

sudden starting of the car while she was attempting to step from the floor of the car to the running-board, or from the running-board to the ground. It could also be found from the evidence that in stepping from the running-board to the ground her fall was caused by the unsuitable character of the place where she was invited to alight, or to that cause combined with the sudden starting of the car.

Exception sustained.

All concurred.

Hillsborough, }
April 2, 1912. }

LIVERMORE & a., Ex'rs, v. WELLS & a.

BILL IN EQUITY, for the construction of the will of Elizabeth A. Livermore. Trial by the court. Transferred without a ruling from the September term, 1911, of the superior court by *Chamberlin, J.*

The second clause of the will is as follows: "My shares in the New Hampshire Insurance Company, in the Souhegan National Bank of Milford, my railroad shares, government bonds, and any other bonds or written evidences or printed of property may be sold and after all bequests are paid the remainder may be divided among the children of my brother . . . and the children of my sister . . . and Laura R. Manning . . . and their heirs." A codicil to the will is as follows: "Herein I designate Mrs. Harriet E. Wells to be my residuary legatee and so appoint." The will was holographic and undated, but was executed on or prior to September 10, 1893. The testatrix died November 3, 1910.

In addition to the property described in the will, the inventory disclosed stock of the American Can Company and of the American Telephone and Telegraph Company, bonds, coupons from bonds, checks payable to the decedent, a promissory note payable to her, and cash on hand, all acquired subsequent to the execution of the will. The executors, as interested parties, pray for instructions as to whether the property last enumerated passes under the second clause of the will or under the codicil.

Thomas L. Livermore & a., executors, *pro se*.

Burnham, Brown, Jones & Warren (Robert L. Manning orally),
for Charles B. Manning and others.

BINGHAM, J. The intention of the testatrix, as disclosed in her will, was that the proceeds of the stocks, bonds, coupons, checks, and note in question should go under the second article of the will to the beneficiaries there named, and the executors are so advised.

Case discharged.

All concurred.

Rockingham, }
May 7, 1912. }

PORTSMOUTH v. NEW HAMPSHIRE NATIONAL BANK.

BILL IN EQUITY, filed August 2, 1911. By a resolution adopted December 14, 1911, the city council directed the city solicitor to discontinue the suit and instructed the mayor to arrange for a dismissal of the bill and an entry of judgment for the defendants. December 19, the mayor requested the court to dispose of the litigation in accordance with the resolution. The court thereupon dismissed the bill and ordered judgment for the defendants, and the city solicitor excepted. Transferred from the October term, 1911, of the superior court by *Wallace, C. J.*, on a bill of exceptions.

Samuel W. Emery, Jr., city solicitor, *pro se*.

Edwin G. Eastman, John W. Kelley, and Calvin Page, for the defendants.

YOUNG, J. The city solicitor has no standing in this case, for he is not acting for the city, but in defiance of its wishes; that is, he is here, not for the purpose of doing what the city instructed him to do, but to prevent the city from doing it.

Exception overruled.

All concurred.