

DOW v. ATKINSON.

An appeal from the assessment of damages by selectmen, for land taken for the establishment or enlargement of a cemetery, under Gen. St., c. 45, s. 2, may be taken at any time within one year after the cemetery is established or enlarged.

APPEAL from the assessment of damages by the selectmen, for land of the petitioner taken for the enlargement of a public cemetery. The appeal was filed June 29, 1878. The laying out was in September, 1877, and the return thereof was recorded September 24, 1877. The petitioner had actual notice of the laying out within sixty days after the return was recorded. The defendants moved to dismiss the petition, because the petitioner, having had actual notice of the laying out, did not file his petition within sixty days after the return thereof was recorded. Motion granted, and petitioner excepted.

Hatch, for the petitioner.

Marston & Eastman, for the town.

CLARK, J. Gen. St., c. 45, s. 2, provide that all proceedings for obtaining increased damages, in case the owner is dissatisfied with the appraisal of the selectmen, for land taken for the establishment or enlargement of a public cemetery, shall be the same as in the case of highways laid out by the selectmen; and Gen. St., c. 63, s. 10, provide that "any land-owner aggrieved by the decision of the selectmen * * * in the assessment of damages in any case relating to a highway, may appeal therefrom to the supreme court by petition within one year after the highway or alterations are made." The limitation of the time within which an appeal shall be taken to sixty days after the return is recorded, as provided in Gen. St., c. 63, s. 11, applies only to appeals from the laying out or altering of a highway, and not to the assessment of damages to a land-owner. *Freeman v. Cornish*, 52 N. H. 141.

Exceptions sustained.

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