

was married. The object of this testimony was to show the jury that P., being mistaken or untruthful as to the date of her marriage, must also be unreliable in other particulars. If it would tend to weaken her testimony to any greater extent by showing the true date of her marriage, it would be contradicting her upon a collateral issue, and to what extent that should be carried is a question of fact to be determined at the trial term. *Amoskeag Co. v. Head*, ante 332, 337; *Merrill v. Perkins*, ante 343; *State v. Railroad*, 58 N. H. 410.

Exceptions overruled.

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

STOWELL v. FOWLER.

In assumpsit on a claim barred by the statute of limitations, evidence that the defendant said he had no money; that he would settle when he should get the money; that he would not promise any time when he would pay; that he expected his mother would die, and if she should he would settle up the matter,—is not sufficient to take the case out of the statute, without proof of the defendant's ability to pay.

ASSUMPSIT. Plea, the statute of limitations. Replication, a new promise within six years.

One C, having the claim to collect, called on the defendant and informed him that something must be done about it, and asked him what he would do. The defendant said he would not give a note to anybody, but would settle as soon as he could; that it should all be settled up; that he thought the bill was pretty strong, and that there was something wrong about it, but that he would settle it when he should get the money. He would not promise any time when he would pay, but said he expected his mother would die, and if she should he would settle up the matter.

On two previous occasions the defendant said he had no money, and could do nothing about the claim then; that he did not know when he should have any, but expected some to come to him at some time. He made no objection to the bill, but declined to give a note, and gave C to understand that he would settle.

On the above testimony the defendant moved for a nonsuit, which was denied by the referee who heard the cause, and the defendant excepted.

Corser and W. T. & H. F. Norris, for the defendant.

Ray & Walker, for the plaintiff.

59	585
69	184
69	644

59	585
71	387

59	585
74	273
74	274

SMITH, J. To entitle the plaintiff to recover, he must prove a direct and unqualified admission of a previous subsisting debt which the defendant was liable and willing to pay. *Ventris v. Shaw*, 14 N. H. 422. If the evidence shows an undertaking to pay, it was to pay as soon as the defendant should be in funds. His promise was not contingent upon the death of his mother, but that event was one occasion when he expected to be in funds. There was no evidence that the defendant subsequently had money from which he might have settled this claim. The promise was, to "settle when he should get the money." The motion for a nonsuit should have been granted. *Exeter Bank v. Sullivan*, 6 N. H. 124, 132, 135, 136; *Butterfield v. Jacobs*, 15 N. H. 140; *Weare v. Chase*, 58 N. H. 225; *Dodge v. Leavitt*, ante 245; 3 Par. Cont. 70.

Exceptions sustained.

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

SEWELL v. WEBSTER.

59	586
67	377
68	273

59	586
71	27
71	114

Whether a person was unavoidably prevented from filing the claim for damages required by Gen. Laws, c. 75, s. 7, is a question of fact to be determined at the trial term.

Travelling on Sunday for pleasure will not prevent the traveller from recovering for injuries received from a defective highway.

PETITION, under Gen. Laws, c. 75, s. 9, for leave to file the statement required by s. 7. Facts found at the trial term.

The plaintiff was confined to his house for more than ten days after an accident upon a highway, from the injuries then received. He was not unconscious, nor unable to relate the circumstances of the accident, nor unable to describe the locality. He employed a competent person to prepare the statement required by s. 7, to whom the supposed place of the accident was pointed out by the plaintiff's attending physician. The plaintiff's wife was riding with him at the time of the accident, and might have gone to the place and pointed it out if she had been requested to do so. The plaintiff's agent prepared a statement, which was signed and sworn to by the plaintiff, and seasonably filed with the town-clerk. The place of the accident was described as "about seven rods north of an old barn called the Wadleigh barn," and the obstruction as "two large stones on the east side of and in said highway." The actual distance of the stones from the barn was seventeen rods. The ground was paced by the agent, who through inadvertence incorrectly stated the distance in the statement. There were two