

Hillsborough, }  
June 28, 1934. }

ROBERT F. BURNS *v.* EMILE COTÉ.

*Chretien & Craig* (Mr. Chretien orally), for the plaintiff.

*O'Connor & Saidel* (Mr. Saidel orally), for the defendant.

MARBLE, J. The evidence relating to liability does not differ in any essential respect from that of the former trial. It follows that the court did not err in denying the motion for a nonsuit and directed verdict. *Remick v. Company*, 82 N. H. 182, 183; *Haakensen v. Company*, 77 N. H. 588. The plaintiff's admission that he heard the car approaching from behind was merely a circumstance to be considered on the issue of his care. Other cars had gone by him in safety and he was not bound to anticipate that the defendant's car would not do so. As stated in the earlier opinion, the mere fact that he realized his position was a dangerous one did not preclude recovery.

In all but one instance the exceptions to argument were irregularly taken (*Tuttle v. Dodge*, 80 N. H. 304, 312), and in that instance the objectionable part of the alleged misstatement was promptly and sufficiently corrected (*State v. Hale*, 85 N. H. 403, 412).

*Judgment on the verdict.*

All concurred.