

(R. S., c. 25, ss. 3, 21; *Ib.*, c. 230, s. 13), affords no argument for or against the maintenance of the present suits. If it must be inferred from the enactment that the legislature understood that the action did not lie at common law, the inference from its repeal is quite as strong that the revisors and the legislature thought the action did lie at common law, and that the provision was therefore unnecessary, as that they deemed it unwise.

The exception to the denial of a motion for a nonsuit is overruled. The plaintiffs introduced evidence tending to prove the allegations contained in the writs, and the court found it sufficient, as appears from a finding for each of the plaintiffs.

Judgment for the plaintiffs.

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

Merrimack, }
Dec., 1896. }

BOSTON & MAINE RAILROAD v. CONCORD.

The statute (Laws 1893, c. 39, s. 1) which authorizes the railroad commissioners to apportion between a railroad and a town the expense incurred in the change of a highway bridge, and does not provide for an appeal from their decision, is not unconstitutional.

DEBT, for a sum apportioned to the defendants by the railroad commissioners, under Laws 1893, c. 39, s. 1. Facts agreed. The plaintiffs raised a highway bridge in Concord over the Concord & Claremont Railroad, in compliance with an order of the railroad commissioners. Upon petition of the plaintiffs and after hearing the parties, the railroad commissioners apportioned to the defendants \$150 of the expense of the change outside the railroad location. The defendants appeared at the hearing and objected to the jurisdiction of the commissioners, claiming that the act of the legislature, so far as it purported to confer authority upon them to determine the rights and liabilities of the defendants, was void, because it is not constitutional and does not provide for an appeal to the court if a party is aggrieved by the commissioners' decision.

Frank S. Streeter and John M. Mitchell, for the plaintiffs.

Sargent, Hollis & Niles, for the defendants.

CLARK, J. The city of Concord is a municipal division of the state. The railroad commissioners, under the authority conferred upon them by the legislature, apportioned the expense incurred in raising the bridge between the railroad and the city as in their judgment was just. The powers and duties of the city are largely within the control of the legislature, and the railroad commissioners are state officers authorized to determine what portion of the expense incurred by the railroad in the changes made outside the railroad location shall be paid by the city of Concord. Laws 1893, c. 39, s. 1. They are to award such a sum "as is in their judgment just," and their conclusion is final as to the city. From the appraisal of damages to land-owners by the railroad commissioners, any party aggrieved has a right of appeal; but in apportioning the expense between the railroad and the city, the judgment of the commissioners is conclusive. It is a matter within the control of the legislature (*Wooster v. Plymouth*, 62 N. H. 193), and there should be

Judgment for the plaintiffs.

All concurred.

Merrimack, }
Dec., 1896. }

GILES v. THE JOHN B. CLARKE CO.

A declaration setting forth a libelous publication, and containing nothing that would justify or excuse it, is not demurrable on the ground that the words complained of were published concerning the plaintiff as a fair criticism upon a person occupying a *quasi* public position.

CASE, for libel. The declaration alleges, in substance, that the plaintiff is, and for some time has been, an attorney-at-law; that he was practicing his profession and receiving large profits therefrom; that he was a person of good name, credit, and reputation; that the defendants, well knowing the premises and intending to injure the plaintiff and bring him into public scandal and disgrace, maliciously published in the newspapers, "The Daily Mirror and American," and "The Mirror and Farmer," the following false and libelous matter concerning him:

"Giles [meaning the plaintiff], a Manchester man, has relieved his mind to Bryan by O. K.-ing New Hampshire. Now let the procession move."—*Nashua Press*.

"Avast, there, you lubberly liar! Giles [meaning the plaintiff] a Manchester man! Not by eighteen full length miles. He's a Concord man, from the sole of his [meaning the plaintiff's]