

the jury upon either of the alleged grounds of negligence, and that the motion for a directed verdict should have been granted.

*Judgment for the defendant.*

All concurred.

Sullivan, }  
Jan. 6, 1931. }

ARTHUR A. LEAR *v.* JOSEPHINE BRODEUR & *a.*

[REDACTED]

[REDACTED]

[REDACTED]

*Barton & Shulins*, for the plaintiff.

*Henry N. Hurd*, for the defendants.

PER CURIAM. The question whether the plaintiff was wrongfully deprived of his right to a jury trial by the original order herein is not now open for consideration, since no exception was taken to the order at the time it was made. This is elementary. Hening, N. H. Dig. Tit. Procedure, s. x.

A comparison of the language of the original declaration with that of the amended count demonstrates that the court was correct in its ruling that they were based on the same cause of action. In this situation the last motion of the plaintiff raised only a procedural question as to the scope and effect of the previous order. The purport of the final ruling was that this order determined the subsequent course of the proceedings. The interpretation thus placed by the superior court upon its own order raises no question of law for us to consider.

*Exception overruled.*

Grafton, }  
Jan. 6, 1931. }

FRANK MUSGROVE & a v. WINTHROP PARKER & a.