

If they did, they are without fault, and are not liable. If they did not, their negligence is, in law, the sole cause of the plaintiff's loss. *Nashua Iron and Steel Co. v. Railroad*, 62 N. H. 163. The question was rightfully submitted to the determination of the jury. *Paine v. Railway*, 58 N. H. 611, 613. The offer of the defendants to show that Merryfield, who was suspected of the theft of Page's book, kept a disreputable place near where Page roomed, was properly denied, as that evidence does not bear on the question at issue.

As bearing on the claim of the defence that Page himself, or some one with whom he was in collusion to defraud the defendants, drew the money from the bank, the plaintiff was properly allowed to show that Page, at the time of his death, about two months and a half after the money was drawn, possessed but a small amount of money,—the testimony having some tendency to negative this position of the defendants. In regard to the instructions requested by the defendants, the first was properly denied because it limited the duty of the bank to the exercise of ordinary care measured by the "facts and circumstances within their knowledge," instead of the facts and circumstances which by the use of due care they might have known, thus relieving them from the consequences of "culpable ignorance."

The second request was also properly denied, because it asked that the degree of care ordinarily exercised by the defendants in their business should be the standard which should determine the defendants' liability, instead of the degree of care which persons of average prudence exercise. The instructions given in regard to these matters were unobjectionable.

The third and fourth requests were properly refused, since the question of contributory negligence was not involved.

*Exceptions overruled.*

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

---

DANE v. DANE, *Ex'r.*

A bond with one sufficient surety is a compliance with the statute requiring that the appellant from a decree of the judge of probate "shall give bond with sufficient sureties to prosecute his appeal."

PROBATE APPEAL. The defendant moved to dismiss, because the bond given on the appeal had but one surety.

*Henry B. Atherton*, for the plaintiff.

*George B. French*, for the defendant.

WALLACE, J. The statute requires that a person appealing from a decree of a judge of probate "shall give bond with sufficient sureties to prosecute his appeal with effect, and to pay all such costs as shall be awarded against him by the supreme court." P. S., c. 200, s. 3. The Provincial Statutes of 1718 required a person appealing from a decree of a judge of probate to give "bond in a reasonable sum with sufficient security to prosecute his appeal with effect;" and the word "security" was continued in the statutes till 1789. Prov. Laws (ed. 1716) 101, 103; Prov. Laws (ed. 1761) 20, 22. The act of February 3, 1797, required a "bond in a reasonable sum with sufficient sureties to prosecute said appeal with effect;" and the words "with sufficient sureties" were used in the statute in this connection until the general statute of probate appeals, approved July 2, 1822. Laws 1822, c. 33, s. 1; Laws (ed. 1789) 76; Laws (ed. 1792) 215; Laws (ed. 1805) 166; Laws (ed. 1815) 202. This act required a bond "with sufficient surety," and this language continued to be used until 1867, when the General Statutes went into effect. Laws (ed. 1830) 373; R. S., c. 170, s. 3; C. S., c. 180, s. 3. In the General Statutes the words "with sufficient surety" were changed to "with sufficient sureties," which have remained in the statutes ever since. The report of the commissioners who compiled the General Statutes shows that this change was regarded by them as a merely verbal one. G. S., c. 188, s. 3; Com'r's Rep. of 1867, c. 189, s. 3; G. L., c. 207, s. 3; P. S., c. 200, s. 3.

These changes are verbal, made at the different revisions of the statute laws, and do not indicate any intention on the part of the legislature to alter the meaning. The purpose of the statute is to compel the appellant to furnish sufficient security for the payment of such costs as may be awarded against him. This purpose may as well be accomplished by a bond with one surety who is sufficient, as with more. And in the light of the rule provided in our statutes for their construction (P. S., c. 2, s. 3), that "words importing the singular number may extend and be applied to several persons or things; words importing the plural number may include the singular," and in view of the history of the legislation on this subject, it is plain that furnishing a bond with one sufficient surety is a compliance with the statute. *Farnam v. Davis*, 32 N. H. 302, 308. If the bond is insufficient, the court will at any time, upon application, order the appellant to furnish additional security. *Holt v. Rice*, 51 N. H. 370.

It need not now be considered whether consistently with this result the decision in *Gilman v. Bartlett*, 20 N. H. 168, can be sustained.

*Motion denied.*

SMITH, J., dissented: the others concurred.