

Hillsborough, }
Feb. 5, 1924. }

THOMAS E. DUBE, *Adm'r*, v. FREDERICK J. SEVIGNE.

The statement by counsel of an immaterial matter is unexceptionable if the trial court finds that the remark did not render the trial unfair.

Remarks of the court calling to the attention of the jury a matter of common knowledge relevant to the issue are unexceptionable.

CASE, for negligence. Trial by jury and verdict for the defendant. The defendant ran over the intestate with his automobile while driving in a snowstorm.

Transferred by *Branch, J.*, on exceptions to the charge and to the argument of defendant's counsel.

The exceptions appear in the opinions.

Lucier & Lucier and *Doyle & Doyle*, for the plaintiff.

Warren, Howe & Wilson, for the defendant.

YOUNG, J. The court instructed the jury that the speed at which the defendant was driving had nothing to do with the accident, but as the plaintiff has not transferred the evidence relevant to that issue this exception raises no question for this court.

The court in the course of the charge said in substance: we all know that in a snowstorm snow begins to collect on the wind-shield as soon as we wipe it off and we would make no progress if we attempted to keep our wind-shield entirely free from snow. That this statement is true is a matter of common knowledge, and not objectionable for that reason. *Beliveau v. Company, ante*, 57. It is also true that the facts stated were facts the jury should consider in determining whether the defendant used ordinary care in clearing his wind-shield, consequently it was proper for the court to call them to the attention of the jury.

The defendant's counsel in closing asked the jury if it were not true in their experience that ninety-eight per cent. of all accidents were caused by negligence. The only possible objection to this question is that the issue it raised was immaterial and as the court has found that it "did not render the trial unfair" the plaintiff takes nothing by this exception.

Exceptions overruled.

All concurred.