

Merrimack, }  
June 26, 1915. }

## HARLAN F. BESSE v. BOSTON &amp; MAINE RAILROAD.

CASE, for negligence. Trial by jury and verdict for the defendant. Transferred from the October term, 1914, of the superior court by *Kivel, J.*, on the plaintiff's exception to the exclusion of evidence. There was also an exception by the defendant to the denial of a motion for a directed verdict.

*Hollis & Murchie (Alexander Murchie orally)*, for the plaintiff.

*Streeter, Demond, Woodworth & Sulloway (Mr. Sulloway orally)*, for the defendant.

PEASLEE, J. It is conceded upon one side that the evidence might properly be excluded in the discretion of the court; and upon the other side, that its exclusion as matter of law would be erroneous. The controversy is over the meaning of the record. In this situation the appropriate procedure is to return the case to the superior court for a statement of the questioned fact.

The consideration of the defendant's exception to the denial of its motion for a directed verdict should await the outcome of an application to the presiding justice for a statement of the ground upon which the evidence was excluded.

*Case discharged.*

All concurred.