

Strafford, }  
 April 4, 1905. }

FOSS *v.* PORTSMOUTH, DOVER & YORK RAILWAY.

An interjected remark by the court as to the value of conflicting medical theories, conditional in form and harmless in substance, does not furnish cause for setting aside a verdict.

No exception lies to the exclusion of evidence which may have been properly rejected on the ground of remoteness.

CASE, for personal injuries. Trial by jury and verdict for the plaintiff. Transferred from the September term, 1904, of the superior court by *Stone, J.*

August 28, 1903, there was a collision between two of the defendants' cars, upon one of which the plaintiff was riding, in consequence of which she claimed to have sustained physical injuries. Whether she was injured by the collision was the issue tried. Upon the cross-examination of one of the plaintiff's witnesses, a physician, the defendants' counsel asked him about the relative authority of certain medical writers on nervous diseases and inquired of him if he would produce in court the work of a certain specialist. Thereupon the court remarked: "I guess we won't go into a comparison of books. If they don't give us any more information than some law books do, we shan't get much from them." To this remark the defendants excepted.

The defendants, having introduced evidence that the shock from the collision was slight and that no other passenger was injured, offered to show that no passenger on either car had complained to them of having been injured, and that no other claim for damages for such injury had been brought against them. The evidence was excluded, and the defendants excepted.

*William F. Nason*, for the plaintiff.

*John Kivel, Samuel W. Emery, and George T. Hughes*, for the defendants.

WALKER, J. The defendant claims that the remark of the court was prejudicial and rendered the trial unfair. But as it was conditional in form, and as it was not even the statement of a fact, it could have conveyed no information to the jury as to the reliability of medical theories advanced by the medical witnesses. The court in effect said that he did not know whether much information could be derived from medical books—a statement which was plainly immaterial and harmless. *Dow v. Electric Co.*, 68 N. H. 59.

Whether other passengers had complained to the defendant of having been injured in the accident, or whether any of them had made claims for damages against the defendant on account of such injuries, were matters collateral to the main issue, and the evidence bearing thereon may have been properly excluded on the ground of remoteness. *Kendall v. Flanders*, 72 N. H. 11.

*Exceptions overruled.*

All concurred.

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Merrimack, }  
April 4, 1905. }

LARONDE v. BOSTON & MAINE RAILROAD.

Certain evidence deemed sufficient to warrant a finding that the motorman of an electric car was guilty of negligence in failing to seasonably discover the presence of a horse upon the tracks and avoid collision with the animal.

In an action against a street railway company for negligently running upon a horse, the fact that the animal was wrongfully in the highway at the time of collision does not relieve the defendants from responsibility, if ordinary care on the part of their servants would have prevented the injury.

CASE, for negligently running against and killing the plaintiff's horse. Trial by jury. The defendants' motions, made at the close of the plaintiff's evidence, for orders directing a nonsuit and a verdict in their favor, were denied subject to exception. The case was then taken from the jury with an agreement that, if there was sufficient evidence to warrant its submission to the jury, the plaintiff should have judgment for \$150 and costs; if not, the defendants should have judgment. Transferred from the October term, 1904, of the superior court by *Wallace, C. J.*

The plaintiff's evidence tended to prove the following facts: The defendants' Concord & Manchester street railway branch runs in a northerly and southerly direction through Main street in the village of Suncook. Cross street enters Main street from the west. The railway track is straight for a distance of 580 feet northerly of the intersection, and a person can see from a point that distance away to Cross street in a clear day. The plaintiff, who is a grocer, has a stable on Cross street, fifty to seventy feet distant from Main street, and his place of business is on Main street northerly of Cross street. At six o'clock in the morning of