

[Cheshire, December, 1885.]

UNION SCHOOL-DISTRICT v. KEENE.

SAME v. BATCHELDER & a.

The first case is an appeal from the laying out of a highway by the mayor and aldermen of Keene upon the plaintiffs' school-house lot. The second is a bill in equity praying that the mayor and aldermen be enjoined from taking down or removing the school-house. A temporary injunction was granted by a justice in vacation.

It appearing that the plaintiffs have no title to or interest in the school-house lot, except a right to the use of the same until the first day of July next,—IT WAS ORDERED, that the appeal be dismissed, that the injunction be continued until the first day of July, and that it be then dissolved and the bill dismissed.

S. Hardy and *Eddy* (of Vermont), for the plaintiffs.

Lane & Dole, *Hersey & Abbott*, and *Batchelder & Faulkner*, for the defendants.

ALLEN, J., did not sit.

[Coös, December, 1885.]

PAINE v. GRAND TRUNK RAILWAY CO.

CASE, for injuries received in crossing the defendants' track with a horse and wagon at a grade crossing of the highway, which was partially obstructed by the van car of a lumber train. It is the same case reported 58 N. H. 611, the questions being reserved upon the trial of that action in review.

BLODGETT, J. 1. The jury must have found by their verdict that the plaintiff was in the exercise of ordinary care at the time of the accident; and the reported facts disclose nothing sufficient to enable the court to say, as matter of law, that a nonsuit should have been ordered, or that the testimony of the witnesses, and especially when taken in connection with the inferences which the jury might have justifiably drawn from the view, was insufficient to support the verdict.

2. There plainly was competent evidence of negligence on the part of the defendants, for reasons given in the former opinion in this case, reported in 58 N. H. 611, 614; and what constitutes negligence in a given exigency is a question for the jury, and not for the court.