

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.