

Matthew J. Ryan and Herbert I. Goss (Mr. Goss orally), for the plaintiff.

Drew, Shurtleff & Morris and Rich & Marble (Mr. Marble and Eri C. Oakes orally), for the defendants.

PARSONS, C. J. Upon the only ground of liability asserted—the defendants' fault in not avoiding the injury after discovery of the danger—the case cannot be distinguished from *Cavanaugh v. Railroad, ante*, 68. In view of the suggestion of additional evidence upon the question of damages, there is now no occasion to consider the plaintiff's exception to the ruling thereon, which was not argued. The plaintiff was entitled to go to the jury.

Exception sustained.

All concurred.

Hillsborough, }
Jan. 7, 1913. }

BARTLETT v. MANSFIELD.

DEBT, against a selectman, to recover the penalty imposed by section 16, chapter 57, Public Statutes. Trial by jury and verdict for the defendant. Transferred from the January term, 1912, of the superior court by *Mitchell, J.*, on exceptions taken by the plaintiff. On the ground that the private action for a penalty was abolished by chapter 31, Laws 1899, judgment was ordered for the defendant without considering the exceptions. *State v. McConnell*, 70 N. H. 158, 161; *Noyes v. Edgerly*, 71 N. H. 500, 503, 505.

David W. Perkins, for the plaintiff.

Wason & Moran, for the defendant.

Merrimack, }
Feb. 4, 1913. }

YOUNG v. AMERICAN EXPRESS Co.

CASE, for negligence. Transferred from the April term, 1912, of the superior court by *Mitchell, J.*