

tion which is questionable (*Whipple v. Railroad*, 90 N. H. 261), there was no prejudicial error which would require a new trial.

The question of whether father or son made the remark, or whether it was a two party exchange, did not affect the tenor of the argument, and no issue in the case turned upon the fact. The argument was directed to the length of time involved, and the fact that the plaintiff had not moved from the center of the road. Whether it was the boy who spoke or the father, or both, the gist of the argument would not have varied, and the effect upon the jury would have been the same. A harmless misstatement will not vitiate a verdict. *Prokey v. Hamm*, 91 N. H. 513.

The plaintiff points out that the record contains no finding by the Trial Court that what took place did not render the trial unfair. *Bruce v. Company*, 87 N. H. 462, 464. Ordinarily such a finding would be required. *LePage v. Company*, 97 N. H. 46, 52, 53. On the other hand: "If the fact were an immaterial one, or from the situation it was not probable the jury who heard the evidence were misled by the misstatement of it, it would be plain that there was no lack of fairness in the trial." *Benoit v. Perkins*, 79 N. H. 11, 20. This is such a case as was described by the quotations, and the plaintiffs' exception to argument is overruled.

Other exceptions transferred have been neither briefed nor argued, and are deemed to be waived.

Judgment on the verdict.

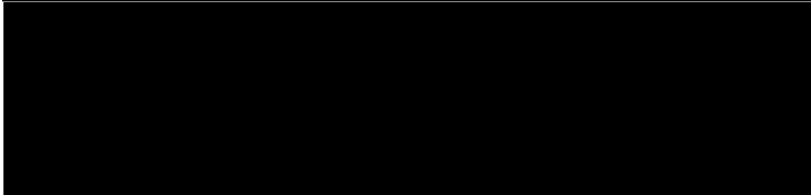
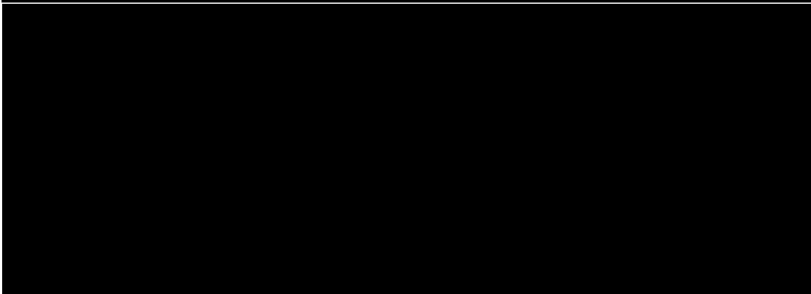
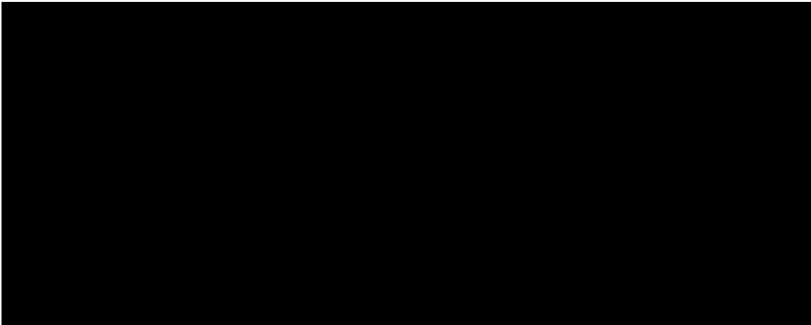
GOODNOW, J., did not sit: the others concurred.

Strafford, }
Nov. 5, 1952. } No. 4136.

EVA DRAKE

v.

RETTA M. BOWLES d/b/a MY LADY BEAUTY SHOP.



McCabe & Fisher and John D. McCarthy (Mr. Fisher and Mr. McCarthy orally), for the plaintiff.

Charles F. Hartnett (by brief and orally), for the defendant.

KENISON, C. J. Discovery in this state may be characterized as broad and liberal and it functions with desirable flexibility

under the discretionary control of the Presiding Justice of the trial court. *Kann v. Company*, 81 N. H. 535, 541. It is favored as a means for the adequate preparation for trial and as a method for ascertaining the truth. *State v. Cote*, 95 N. H. 108, 111. "Because of the liberal laws in the state for the taking of depositions in advance of trial" (*Lefebvre v. Somersworth Co.*, 93 N. H. 354, 356), the necessity for the remedy of discovery in either law or equity is not as acute as it otherwise would be (*Staargaard v. Company*, 96 N. H. 17, 18). However, the remedy is available and has continued to develop for the most part without the aid of statute or special rules of court. R. L., c. 371, s. 1; *Reynolds v. Company*, 71 N. H. 332; *LaCoss v. Lebanon*, 78 N. H. 413; *Ingram v. Railroad*, 89 N. H. 277. Cf. *Veino v. Veino*, 96 N. H. 439.

In personal injury actions discovery takes the form of a physical examination of the injured party. This is usually done as a matter of course by agreement but the inherent power of the court to order an ordinary physical examination is settled in this jurisdiction. *Krook v. Blomberg*, 95 N. H. 170; VIII Wig. Ev. (3rd ed.) s. 2220 C, Note 13 (Supp.). The conditions under which the examination is to be made as well as its nature, extent and conduct may be defined by the Trial Court so that proper safeguards exist on behalf of the party examined. Anno. 135 A. L. R. 883; 50 Col. L. Rev. 1026, 1049. Discovery may even call for an autopsy if good and substantial reasons exist which make the evidence of the autopsy vital. *Kusky v. Laderbush*, 96 N. H. 286. The development and expansion of discovery in this jurisdiction clearly indicates that the Trial Court has discretionary power to order that a copy of the report of the physical examination be given to the plaintiff if required in the interests of substantial justice under the particular circumstances of any given case. Something more is required of the plaintiff than a desire to have the report or an attempt to avoid hiring his own physician. Therefore the following argument in behalf of the plaintiff is considered inadequate: "In many cases the plaintiff is a person of moderate circumstances who has suffered an injury and must, of necessity, keep his expenses down. If a report of defendant's expert doctor is not made available to plaintiff, then the plaintiff is put to the additional expense of employing an expert of his own to make an examination and to hold him in readiness as a witness." It is not difficult to think of circumstances where the death or unavailability of a party or a witness or other reasons would require that the report of the physical examination

