

[Strafford, June, 1889.]

LOCKE, *Adm'r*, v. FIRST NATIONAL BANK OF GONIC.

ALLEN, J. The agreed facts are a deposit and promise to pay to the plaintiff's intestate, March 11, 1872; and no new promise was ever made to him in his lifetime, nor to his administrator since his death, which occurred more than six years after his promise. The statute of limitations being pleaded on the facts stated, the maintenance of the action is barred.

*Judgment for the defendants.*

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

*J. A. Edgerly*, for the plaintiff.

*Worcester & Gafney*, for the defendants.

[Strafford, December, 1889.]

MOONEY, *Adm'r*, v. BOSTON & MAINE RAILROAD.

BILL IN EQUITY, alleging that the plaintiff's intestate was killed by the negligence of the defendants; that she was prevented from giving the notice required by Laws of 1887, *c.* 71, *s.* 2, within the time limited, by acts of the defendants' agents and attorneys, and praying that she be now allowed to give the required notice. The bill was dismissed upon a hearing, and the plaintiff filed a bill of exceptions.

*H. D. Yeaton and Marston & Eastman*, for the plaintiff.

*John Kivel and Worcester & Gafney*, for the defendants.

BLODGETT, J. It does not definitely appear upon what grounds the plaintiff's bill was dismissed at the trial term, after the hearing had therein; but, no other ground of dismissal being shown, it is fairly to be assumed that the presiding justice found as a fact that the plaintiff was not induced to refrain from employing counsel and giving the notice required by *c.* 71, Laws of 1887, relating to actions for personal injuries resulting in death, by any acts or representations of the defendants or their authorized agents, as is alleged in the bill. Taking this to be so, no question of law is raised by the plaintiff's exception to the order of dismissal. Issues of fact arising in the trial term are properly for the exclusive

determination of that term, and, consequently, when they are heard and decided there, the decision will not be revised here. To support a bill of exceptions, some legal error must be alleged and shown.

*Exceptions overruled.*

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

[Strafford, December, 1889.]

LEONARD v. STATE.

BINGHAM, J. The facts are the same as in *Philpot v. State*, ante, p. 250.

*Petition denied.*

All concurred.

*Dodge & Caverly* and *W. S. Pierce*, for the plaintiff.

*J. Kivel*, solicitor, for the state.

[Merrimack, December, 1889.]

CARTER, *Adm'r*, v. PAGE BELTING CO.

CASE, for injuries resulting in the death of the plaintiff's intestate, a workman in the employ of the defendants.

*Albin & Martin*, for the plaintiff.

*Chase & Streeter*, for the defendants.

SMITH, J. The only question submitted to the jury was, whether Carter knew, or by ordinary care might have known, the danger attending his work in and about the drum in the condition in which it was at the time of the explosion. Whether he had been sufficiently instructed as to the dangerous character of the work, or not instructed at all, was not a question submitted to them, and there was no request to have it submitted, and no exception that it was not. If the inquiry by the jury was relevant to the question submitted, the reply was according to the facts as they appear from the evidence. There is nothing to show that it was not literally and strictly correct.

*Exceptions overruled.*

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