

Rockingham, }
Oct. 1, 1935. }

ORRIN M. JAMES, *Ex'r* v. MARTHA J. STAPLES, *Ap't*.

Arthur E. Sewall and *Jeremy R. Waldron* (*Mr. Sewall* orally), for the executor.

William H. Sleeper, *John L. Mitchell* and *Ralph G. McCarthy* (*Mr. Sleeper* orally), for the appellant.

Per Curiam. The order for a jury trial is to be interpreted by the trial justice making it in respect to its application to the trial had or to any retrial as well. *Lear v. Brodeur*, 84 N. H. 549, 550. If it was to apply to a retrial, it may be set aside upon a finding of accident, mistake or misfortune causing the continuance of the order to be unjust, conformably with the statutory principle (P. L., c. 342) relating to new trials.

Case discharged.