

concludes his opinion by holding that the action cannot be maintained, and states that he knows of no case in which an action for personal injury "suffered by a citizen of the town from neglect of the town to provide him with safe and suitable means of exercising his public rights" has been sustained, in the absence of a statute giving the right.

For cases in other jurisdictions, holding that school districts stand upon the same basis as counties and towns in respect to their liability to individuals for damages suffered by reason of the negligent performance of public duties, see *Bigelow v. Randolph*, 14 Gray 541; *Hill v. Boston*, 122 Mass. 344; *School District v. Fuess*, 98 Pa. St. 600,—42 Am. Rep. 627; *Ford v. School District*, 121 Pa. St. 543; *Weddle v. Commissioners*, 94 Md. 334; *Bank v. School District*, 49 Minn. 106.

Case discharged.

All concurred.

Strafford, }
Feb. 2, 1904. }

KEENAN v. PERRAULT.

An action of trespass to the person is not to be dismissed merely because the trustee blank in the original writ was filled out with a fictitious name, with no intention of having the process served upon a trustee and with no such service in fact made.

TRESPASS, for assault. The action was commenced by trustee writ, in which the name of John Smith was inserted as trustee. The writ was not served upon any one as a trustee, and there was no such person as Smith intended. The name was inserted in the writ simply to fill out the blank and for no other purpose. Upon the defendant's motion, the court dismissed the action upon the ground that it was improperly begun by trustee process, and the plaintiff excepted. Transferred from the September term, 1903, of the superior court by *Stone, J.*

Felker & Gunnison, for the plaintiff.

Elmer J. Smart, for the defendant.

WALKER, J. As the trustee blank in the writ was filled out with a fictitious name, with no intention of having it served as a

trustee writ, and as it was not in fact served upon a trustee, the action was not "begun by trustee process" within the meaning of section 1, chapter 245, Public Statutes. *Clement v. Clement*, 18 N. H. 611; *Cole v. Smith*, 61 N. H. 642. It is as though the trustee part of the writ had been left entirely blank, in which case the officer would have performed his duty by serving it as a writ of summons and attachment. P. S., c. 219, s. 2; Laws 1893, c. 67, s. 6. The order dismissing the action, therefore, on the ground that it was begun by trustee process, was error.

Exception sustained.

All concurred.

Belknap, }
Feb. 2, 1904. }

UNION HOSIERY Co. *vs.* HODGSON.

The authority of a tenant in common to act as agent for his co-tenants in a given transaction cannot be inferred from his undertaking so to do in the particular instance, nor from a special authority to represent them in another transaction concerning the common property.

The testimony of an alleged agent is admissible to prove his authority.

Testimony as to the understanding of the parties interested in the purchase of property is competent upon the question of its ownership.

The exclusion of evidence which only tends to prove a conceded fact does not constitute reversible error.

No exception lies to the rejection of evidence which might properly have been excluded on the ground of remoteness, in the absence of indication that such was not the fact.

ASSUMPSIT, to recover the value of steam furnished the defendant for mechanical and heating purposes, from December 1, 1899, to January 6, 1900. Trial by jury and verdict for the defendant. Transferred from the November term, 1902, of the superior court by *Stone, J.* The plaintiffs are Franklin P. Stewart, doing business as the Union Hosiery Company, J. P. and Georgia A. Morin, copartners under the name of J. P. Morin & Company, and the Belknap Mills, a corporation, of which William C. Marshall is the treasurer and general manager.

The defendant during the period aforesaid was operating a dye-house which she leased of the Belknap Mills. The Union Hosiery Company and Morin & Company were also tenants of the Belknap Mills, occupying separate and distinct parts of the latter's prem-