

Hillsborough, }
Dec. 5, 1933. }

JOHN F. LARKIN *v.* JAFFER ALLEY.

Hurley & Connor, for the plaintiff.

Cyprien J. Belanger and *Banigan & Banigan*, for the defendant.

PER CURIAM. The defendant by his motion sought to set up a defence alleged to have been disclosed by the testimony but not relied upon at the trial. It is well settled under our practice that a verdict cannot be sustained upon grounds not presented at the trial, although deducible from the evidence. *Doyle v. MacDonald*, 85 N. H. 545, 547; *Hawes v. Chase*, 84 N. H. 170; *Bjork v. Company*, 79 N. H. 402, 407; *Gage v. Railroad*, 77 N. H. 289, 296 and cases cited. *A fortiori* a verdict cannot be disturbed upon such grounds.

Judgment on the verdict.

Woodbury, J., did not sit.