

Hillsborough, }
Dec. 5, 1905. }

PRIOR v. FULLER.

REARDON v. SAME.

ASSUMPSIT, for services. The actions were tried together at the January term, 1905, of the superior court. The plaintiff Reardon testified that he saw the defendant at a certain time and place, and overheard a conversation between him and the plaintiff Prior. The defendant objected to an inquiry as to what the conversation was, upon the ground that it was not sufficiently established that the person whom the witness heard in conversation with Prior was the defendant. The objection was overruled, and the defendant filed a bill of exceptions which was allowed by *Pike, J.*

William W. Risk (of Massachusetts) and *Edgar I. Kendall*, for the plaintiffs.

Vere Goldthwaite (of Massachusetts) and *Wallace B. Clement*, for the defendant.

PARSONS, C. J. Whether the person whose conversation with the plaintiff was heard by the witness was the defendant or some other, was a question of fact. There being evidence tending to show that such person was the defendant (*Glauber Mfg. Co. v. Voter*, 70 N. H. 332), the objection that it was insufficient to establish the fact goes merely to the weight of the evidence, and raises no question of law.

Exception overruled.

All concurred.

Cheshire, }
March 6, 1906. }

PERRY & a. v. UNITED STATES HEALTH AND ACCIDENT
INSURANCE CO.

ASSUMPSIT, to recover a balance due upon the contract hereinafter mentioned. Trial before *Peaslee, J.*, at the October term, 1905, of the superior court.

By a contract dated April 1, 1902, the defendants appointed the plaintiffs their agents, to canvass for applications for accident and health insurance in this state, and to issue policies thereon,