

Rockingham, }  
Feb. 1, 1921. }

MINERVA CAPELLE, *Adm'x*, v. PHILIP TROBER.

Incompetent and prejudicial testimony, if stricken out, no exception being taken on the ground that it rendered the trial unfair, is not ground for disturbing a verdict. In case for negligently causing death, evidence that since decedent's death the class of business in which he was employed had locally increased is relevant on the question of damages.

ACTION, for negligently causing the death of the plaintiff's intestate. Trial by jury and verdict for the plaintiff. Transferred from the May term, 1920, of the superior court by Allen, J. The defendant filed motions for a nonsuit and a directed verdict; and also a motion that the verdict be set aside; all of which were denied subject to the defendant's exception. The evidence relevant to certain of the exceptions is stated in the opinion.

*Horace I. Bartlett* (of Massachusetts) and *Sleeper & Brown* (*Mr. Sleeper* orally), for the plaintiff.

*Cyprian J. Belanger* and *James E. Banigan*, for the defendant.

WALKER, J. The principal argument of the defendant relates to the incompetent and prejudicial character of a statement made by one of the plaintiff's witnesses to the effect that an insurance company was interested in the case. But the argument is unavailing for the reason that upon the defendant's motion the statement was stricken out by the court, and no exception by the defendant was taken to it on the ground that it rendered the trial unfair. He waived any right he might have had to an exception upon that ground. *Kenney v. Hampton*, 73 N. H. 45. His motion was granted and he cannot now insist that the error was not cured.

The defendant's exception to evidence that the shoe business in the town where the deceased lived had increased since her death must be overruled. As she had been a worker on shoes and presumably was skilled in that trade the evidence was clearly admissible on the question of damages.

Various other exceptions to the rulings of the court were taken by the defendant, which he has not argued, and which seem to be without merit. They are therefore not considered.

*Exceptions overruled: judgment on the verdict.*

All concurred.