

268. At most it disclosed an unilateral understanding of the defendant to that effect which is insufficient.

Plaintiff's counsel argued that the plaintiff "couldn't grab hold of the rail because it was slippery." The evidence disclosed that she did hold onto the rail, which was slippery, until she slipped on the bottom step and then lost her grip on the rail. The argument was not meticulously correct but as an inconsequential misstatement of the evidence, it was cured by the Court's charge to the jury to disregard any misquotation of the evidence by the attorneys. *Clough v. Schwartz*, 94 N. H. 138, 141.

*Judgment on the verdict.*

All concurred.

Rockingham, }  
Dec. 6, 1949. } No. 3877.

CHARLES G. STABROW, *Adm'r* v. PETER STABROW.

*Charles J. Griffin and Thomas J. Morris*, for the plaintiff.

*Waldron, Boynton & Waldron*, for the defendant.

LAMPRON, J. The defendant's motion for a nonsuit (correctly a motion to dismiss, and so treated) was properly denied and his exception thereto must be overruled. In passing upon this motion, the Court was obliged to consider the evidence for the plaintiff as true and to construe it most favorably to the plaintiff. *Shimkus v. Caesar*, 95 N. H. 286, 287.

The plaintiff testified that, shortly after the burial of his mother, the defendant came and rapped on the door of plaintiff's home one morning, woke him up, and came upstairs to his bedroom. The defendant was excited over money he had found, stating that plaintiff had a good mother for having so much money in the house. At defendant's request, plaintiff accompanied him to the homestead. There, in plaintiff's presence, the defendant dug around the house, among the furniture, around the rugs, in short all through the house, and found several large sums of money amounting in all to over \$10,000 of which he took possession. This money was found in all the rooms of the house and in such containers as a coffee can, a milk can, bank money bags, lady's handkerchief and several purses and handbags. The defendant was surprised at his find.

The above was sufficient evidence on which a verdict could be found for the plaintiff and justified the denial of defendant's motion. *Lamkin v. Johnson*, 72 N. H. 344, 345.

No other question of law was saved by the defendant during the trial. Consequently those parts of his motion to set the verdict aside as being "against the law" and as being "against the evidence" raise no questions of law not already disposed of. *Bennett v. Larose*, 82 N. H. 443; *Condiles v. Waumbec Mills*, 95 N. H. 127, 128.

As to that part of his motion to set the verdict aside as being against "the weight of the evidence" it does not appear as a matter of law that the evidence in favor of the defendant was of such a preponderance that everyone must find in his favor (*Bennett v. Larose, supra*, 448), and there is "no clear or definite indication in the record that the Court acted improperly or unintelligently in considering the evidence, or was in any way misled." *Condiles v. Waumbec Mills*,



*supra*, 129; *Leavitt v. Bacon*, 89 N. H. 383, 389. Defendant's motion to set the verdict aside was therefore properly denied and his exception thereto is overruled.

*Judgment on the verdict.*

All concurred.



Hillsborough, }  
Jan. 3, 1950. } No. 3832.

STATE *v.* FRANK LACOSHUS & *a.*

