

16 Mass. 393, which are now essentially overruled in Massachusetts.

*Exceptions overruled.*

SMITH, J., did not sit: the others concurred.

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GRAFTON.

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DAVIS, *Adm'r*, *v.* RUMNEY.

The act of 1887 (*c.* 71), relating to liability "when the death of a person is caused by a wrongful act or neglect of another," is applicable to a defect of a highway caused by the neglect of a town, by reason of which a traveller is killed.

CASE, upon Gen. Laws, *c.* 75, *s.* 1, and Laws 1887, *c.* 71, for neglect, causing a defect in a highway, by reason of which the plaintiff's intestate, a traveller, was thrown from his carriage and killed, in April, 1889. The defendants demurred, contending that the act of 1887 was not applicable to towns.

*Burleigh & Adams* and *D. Barnard*, for the plaintiff, cited *Clark v. Manchester*, 62 N. H. 577, and *Jewett v. Keene*, 62 N. H. 701.

*E. Aldrich* and *I. W. Drew*, for the defendants.

DOE, C. J. Demurrer overruled.

CARPENTER, J., did not sit: the others concurred.

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DOTEN *v.* DOTEN, *Ex'r.*

A legacy made payable at a day fixed in the will, bears interest only from the time it becomes due.

BILL IN EQUITY, to recover interest on a legacy. The bill alleges that the plaintiff, Mabel P. Doten, is the daughter of Ambrose Doten and the granddaughter of James Doten, and was born in 1870; that her father died June 7, 1873; that James executed his will December 8, 1874, making the defendant executor, and

66b 331
66 447
66b 531
68 585
66 331
Case 2
71 233