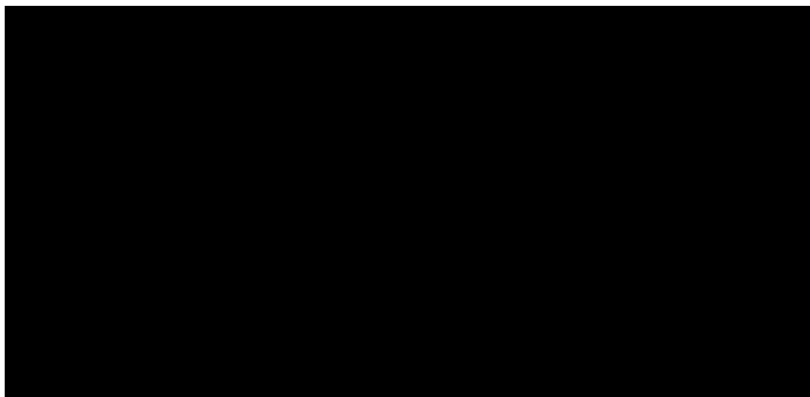
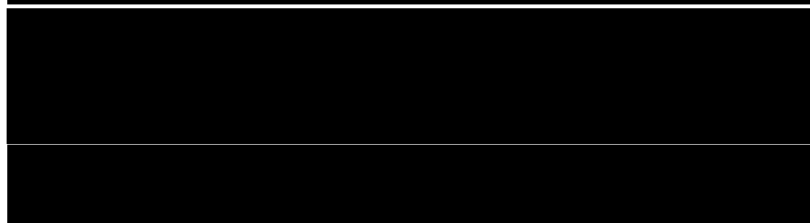
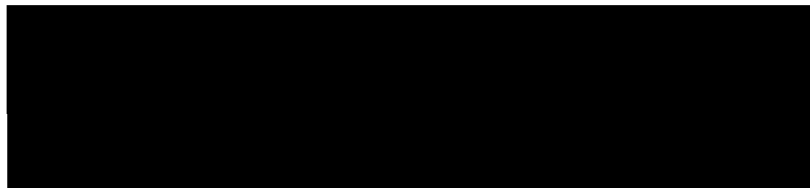


Hillsborough,  
No. 4240.

FRED PERREAULT *v.* MARY LYONS & *a.*

Argued October 7, 1953.

Decided October 30, 1953.



*Morris D. Stein* and *Nicholas Pantelas* (*Mr. Stein* orally), for the plaintiff.

*Albert Terrien* (by brief and orally), for the defendants.

BLANDIN, J. We have here a situation where the defendants saved no exceptions during the trial and made no motions for a

nonsuit or direct verdict. They have therefore waived their right to question the sufficiency of the evidence to support a verdict (*Simes v. Atwell*, 85 N. H. 537), or to raise any issues except such as fall within the scope of their motion to set aside the verdict and enter judgment for them. *Ayers v. Gordon*, 94 N. H. 30, and cases cited. However, their motion alleging among other grounds that the verdict was against the weight of the evidence did present to the Trial Court the question whether "no reasonable man could fail to find in favor of the defeated [parties]. . . ." *Simes v. Atwell, supra*, 537, 538. In granting this motion the Trial Court gave as its reason "that the evidence was insufficient to sustain a finding of want of probable cause." It thus appears that it decided the motion upon an issue which was not properly before it, but did not pass on the question of the weight of the evidence as should have been done under our practice. *Condiles v. Waumbec Mills*, 95 N. H. 127, and cases cited. In this situation the case must be remanded that it may do so. *Colby v. Varney*, 97 N. H. 130, 134. The present order is vacated.

*Exceptions sustained.*

All concurred.

Merrimack,  
No. 4244.

HARDWARE MUTUAL CASUALTY COMPANY *v.* MAX TOBYNE & *a.*

Argued October 7, 1953.

Decided October 30, 1953.