

Exceptions must stand on the ground on which the party taking them intended they should stand when they were taken. But if, when taken, it was intended to rely on this point, it could not now avail the plaintiff, for the attention of the court was not called to the point now relied on. When an exception is taken to instructions which are erroneous, upon a point which, if made known at the time, would have been rectified, the point must be stated, so that the court can understand the ground of objection, and have an opportunity to correct the error. If not stated, the exception will be regarded as waived. It would be unjust to allow a party to lie by and take the chances of a verdict in his favor, and, if defeated, avail himself of an exception which might have been obviated if seasonably known. *Moore v. Ross*, 11 N. H. 547, 557; *McConihe v. Sawyer*, 12 N. H. 396; *Whipple v. Stevens*, 22 N. H. 219; *Hayward v. Bath*, 38 N. H. 179; *Heath v. Heath*, 58 N. H. 292; *Ford v. Monroe*, 20 Wend. 210.

*Exception overruled.*

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

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LADD v. STRATTON.

A plea in abatement, alleging the pendency of a prior action for the same cause, is bad on demurrer, if the record of the prior action is not enrolled.

WRIT OF ENTRY. Plea in abatement, alleging the pendency of a prior action for the same cause. The plaintiff filed a replication, to which there was a demurrer by the defendant. The defendant did not enroll the record of the prior action.

*Bingham & Mitchell*, for the defendant.

*Carpenter and Batchellor* for the plaintiff.

STANLEY, J. The plea in abatement is bad. It does not fully set out the record of the prior action. The rule is uniform in this state, that a defendant, who by plea in abatement relies on the record or process of any court, must enroll in or with his plea the record or process on which he relies. *Smith v. Ins. Co.*, 22 N. H. 25. This is required, so that the court may have the whole record before them, and judge from its inspection whether the facts are as alleged.

*Demurrer overruled.*

BINGHAM and SMITH, JJ., did not sit: the others concurred.