

agent. It is admitted that the defendant sold nineteen of the shirts and is liable therefor. From this it follows that there was no error in denying the motion for a nonsuit.

But the case has been argued upon both sides on the theory that it presented some question touching the verdict as to the balance of the goods. If an exception was taken which raises such an issue, it does not appear in the record as made up by counsel. If it did so appear, it would then be necessary, if the issue was on a nonsuit as to these items, to report the substance of the evidence. The statement of such facts as counsel have been able to agree upon does not bring before this court the evidence upon which the verdict was found.

It is stated in the transferred case that the sickness of Judge *Stone* prevented his drawing a case. If this means that it was understood that findings of fact and rulings thereon were to be filed (P. S., c. 204, s. 10), the defendant may be entitled to a new trial on the ground of accident or misfortune. Whether he should be granted such relief for these or other reasons, whether his exceptions should be restated without a new trial, and whether the transcript of the evidence should now be procured (if procurable), are matters to be determined in the superior court. Upon the case as it stands, the plaintiff is entitled to judgment on the verdict; but as it seems probable that justice may require further proceedings in the superior court, the order is

Case discharged.

All concurred.

Hillsborough, }
Feb. 10, 1911. }

MOSES v. BOSTON & MAINE RAILROAD.

CASE, for personal injuries. Trial by jury and verdict for the plaintiff. The plaintiff was injured by the unexpected starting of the defendants' train from which she was alighting. She supposed that the train had stopped at the West Rindge station, where she desired to leave it, but it had in fact stopped just beyond the station. It was dark and the station was unlighted. After the train left the station next before West Rindge, the brakeman announced "the next station will be West Rindge."

The defendants moved for a nonsuit on the ground that it was negligence for the plaintiff to attempt to leave the car before the station was announced. The motion was denied and they excepted. Transferred from the January term, 1910, of the superior court by *Pike, J.*

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

Hamblett & Spring (*Mr. Spring* orally), for the defendants. 3

Per Curiam. There was no evidence of the usual practice in the matter in controversy, and the case must be decided upon the common knowledge of mankind upon the subject. So considering it, the defendants' contention cannot be sustained. There is no statute requiring passengers to remain in a car until the station is announced, and it is not common knowledge that this is what the ordinary man would do.

Exception overruled.

Rockingham, }
April 4, 1911. }

ROCKINGHAM COUNTY v. BROWN.

WALKER, J. This is an agreed case which makes no provision for a final order or other disposition of the case, after the questions of law supposed to be involved are determined. It is not advisable for the court upon such a case, unassisted by brief or argument from either side, to seek to discover the questions of law that may be involved and to decide them, in the absence of any intimation what disposition shall be made of the case, or what effect such a decision is expected to have upon the determination of the controversy. *Conn. Valley Lumber Co. v. Monroe*, 71 N. H. 473.

Case discharged.

All concurred.

Charles H. Batchelder, solicitor, for the plaintiffs.

Ernest L. Guptill, for the defendant.