

Merrimack, }
 Nov. 2, 1909. }

BEAN, *Guardian*, v. STAPLES, *Ex'r*.

PETITION, for a construction of the following clause of the will of Ellen S. Clark: "To Kenrick C. Bean, son of said Mary I. Bean, and to Jeremiah E. Franklin, son of said Anna D. Franklin, provided he reach the age of twenty-one years, I give to each the sum of one thousand dollars." At the October term, 1908, of the superior court it was held by *Stone, J.*, that Kenrick's legacy vested on Mrs. Clark's death, and the defendant excepted. Upon consideration of the case in the supreme court the order was,

Exception overruled.

Leach, Stevens & Couch, for the plaintiff.

Thomas F. Clifford, for the defendant.

Hillsborough, }
 Dec. 7, 1909. }

BOUCHER v. THIBEAU.

ASSUMPSIT, for board, lodging, and money paid. Trial by jury and verdict for the plaintiff. Transferred from the September term, 1908, of the superior court by *Plummer, J.*

The plaintiff claimed that the defendant, who is his mother, lived in his family under an express promise to pay for the items charged in the specification. The defendant denied making any promise, either expressly or by implication. The defendant excepted to testimony as to the pecuniary ability of the parties and the situation and family of the plaintiff at the time he claimed the promise was made, and also to evidence of her declarations that she had been forced to make a will in favor of Mrs. Teishman, her daughter, and that if she could come to live with the plaintiff she would break the will and leave him all her property. Mrs. Teishman was a witness at the trial. The defendant also excepted to a statement by the plaintiff's counsel in opening and argument, to the effect that Mrs. Teishman was the real defendant.

Mederic Guilbault and Taggart, Tuttle, Burroughs & Wyman, for the plaintiff.

Burnham, Brown, Jones & Warren, for the defendant.

PARSONS, C. J. The evidence was competent. The argument was justified by the evidence.

Exceptions overruled.

All concurred.

Hillsborough, }
Dec. 7, 1909. }

LEDoux v. HUDSON, PELHAM & SALEM ELECTRIC RAILWAY CO.

CASE, for negligence. Trial by jury and verdict for the plaintiff. Transferred from the January term, 1909, of the superior court by *Wallace*, C. J., on the defendants' exceptions to the denial of a motion for a nonsuit and to the refusal of requested instructions to the jury.

Doyle & Lucier (*Mr. Lucier* orally), for the plaintiff.

Samuel W. Emery (of Massachusetts), for the defendants.

PEASLEE, J. The negligence of the defendants consisted in not stopping a swiftly moving electric car as soon as they reasonably might after it was apparent that the plaintiff was intending to cross the track at a level crossing. The case is distinguished from *Waldron v. Railroad*, 71 N. H. 362, by the fact that here there is evidence that the motorman knew or ought to have known that a foot-traveler was about to go upon the track.

The plaintiff's case as to her own care rests upon two propositions. She looked at her clock before starting out and learned it was past car-time. She was quite deaf, and before going upon the crossing looked up the track and saw no car coming; and unless it had been running at an unusual rate of speed, she could then have crossed in safety. Either ground was sufficient to permit her to go to the jury. *State v. Railroad*, 52 N. H. 528, 558; *Nutter v. Railroad*, 60 N. H. 483.

The exceptions to the refusal of instructions have not been argued and are apparently abandoned.

Exceptions overruled.

All concurred.