

Merrimack, }  
March 7, 1916. }

EDWARD HAMEL, *Adm'r*, v. IRA W. PEABODY.

CASE, for negligently running upon the plaintiff's intestate at a cross walk on Main street in Suncook village. At the close of the plaintiff's evidence a nonsuit was ordered, subject to exception. Transferred from the October term, 1914, of the superior court by *Kivel*, J.

*John M. Stark* and *Robert W. Upton* (*Mr. Upton* orally), for the plaintiff.

*Martin & Howe* (*Mr. Howe* orally), for the defendant.

PEASLEE, J. The evidence in this case is conflicting and somewhat fragmentary. Enough appears however so that it could be found that the defendant drove his automobile over a cross walk in a thickly settled village at a speed of fifteen miles an hour, that when more than a hundred feet away from the crossing he saw the plaintiff's intestate standing on the cross walk apparently waiting for him to pass, that he gave no warning signal and did not look in her direction again until just as she was struck by his automobile. Upon this evidence it was a fair question for the jury whether due care was exercised by the defendant,— whether he ought not to have given some warning or taken further observation to make sure that his first impression of the situation was the correct one.

The decedent was an elderly woman, whose eyesight was very defective, but whose hearing was good. It could be found from the evidence that she made use of such faculties as she possessed, and, acting upon a reasonable belief that the way was clear, attempted to cross the street. The case should have been submitted to the jury.

*Exception sustained.*

All concurred.