

The above facts are undisputed, except that plaintiff says his buildings are three-quarters of a mile from the main highway instead of a one and one-half mile as claimed by the defendant.

The Court was right in saying there was not one iota of negligence shown. The only negligence claimed by the plaintiff, as appears in the record, is that defendant's truck should have stopped some distance away from the buildings, on level ground, from where the driver could have delivered the grain. This it appears would be about one hundred yards away. But as it already appears, the defendant would still have had to drive to the buildings to turn around and go back to the main road.

It is clear that the cause of the accident was the ice under the snow. This was on plaintiff's premises, and defendant cannot be charged with knowledge of a condition which plaintiff himself, according to his own testimony, knew existed and of which defendant had no knowledge. There is nothing in the case to indicate defendant should have had knowledge of the presence of ice under the snow.

We are therefore confronted with a plain case of skidding caused by no negligence on the part of the defendant, and it has been the law of this state ever since *Burns v. Cote*, 86 N. H. 167, 169, that skidding in and of itself, when not due to carelessness on the part of the operator of an automobile, is not evidence of negligence.

Judgment for defendant.

All concurred.

Hillsborough, }
Dec. 23, 1946. } No. 3628.

JAMES POULICAKOS *v.* KATINA POULICAKOS.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Nicholas J. Costakis, for the libelant.

A. Nicholas Soufras and Solomon Baker (of Massachusetts), for the libelee.

MARBLE, C. J. On the pleadings as they now stand, the ruling of the Presiding Justice is technically correct, for the libelant alleges the requisite period of residence in New Hampshire (R. L., c. 339, s. 6, *cl.* IX), and where the cause of divorce "consists of a course of conduct continued during a prescribed period of time, as in the case of desertion, or abandonment, it is not material to the jurisdiction, when or where they commence to exist." *Payson v. Payson*, 34 N. H. 518, 521.

However, the validity of the Massachusetts decree does not appear to be questioned, nor is there any suggestion that subsequent events have created a new legal situation or altered "the legal rights or relations of the litigants" (see Anno. 138 A. L. R. 346, 360). That being so, the libelee, on filing an appropriate plea, will be entitled to a dismissal of the libel. The issues involved in the suit for separate support in Massachusetts and the divorce case in this jurisdiction are practically the same, and, under the full faith and credit clause of the Federal Constitution (*art.* IV, s. 1), the libelant is barred from asserting that the separation was due to the libelee's fault. *Harding v. Harding*, 198 U. S. 317. See *Taylor v. Taylor*, 72 N. H. 597; Anno. 138 A. L. R. 346, 375-380.

Case discharged.

All concurred.

MEMORANDUM.

Mr. Chief Justice Marble, having attained the age of seventy years on December 24, 1946, retired under the constitutional limitation.

On October 17, 1946, Mr. Justice Branch was appointed Chief Justice of this court, his term beginning December 24, 1946.

On October 17, 1946, Mr. Laurence I. Duncan, Associate Justice of the Superior Court, was appointed an Associate Justice of this court, his term beginning December 24, 1946.