

CARROLL v. LOCKE.

A party, by consenting to a reference of his cause, with an agreement that the report of the referee shall be final and that judgment shall be entered thereon, waives his right of review.

By consent of the parties, the cause was committed to a referee, with an order of court that his report should be final, and that judgment should be entered thereon as of the term at which the cause was thus referred. Upon the return of the referee's report at the next subsequent trial term, upon the defendants' motion and against the plaintiff's objection, the action was brought forward and restored to the docket. Thereupon the plaintiff moved for judgment upon the report, which was ordered. The defendants then moved for a stay of execution under the 51st rule of court, claiming that under the statute they were entitled, of right, to a review. The court, *pro forma*, granted the motion, and the plaintiff excepted.

W. T. & F. H. Norris and *Shirley*, for the plaintiff.

Sargent & Chase and *F. H. Pierce*, for the defendants.

FOSTER, J. "Civil actions in the supreme court, in which an issue has been joined and judgment rendered, except in cases otherwise provided, and such actions in which judgment has been rendered by agreement of parties open to review, may be once reviewed." Gen. St., c. 215, s. 1.

After issue joined, this cause was referred by consent. The right of trial by jury, and the right of review, were waived by the terms of the agreement providing that the report should be final and that judgment should be entered thereon, as of the term at which the cause was referred. There is no suggestion of any accident or mistake.

Statutory provisions, which are enacted for the benefit of individuals and not on account of mere public considerations, may be waived by those for whose benefit they are intended. *Hanover v. Weare*, 2 N. H. 131; *Page v. Pendergast*, *ib.* 235; *Lisbon v. Bath*, 23 N. H. 9; *Brown v. Dudley*, 33 N. H. 511; *Plummer v. Meserve*, 54 N. H. 166; *Perkins v. Scott*, 57 N. H. 55; Bouv. Dic., Waiver.

Exceptions sustained.

STANLEY, J., did not sit.