

and equitable owner of the land, subject to Albina's right to purchase it, or whether she retained the legal title to secure the payment of what Albina owed her—the purchase price. It is not clear from the record as to how the fact may be, but if it is to be ascertained from the construction of the bond the tax should be abated; for if Albina fails to meet the payments as they become due, the plaintiff cannot recover them in an action on the bond.

*Case discharged.*

All concurred.

Hillsborough, }  
Dec. 6, 1910. }

ALTMAN *v.* BOSTON & NORTHERN STREET RAILWAY CO.

A voluntary offer by the defendant to pay the plaintiff's claim in full is admissible in evidence as an admission of liability.

In an action for negligently colliding with a team, a verdict cannot be ordered for the defendant if the evidence warrants a finding that when danger was imminent ordinary care on the part of the defendant would, and like care on the part of the plaintiff would not, have prevented the accident.

CASE, for negligently injuring the plaintiff's horse, carriage, and harness. Trial by jury and verdict for the plaintiff. Transferred from the January term, 1910, of the superior court by *Wallace, C. J.*

As the plaintiff's servant was driving her team diagonally across Canal street in Nashua, the defendants' car collided with the wagon and caused the injury complained of. The driver did not see the car until after the collision, but the motorman saw that the team was in danger when the front end of the car was opposite the rear end of the wagon. The car was moving at the rate of four and a half to six feet a second, and the team two thirds as fast.

The plaintiff was permitted to testify as to certain statements made to her by the defendants' adjuster, which it was claimed amounted to an admission of liability. The defendants excepted to the admission of this evidence and to the denial of their motion for direction of a verdict in their favor.

*Wason & Moran*, for the plaintiff.

*Doyle & Lucier*, for the defendants.

YOUNG, J. The evidence excepted to was competent. *Coffin v. Plymouth*, 49 N. H. 173. Even if an offer to pay a small sum in settlement of a large demand is as consistent with an intention to buy peace as with one to admit liability (*Colburn v. Groton*, 66 N. H. 151, 157), it cannot be said that that is the fact when, as in this case, the defendants voluntarily offer to pay the plaintiff's claim in full.

Since the evidence excepted to was properly admitted, it is unnecessary to consider the defendants' second exception. But if that were not so the exception would have to be overruled, for it can be found from the testimony of the expert that the motorman could have stopped the car in a second by reversing it; in other words, in time to prevent the accident. Consequently it can be found that ordinary care on the part of the motorman after he knew the team was in a place of danger would, and like care on the part of the driver after he knew of the approach of the car would not, have prevented the accident.

*Defendants' exceptions overruled.*

All concurred.

Sullivan, }  
Dec. 6, 1910. }

LAMBERTON *ſ* a. v. DINSMORE *ſ* a.

A judgment is binding upon a party in interest who files a formal statement of defence as a part of the record in the case.

BILL IN EQUITY, brought by husband and wife to enjoin interference with a right of way alleged to be appurtenant to real estate owned by the wife. In a prior suit brought by the present defendants against the husband for trespass to real estate, there had been a confession as to part, a brief statement of the right of way and its use by the husband as servant of the wife as a defence to the rest of the alleged wrong, a special verdict that the way existed as pleaded, and judgment on the verdict. The brief statement concluded as follows:

"The defendant and the said Ollie M. Lamberton, whose servant and agent defendant was at the time of the alleged trespass, claim the right as stated and will show that they have the right to travel over said ancient way leading as stated to and from the lands of said Ollie M. Lamberton, for any purpose connected therewith,