

## SIDES v. PORTSMOUTH.

If a railroad, having the right to cross a highway, does not leave it reasonably safe, and a person is injured thereby, the town may be held liable.

CASE, for damage to a traveller caused by a defective highway. The alleged defect was a hole at a railroad crossing. The defendant excepted to the refusal of the court to instruct the jury that it is not answerable for the mode of construction or condition of the railroad. Verdict for the plaintiff.

*Foster* and *Hatch*, for the defendant.

*Page* and *Frink*, for the plaintiff.

BINGHAM, J. If a railroad company, acting under their charter, create an obstruction in a highway by which a traveller sustains damage, the town is answerable as if the same acts had been done by an individual. *Willey v. Portsmouth*, 35 N. H. 313; *Elliot v. Concord*, 27 N. H. 204; *State v. Dover*, 46 N. H. 452; *Bacon v. Boston*, 3 Cush. 179; *Eyler v. Co. Com'rs*, 49 Md. 257; *Watson v. Tripp*, 11 R. I. 98.

*Judgment on the verdict.*

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

## SOLOMON v. CHESLEY &amp; a.

In an action on a bond given to indemnify one against loss from an injunction granted under the 36th rule in chancery, on a bill in equity brought to vacate a judgment and enjoin execution upon it, the reasonable counsel fees incurred in defending against the bill may be recovered as damages.

DEBT, on the bond of the defendants given to indemnify Mohr, Solomon & Mohr against loss from an injunction issued against them, under the 36th rule in chancery. The plaintiff, as surviving partner of Mohr, Solomon & Mohr, recovered judgment against Chesley, and took execution upon it. Chesley, charging that the judgment was obtained by fraud, filed a bill in equity to vacate it and restrain its collection, and, upon filing the bond in suit, procured a temporary injunction. The bill was tried, and failed. Sub-

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