

Defendants maintain, however, that if the time limit for substituting the administrator of a deceased party under RSA 556:10 is unconstitutional, then the entire statute must also fall, thereby depriving plaintiff of her cause of action. A portion of a statute may be stricken as unconstitutional if it appears that the legislature would have enacted the statute without the offending provision. *Fernald v. Bassett*, 107 N.H. 282, 285, 220 A.2d 739, 742 (1966); *The Employers' Liability Cases*, 207 U.S. 463, 501 (1908). Because the primary purpose of RSA 556:10 was to preserve a cause of action by allowing substitution of a deceased's administrator in a pending suit, the differential time limit for such actions may be declared unconstitutional without affecting the entire statute's constitutionality.

Accordingly, we hold that the requirement of RSA 556:10 that the administrator assume prosecution of the action before the end of the second term after the decease of the plaintiff is unconstitutional to the extent that it allows administrators in counties with three terms less time to assume prosecution of actions. Plaintiff in this case should be allowed the same amount of time (one year) to file as plaintiffs in actions similarly situated in counties with only two superior court terms.

*Remanded.*

All concurred.

Hillsborough  
No. 6883

ROGER A. CARON v. WILLIAM LABRIE

January 31, 1975

*Wiggin, Nourie, Sundeen, Pingree & Bigg (Mr. Dort S. Bigg, Jr. orally) for the plaintiff.*

*Gerard O. Bergevin and Richard J. D'Amours (Mr. Bergevin orally) for the defendant.*

### Memorandum Opinion

Defendant's exceptions to a verdict for the plaintiff in the amount of \$3,633.75 were reserved and transferred by the Trial Court, *Cann, J.* Subsequent to oral argument this court received a typewritten letter purportedly signed by the plaintiff. In substance this letter states that the claim of the plaintiff is false and he is "retracting" his suit against the defendant. On order of the court, counsel for the parties again appeared orally. They informed the court that neither had any knowledge of the authenticity of the letter and that plaintiff's counsel had been unable to locate his client. The case is remanded to the trial court for such further hearing as it deems necessary to determine the authenticity and effect of the letter received by this court.

*Remanded.*