

## CHADBOURNE v. EXETER.

On a petition for leave to file a claim against a town for damages resulting from a defective highway, evidence on which a jury could properly return a verdict for the plaintiff is sufficient to warrant a finding that manifest injustice would be done by refusing to grant the petition.

PETITION, under Gen. Laws, c. 75, s. 9. The plaintiff's uncontradicted evidence tended to prove that about noon, December 22, 1890, she slipped and fell on the icy and unsanded sidewalk of Main street in the village of Exeter, while walking thereon, and was seriously injured; that she was familiar with the street, and had noticed ice on the walk at other places, but not at the place where she fell; and that she wore rubbers and stepped carefully. The defendants conceded that she was unavoidably prevented from filing the statement required by the statute within ten days after her injury, and that she intended in good faith to prosecute her claim. They objected to the granting of the petition, on the ground that the evidence was insufficient to show due care on the part of the plaintiff or negligence on the part of the defendants, and did not warrant a finding that manifest injustice would be done by a denial of the petition. The court granted the petition, and the defendants excepted.

*Russell & Boyer*, for the plaintiff.

*Arthur O. Fuller* and *Edwin G. Eastman*, for the defendants.

CARPENTER, J. There was evidence tending to prove the facts necessary to be established in order to entitle the plaintiff to recover in an action against the town. A verdict in her favor could not be set aside on the ground that there was no evidence tending to show that she exercised ordinary care, or that the defendants neglected their duty. To deny the plaintiff an opportunity to try the merits of her claim, when, on the evidence presented, a verdict might properly be found in her favor, may be manifest injustice within the meaning of the statute. *Gitchell v. Andover*, 59 N. H. 363.

*Exceptions overruled.*

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

## STORRS &amp; BEMENT CO. v. WINGATE &amp; a.

The wife of a co-partner, who at her husband's request signs as surety the promissory note of the firm, is not bound by the contract.

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ASSUMPSIT, on the promissory note of a partnership whereof James D. P. Wingate is a member, and of Helen W. Wingate, his wife, who signed the note as surety at her husband's request, and who alone makes defence.

*F. A. Pelton* (of Massachusetts) and *Edwin G. Eastman*, for the plaintiff.

*Thomas Leavitt*, for the defendant.

CARPENTER, J. The contract of a married woman as surety for her husband is invalid. Gen. Laws, c. 183, s. 12. The fact that another is bound with the defendant's husband for the payment of the note does not render her undertaking any the less a contract of suretyship for him. *Stokell v. Kimball*, 59 N. H. 13.

*Judgment for the defendant.*

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

JONES v. CHESTER.

67 191.  
70 280.

Under Gen. Laws, c. 115, ss. 14, 15, Laws 1885, c. 31, and Laws 1889, c. 97, ss. 1, 2, orders given by the selectmen of a town in favor of persons suffering damages to their domestic animals by dogs, are payable in full on the first day of March.

Assumpsit is the proper form of action on such orders, and they may be made negotiable.

ASSUMPSIT, upon an order of the defendants' selectmen, dated June 28, 1890, and directing the treasurer of the town to pay "Henry D. French or bearer \$170 in full, for value of horse which they claim died of hydrophobia, and also for doctor's fee." The writ is dated March 30, 1891.

In the spring of 1890 French's horse died of hydrophobia caused by the bite of a mad dog. Within thirty days he presented to the selectmen proof of the nature and extent of his loss. He claimed \$210, including a veterinary surgeon's fee of \$10. The selectmen offered \$150. June 28, \$170 was agreed upon and the order given. French sold the order to the plaintiff July 7, 1890, and the plaintiff presented it for payment to the treasurer, who declined to pay it on the ground that it was not payable until March 1, 1891. The orders drawn by the selectmen in favor of persons suffering damage to domestic animals from dogs amounted to \$191, and the amount received from taxes on