

hearing had been had and no report made. *Hayward v. Bath*, 35 N. H. 514. The setting aside of the report was like the setting aside of a verdict for error, which may be obviated by another trial.

Exception overruled.

BINGHAM, J., did not sit.

BELLOWS v. BELLOWS.

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There is no constitutional right of trial by jury in proceedings in equity.

BILL IN EQUITY, referred by order of court. On the return of the report the plaintiff elected a trial by jury. The court ruled that the plaintiff was not entitled of right to a jury trial, and ordered a decree for the defendant, to which the plaintiff excepted.

J. Benton and W. Heywood, for the plaintiff.

Ray & Drew, for the defendant.

STANLEY, J. In proceedings in equity the parties have no constitutional right of trial by jury. *Copp v. Henniker*, 55 N. H. 179, 210, 211; *Perkins v. Scott*, 57 N. H. 55, 81-84. The court was therefore right in denying the plaintiff's motion, and

The exception must be overruled.

GAMSBY v. COLUMBIA.

The mere fact of a jury being informed by the attending officer, as ordered by the court, that (for supposed inability to agree) they were all discharged from the further consideration of the case, and two of them (on account of sickness) from any further service, will not vitiate a verdict upon which they afterwards agree.

The facts on which a motion for a new trial is based should be settled at the trial term.

CASE. Some time after the cause had been given to the jury, and they had informed the court by a written message that they could not agree, the officer having charge of the jury was directed to inform them that they were discharged from the further consideration of the

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Case 2	
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