

the action is tried shall cause a certificate thereof to be made on the back of the execution." P. S., c. 236, s. 12.

As the court found the plaintiff's cause of action did not arise from the wilful and malicious act or neglect of the defendant but was founded in contract, the plaintiff was not entitled to the certificate.

*Exception overruled.*

Coös, }  
Dec. 2, 1919. }

JOHN T. QUINN, *Adm'r*, v. GORHAM.

CASE, transferred from the April term, 1919, of the superior court by *Branch, J.*, on an agreed statement of facts.

*Sullivan & Daley* and *Harry G. Noyes* (*Mr. Sullivan* orally), for the plaintiff.

*Drew, Shurtleff, Morris & Oakes, Alfred R. Evans* and *Jesse F. Libby* (*Mr. Oakes* orally), for the defendant.

*Per Curiam.* This is an action for the death of the plaintiff's intestate caused by his being thrown over a defectively railed embankment while a traveler upon a state-aided highway. The accident occurred in August, 1914. The court dismissed the action, and the plaintiff excepted. In view of the decisions in *Grace v. Belmont*, 78 N. H. 112 and in *Kelsea v. Stratford*, ante, 273, the exception must be overruled.

Carroll, }  
Jan. 6, 1920. }

STEPHEN BROCK v. ELLSWORTH H. ROLLINS.

TROVER, for certain articles of personal property sold as a part of the farm in controversy in *Rollins v. Brock*, 78 N. H. 456. Trial by the court and verdict for the defendant. Transferred from the May term, 1918, of the superior court by *Marble, J.*, on the plaintiff's exception to the verdict.