

deed to Darrah was made to secure a debt cannot be heard in a court of law, but the mortgagor must go into a court of chancery for relief. The court, in delivering the opinion, used this language:

"The offer of the bond was not accompanied by any offer to prove, either that the debt secured was not due, or that the same had been paid, or that the decree directed by the opinion in 90 Ill. 245 had been entered by the lower court, and performed by appellant."

The bond spoken of by the court had been offered by the defendant to prove that the deed on which plaintiff based his right to recover was not absolute, but was in effect a mortgage. The inference is very strong that, if the offer of the bond in evidence had been accompanied by an offer to prove that the debt secured had been paid, the evidence would have been proper, and a recovery thereby defeated; and this view meets my approval. While the well-known distinction between the rules of pleading and evidence in courts of law and courts of chancery will be recognized, the flexibility of the rules of law in adapting them to cases falling within the reason of such rules must not be lost sight of. To compel the plaintiff to resort to a court of chancery in order to establish that the defense interposed, alleged to be an outstanding title, is not a valid defense, and is no outstanding title, and presents no obstacle to her right of recovery, would tend to the multiplicity of suits, and would sustain a view of the question too technical and arbitrary for the prompt attainment of justice. There will be a judgment in favor of the plaintiff for the 80-acre tract of land described in the declaration.

UNITED STATES v. LOVING.

(*District Court, N. D. Texas. March 27, 1888.*)

1. INDIANS—TRESPASS ON INDIAN LANDS—GRAZING CATTLE.

Rev. St. U. S. § 2117, provides that "every person who drives or otherwise conveys any stock of horses, mules, or cattle, to range and feed on any land belonging to any Indian or Indian tribe, without the consent of such tribe, is liable to a penalty of one dollar for each animal of such stock." *Held*, that this penalty is recoverable when cattle are driven and permitted to graze on the lands of an Indian tribe a single day without permission.

2. SAME—OBSTRUCTION OF PERMITTED TRAIL.

One who makes a trail across Indian lands to the nearest accessible point of a permitted trail, incurs the penalty prescribed in Rev. St. U. S. § 2117, for grazing cattle on said lands without permission, although prevented by natural obstructions from entering said lands by the permitted trail.

At Law. Action to collect penalty under Rev. St. U. S. § 2117, for driving cattle on land belonging to the Indians.

This action was brought against J. C. Loving to collect the penalty for driving cattle into the Comanche, Kiowa, and Wichita Indian reservations.

MCCORMICK, J., (*charging jury.*) This action is prosecuted to enforce the penalty provided for in the section of the law of the United States for the protection of the Indians:

"Every person who drives or otherwise conveys any stock of horses, mules, or cattle to range and feed on any land belonging to any Indian or Indian tribe without the consent of such tribe, is liable to a penalty of one dollar for each animal of such stock."

It is admitted that the defendant drove 1,200 head of cattle into the Comanche, Kiowa, and Wichita Indian reservation, and that said cattle had been so on the lands of said Indians for at least two days and a half, subsisting by grazing at will along the route they were traveling, or, if not at will, at least being allowed to graze for their subsistence for that time. The statute, as I construe it, is not limited to the meaning to range permanently or for any long period or an indefinite period of time to graze, but the offense is complete when they are so driven and permitted to range and graze one day. It is not disputed that there is a fixed trail well known to the defendant (as he testifies on the stand) through these lands of the Indians, in which persons have permission to drive cattle; but the defendant's cattle were not being driven on this trail, and it is no defense to this action that, by reason of inclosures or other obstructions on the Texas side of Red river, the defendant could not enter the Indian lands on the permitted trail. He could not make a trail of his own from some point where he chose to enter the Indian lands without permission, even to the nearest accessible point on the permitted trail, without incurring the penalty. There being no dispute about the facts of the case, you are instructed to return a verdict for the plaintiff, (the United States) for \$1,200.

ROBERTSON v. CORNELISON.

(*Circuit Court, D. South Carolina. April 9, 1888.*)

1. MASTER AND SERVANT—DEFECTIVE APPLIANCES.

A master is bound to provide safe machinery, and keep it in safe order; not the best possible machinery, or in the best possible order.¹

2. SAME—EMPLOYMENT OF CHILDREN.

In the use of machinery, a master is bound to exercise ordinary care; and in the case of the employment of a child a higher degree of care is required than

¹ If the machinery furnished by a master to his servant is sound, well made, and kept in repair, he will not be liable for an accident occurring to an employe when the only ground alleged is that there is a better and safer kind used for the same purpose. *Richards v. Rough*, (Mich.) 18 N. W. Rep. 735; *Sweeney v. Envelope Co.*, (N. Y.) 5 N. E. Rep. 358; *Pierce v. Cotton Mills*, (Ga.) 4 S. E. Rep. 381; *Delaware River Works v. Nuttall*, (Pa.) 13 Atl. Rep. 65. A master is not bound to adopt the safest method of working. *Naylor v. Railway*, (Wis.) 11 N. W. Rep. 24; *Hickey v. Taaffe*, (N. Y.) 12 N. E. Rep. 286. And his liability for injuries to his servant for defective arrangements is not that of an insurer or guarantor. The question is one of reasonable care and diligence. *Batterson v. Railway Co.*, (Mich.) 13 N. W. Rep. 508, and 18 N. W. Rep. 584; *Railroad Co. v. Wagner*, (Kan.) 7 Pac. Rep. 204; *Railroad Co. v. Hughes*, (Pa.) 13 Atl. Rep. 286; *Bowen v. Railway Co.*, (Mo.) 8 S. W. Rep. 230.