

TUFTONBOROUGH v. FOX & a.

A diminution of the ability of a town to build and maintain a highway may be a sufficient change of circumstances to authorize the discontinuance of the highway.

PETITION, for the discontinuance of a highway that had not been constructed. The court reserved the question whether an increase of the town's indebtedness and a decrease of its ability to build and maintain the highway could be a cause of discontinuance.

Copeland, for the plaintiffs.

F. Hobbs and *Fox*, for the defendants.

DOE, C. J. As the ability of the town to build and maintain the highway was a material part of the question of laying out (*Dudley v. Cilley*, 5 N. H. 558, 560, 561; *Winship v. Enfield*, 42 N. H. 197, 204, 205), a diminution of that ability is a change of circumstances that may be a sufficient reason for discontinuance. It is possible that after a road is laid out, and before it is built, the resources of the town may be so reduced that the expense of the road would be unreasonably burdensome.

Case discharged.

STANLEY, J., did not sit.

 ALLARD v. HAMILTON.

It may be presumed that a material question of fact not specially found, and about which there was evidence, was found in favor of the party having a general verdict.

TRESPASS, *qu. cl.*, and for carrying away oats. Facts found by a referee. The plaintiff, by a verbal contract, undertook to carry on his father's farm, support his father and mother, and have the balance of the proceeds for his pay. With the assistance of his father, brother, and sister, all of whom lived on the farm, it was carried on; and the proceeds were applied to their common support for seven years, when the father and mother died. The oats in controversy grew from seed bought and sown by the father a short time before his death. The plaintiff and his brother carried on the farm that season until July, when the administrator of the father's estate, which was decreed insolvent, claiming the right to the crops, sold the oats,