

Hillsborough, }
 Jan. 5, 1926. }

STATE *v.* LINWOOD O. TRAVIS.

A defendant in a criminal prosecution who voluntarily becomes a witness may be cross-examined as to any relevant matter which tends to discredit him as a witness, including a previous conviction of a criminal offense regarding which direct testimony could not be introduced.

APPEAL, from the municipal court of Hillsborough. The complaint charged the defendant with operating a motor vehicle while under the influence of liquor. Laws 1923, c. 24. Trial by jury and verdict of guilty. Subject to exception, the solicitor in cross-examination of the defendant was permitted to inquire if he had not been "convicted of driving while under the influence of liquor" before, and if his automobile license had not been taken away for that reason. Bill of exceptions allowed by *Branch*, C. J.

George I. Haselton, solicitor, for the state.

J. Joseph Doherty, for the defendant.

MARBLE, J. "This presents the ordinary case of evidence admissible for one purpose, but not for another." *Cobb v. Follansbee*, 79 N. H. 205, 210.

The law is fundamental that the state cannot offer evidence of the bad character of a defendant except to rebut his evidence of good character (*State v. Lapage*, 57 N. H. 245, 289, 290), and even then bad character cannot be shown by particular acts. *State v. Palmer*, 65 N. H. 216, 218. It is also true that proof that a defendant has previously committed an offense similar to that for which he is on trial is not evidence that he is guilty of the offense charged. *State v. La Rose*, 71 N. H. 435, 436, 437; *State v. Lapage*, *supra*.

If, however, the defendant waives his privilege by voluntarily taking the stand, he may be cross-examined regarding any relevant matter which tends to discredit him as a witness. *State v. Fogg*, 80 N. H. 533, 535; 1 Wig. Ev., s. 196. The inquiry objected to in the present case was competent on the issue of the defendant's integrity. *Constantine v. Grenier*, 81 N. H. 550; *Gutterson v. Morse*, 58 N. H. 165. The defendant did not ask to have consideration

of the evidence limited to that issue, and consequently takes nothing by his general exception. *Tuttle v. Dodge*, 80 N. H. 304, 310; *Cobb v. Follansbee*, *supra*.

Exception overruled.

All concurred.

Cheshire, }
Jan. 5, 1926. }

EDITH STRONG v. NEW HAMPSHIRE BOX COMPANY & a.

A petition to recover compensation under the employers' liability act is properly dismissed upon proof that the petitioner has previously brought an action at common law against the employer based upon the injury for which compensation is sought.

A suit having been brought in the name of a minor, an entry made upon the writ by the presiding justice to the effect that the plaintiff's father is to maintain the suit as next friend is equivalent to an order allowing the amendment of the writ by the substitution of a new party plaintiff.

The case having proceeded to trial after the question of the proper party plaintiff had been raised and the entry made on the writ, it will be presumed that a proper party plaintiff was substituted for the minor, and she is bound by the prior and subsequent proceedings.

It is immaterial that the formal record in a case does not show an amendment of the writ, if the minutes of the proceedings on the docket and the original papers on file furnish adequate data for the extension of the record.

PETITION, to recover compensation under the employers' liability act, Laws 1911, c. 163. Transferred by *Branch*, C. J., upon the plaintiff's exception to the dismissal of her petition.

Upon the hearing of the defendant's motion to dismiss the plaintiff's petition the following facts were found.

The injury for which the plaintiff is seeking compensation was received on October 22, 1919. She brought an action at law to recover therefor on February 2, 1923. Trial of said action was had in April by jury. The presiding justice entered upon the back of the writ an order, "the plaintiff's father to maintain suit as next friend." At the close of the plaintiff's evidence a nonsuit was ordered subject to her exception. No bill of exceptions having been filed within the time limited, the defendants on June 30 filed a motion, which was granted on July 6, to amend the writ by adding as party plaintiff "C. H. Strong, husband and next friend of the plaintiff." At the October term motions were entered by the plaintiff on