE—CREDIBILITY OF WITNESS.

Where the testimony of witnesses from the two colliding vessels was in irreconcilable conflict as to the condition of the weather, *held*, that superior credit was due to those witnesses who were sustained by collateral evidence concerning the material subsidiary points respecting the force of the wind and time of the commencement of the rain, storm, and gale.

#### 3. COSTS ON DISMISSAL—RULE OF.

Upon contradictory evidence as to the state of the weather, the libel in this case was dismissed on the ground of inevitable accident; but the case being doubtful on the merits, and the claimant's vessel having remained practically in concealment from the libelants for a year after the collision, *held*, that the