

morning of February 10, he left the horse and other stage property in the care of an agent, and went in search of employment, intending to find work by which he could earn his living by teaming with this horse. Afterwards on the same day the horse was attached by the defendant. In a day or two the plaintiff made a bargain to work with the horse, teaming for a merchant of Sutton.

Flanders, for the plaintiff.

Albin, for the defendant.

Staging was the plaintiff's only business, and this he abandoned the night before the horse was attached. From that down to the time he closed his arrangement with the merchant at Sutton he was out of business. When the attachment was made he was not engaged in farming or teaming, nor had he any other actual use in which the labor of the horse was required.

DOE, C. J. The question is, whether the horse at the time of its attachment was required for the plaintiff's actual use. G. L., c. 224, s. 2, § 12. On this question of fact there is evidence to be considered by the referee. *Somers v. Emerson*, 58 N. H. 48; *Rice v. Wadsworth*, ante 100; *George v. Fellows*, ante 206.

Report recommitted.

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

AMOSKEAG MANUFACTURING CO. v. HEAD.

A question of law, decided at the law term, is not reconsidered in the same case, except on a motion for a rehearing; and such a motion is not seasonably made after a trial of the facts subsequent to the decision.

PETITION, for the assessment of damages under the flowage law. At the April term, 1879, there was a jury trial, and a verdict. The defendant's exceptions taken at the trial were overruled at the December term, 1879. *Ante* 332. At the April term, 1880, the defendant moved in arrest of judgment on the ground that the flowage act (G. L., c. 141, ss. 15-19) is in conflict with the constitutions of New Hampshire and of the United States. The motion was denied, and a bill of exceptions allowed.

C. R. Morrison, for the defendant.

Cross and Mugridge, for the plaintiffs.

DOE, C. J. The questions decided in this case in 56 N. H. 386, cannot be raised again at this time or in this manner. *A. M. Co. v. Heald*, ante 332, 337.

Exceptions overruled.

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

CRESSEY v. THE NORTHERN RAILROAD.

The neglect of a railroad company to fence their road does not excuse them from liability for injury to animals upon their track, although the owner of such animals was aware of that neglect when he turned them out to graze on his own adjoining land.

CASE, for killing the plaintiff's mare, through the neglect of the defendants to maintain a sufficient fence between their railroad and the highway. The plaintiff, knowing the want of a fence, turned his mare into the highway to feed, and she wandered at large and unattended in the highway within the limits of the plaintiff's farm and upon the railroad, and was overtaken by the defendants' cars and killed.

The plaintiff requested the court to instruct the jury, that if the mare wandered from the highway to the railroad track, through the defendants' neglect to keep a sufficient fence, and was there killed by the defendants' cars, the defendants were liable; that if she wandered upon the track through the plaintiff's fault in allowing her to go at large in the highway, and was killed through want of ordinary care of the defendants in managing the train, the plaintiff's knowledge of the want of a fence, was immaterial, and the defendants were liable. The court declined to give these instructions, but, among other things, instructed them that if, without any fault or want of ordinary care on the part of the plaintiff, the mare escaped to the track, and was there killed by the defendants' cars, the defendants were liable; but if the plaintiff had knowledge of the want of a fence, and turned the mare loose into the highway, and she escaped thence to the track, through any want of ordinary care, the defendants were not liable, unless they killed her wantonly, or by due and ordinary care might have avoided it, and did not.

To the instructions given, and to the refusal to give those requested, the plaintiff excepted. Verdict for the defendants, and motion for a new trial.

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