

Grafton, }
Apr. 6, 1926. }

STATE v. LEON HAMEL.

APPEAL, from a conviction in a municipal court, upon a charge of keeping spirituous liquor for sale. The defendant filed a special plea alleging that he had been convicted of and punished for the same offense in the federal court. The plea was overruled by *Sawyer, J.*, who allowed a bill of exceptions.

Clark B. Frost, solicitor, for the state.

Napoleon J. Dyer and *Frank P. Tilton* (*Mr. Dyer* orally), for the defendant.

Per Curiam. The case is governed by *State v. Gendron*, 80 N. H. 394.

Exception overruled.

Hillsborough, }
May 4, 1926. }

ARTHUR GIANARIS v. ARMON S. MANGURIAN.

CASE, for malpractice. Trial by jury and verdict for the defendant. Transferred by *Doe, J.*, on exceptions to the exclusion of evidence and to the refusal to grant requests for instructions.

Arthur B. Hayden, for the plaintiff.

Irving E. Forbes and *Doyle & Doyle*, for the defendant.

Per Curiam. In the absence of brief or argument for the plaintiff, no error is apparent in the exclusion of evidence, and the exceptions thereto are overruled. *Barsantee v. Hartford*, 73 N. H. 616; *Drake v. Insurance Co.*, 78 N. H. 604.

As to the other exceptions, none of the evidence is transferred. It is therefore impossible to say what the evidence tended to show relative to the defendant's duty and liability, and it cannot be told from the case or its amendment whether the requests, either all or some, should have been granted. It does not appear whether they were applicable to the evidence. Since requested instructions, although correctly stating rules of law, are properly refused when they are inapplicable to the facts disclosed by the evidence (*Rowell*