

Merrimack, }  
Nov. 6, 1918. }

## CORNELIUS MORAN v. THOMAS FOX.

CASE, for personal injuries. Verdict for the defendant. The court found that the trial was unfair and set the verdict aside. Transferred by *Sawyer, J.*, from the April term, 1917, of the superior court on the defendant's exception to this finding.

*John M. Stark* and *Robert W. Upton*, for the plaintiff.

*Martin & Howe*, for the defendant.

YOUNG, J. The question raised by the defendant's exception is not whether the remarks excepted to were prejudicial, as a matter of law, but whether there is any evidence to warrant the court's finding that they rendered the trial unfair. Instead of there being no evidence to sustain the finding that they were prejudicial, that is the only conclusion of which the evidence is fairly capable. The question whether they produced the verdict is not now before this court, for the evidence relevant to that issue is not made a part of the case.

*Exception overruled.*

All concurred.

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Cheshire, }  
March 4, 1919. }

## WALTER J. WHITNEY v. EDWARD J. CARR.

CASE, for negligence. Trial by jury and verdict for the plaintiff. Transferred from the April term, 1918, of the superior court by *Marble, J.*, upon the defendant's exceptions to the denial of his motions for a nonsuit and a directed verdict, and to the argument of plaintiff's counsel to the jury. The facts are stated in the opinion.

*Benton & Pickard*, for the plaintiff.

*John J. Landers* and *Joseph Madden*, for the defendant, furnished no brief.