

in order that they might take the proper steps to defend the plaintiffs, very strongly shows that the defendants did not understand that their liability had ceased because of any prior failure of the plaintiffs to comply with the requirements of the policy. It was a practical admission that the prior efforts of the plaintiffs to fulfill the terms of the policy had been reasonable both as to form and seasonableness. Apparently, the defendants then had full information concerning all the facts covered by the admission, except perhaps the date when O'Connell's action was begun. A finding that a notice of the beginning of the suit, given eighteen days after the service of the writ upon one of the plaintiffs and two days before its service upon the other, was "immediate" within the meaning of the word as used in the policy, would not be unsupported by the evidence.

The general finding in favor of the plaintiffs is understood to include a finding of all facts in their favor that are necessary to support the general finding, and so to include findings favorable to them upon the questions of fact above mentioned. The *pro forma* ruling is understood to have related to the facts so found. Accordingly, unless the defendants procure an amendment of the case showing that this construction is erroneous, their exception must be overruled.

Exception overruled nisi.

All concurred.

Merrimaack, }
 March 8, 1902. }

UNION SCHOOL DISTRICT v. DISTRICT No. 20.

71	269
74	523
74	531

Under chapter 96, Laws 1901, an independent school district which does not maintain a high school or one of corresponding grade is liable for the tuition of children resident therein who attend a high school elsewhere.

ASSUMPSIT, for tuition of children who reside in the defendant district with their parents or guardians and attend the high school of the plaintiff district. Transferred from the October term, 1901, of the superior court by *Stone, J.*

There are three school districts in Concord, namely, Union School District, District No. 20, and the Town District. District No. 20 does not maintain a high school, or one of a grade corresponding to the high school in Union School District. The parents and guardians of the children residing in District No. 20

and attending the high school in Union School District notified the school board of the former district of the purpose of the children to attend that school. The defendant district declines to pay tuition for any of the children, claiming that the same should be paid by the city of Concord.

Mitchell & Foster, for the plaintiffs.

David F. Dudley, for the defendants.

Edmund S. Cook, for the city of Concord.

BLODGETT, C. J. The sole contention of the defendant district is that the tuitions of the children resident therein who attend the high school of the plaintiff district should be paid by the city of Concord, in which both districts are situate.

We are unable to find any tenable basis for this contention. So far as appears, and as we take the fact to be, each district has "a special, independent, and complete organization, and officers of its own having exclusive authority for the superintendence and government of its schools and the administration of all its school affairs," and is a distinct and separate organization and corporation, not merely as to each other, but as to the city of Concord. *Sargent v. District*, 63 N. H. 528, 530, 533, 534; *Wheeler v. Alton*, 68 N. H. 477, 478.

With these relations and conditions existing, it would not only be obviously unjust to subject the city to the payment of tuition at the plaintiffs' high school for children resident in the defendant district, which has authority to establish and maintain a high school of its own (P. S., c. 89, s. 9), but we think the parties fairly come within the meaning of "town" as used in chapter 96, Laws 1901, enacting that "any town not maintaining a high school or school of corresponding grade shall pay for the tuition of any child who with parents or guardian resides in said town and who attends a high school or academy in the same or another town or city in this state, and the parent or guardian of such child shall notify the school board of the district in which he resides of the high school or academy which he has determined to attend."

This construction not only accords with the requirements of justice and the well-recognized, independent, corporate powers of school districts, and the historical evidence; but it is also authorized by *Sargent v. District* and *Wheeler v. Alton*, *supra*, and by section 5, chapter 2, of the Public Statutes, which provides: "The word 'town' shall extend and be applied to any place in-

corporated, or whose inhabitants are required to pay any tax, and shall mean that city, town, ward, or place in which the subject-matter referred to is situate, or in which the persons referred to are resident, unless from the context a different intention is manifest." But apart from these considerations, towns, as such, not being authorized to maintain high schools and having no boards of education, it is manifest from the act of 1901 itself that the construction adopted is the correct one.

The plaintiff's action is maintainable.

Case discharged.

All concurred.

Rockingham, }
April 1, 1902. }

71	271
72	446
72	586

71	271
74	462

WALKER v. BOSTON & MAINE RAILROAD.

The denial of a request for a specific instruction is not erroneous if its substance, so far as applicable to the evidence, is included in the charge.

If a doubt exists as to the meaning of language employed in a reserved case, the difficulty is to be obviated by amendment and not by judicial construction.

Where the credibility of a witness is brought in question by the contradiction of his incompetent statement, the objectionable testimony is thereby made a proper subject for argument.

Whether a suggestion of counsel as to testimony which would have been given by a person not called as a witness was an assertion of fact or a request for inference by the jury, is a question to be determined by the trial court.

Where an objection is interposed during argument of counsel, the question as to what remarks were included within an exception claimed is one of fact determinable by the trial court.

It is not cause for setting aside a verdict that the jury were urged to draw an unwarranted inference from admitted or established facts.

CASE, for personal injuries. Trial by jury and verdict for the plaintiff. Transferred from the April term, 1901, of the superior court by *Young, J.*

The plaintiff claimed that she was injured by the sudden starting of the train on which she was a passenger, as she was leaving a car. Her evidence tended to prove that she and her sister attempted to leave the car within a reasonable time after the train