

ency of opening the highway. *Hampstead's Petition*, 19 N. H. 343, 348.

In the present case, the commissioners find that since the highway in question was laid out, the selectmen have laid out another in good faith, which obviates the necessity for the one sought to be discontinued; that the delay in building it has been only in order that the result of this petition might be made known; and that, by reason of such change of circumstances, the first highway is no longer necessary, and should be discontinued.

These facts sufficiently distinguish this case from that of *Marlborough's Petition*, 45 N. H. 556, to which our attention has been called, and also undeniably present a change of circumstances which was proper to be considered by the commissioners upon the matter before them. So far as it appears, they acted upon competent evidence, which it was their exclusive province to weigh; they are charged with no fraud, nor is exception taken to the regularity of their proceedings. Hence, and in accordance with the settled rule in this state, the court will not attempt to revise their conclusion. *Hampstead's Petition, supra*; *Marlborough's Petition*, 46 N. H. 495; *Candia and Hooksett v. Chandler*, 58 N. H. 127;—and see, generally, *Petition of Hopkinton*, 27 N. H. 133; *Bethlehem's Petition*, 20 N. H. 210; *Freeman v. Plainfield*, 52 N. H. 146; *Thompson v. Conway*, 53 N. H. 622.

Exceptions overruled.

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

[Hillsborough, June, 1880.]

RING v. HOLT.

Burns, for the plaintiff.

Wallace, for the defendant.

Report of a referee whose general finding for the plaintiff was apparently based on an inference of fact. No error of law appearing, judgment was rendered on the report.

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

[Hillsborough, June, 1880.]

RUETER & a. v. HOWE.

Osgood and Morrison & Bartlett, for the plaintiffs.

Patten, for the defendant.

ASSUMPSIT. The defendant authorized the plaintiffs to deliver ale to one Donahoe, during the next twelve months after September 4, 1877, not exceeding the amount of \$500, and promised to pay them for it if Donahoe did not. During the twelve months the plaintiffs delivered to Donahoe \$500 worth of ale, for which he paid them; and afterwards, during the same twelve months, they delivered to him more than \$7,000 worth, for some of which he has not paid them. The plaintiffs having been paid for what they delivered on the defendant's authorization, judgment was ordered for the defendant.

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

[Grafton, June, 1880.]

GREELLY & a. v. BAGLEY.

Burleigh & Adams, for the plaintiffs.

Burrows & Jewell, for the defendant.

TRESPASS, *qu. cl.* Report of a referee in favor of the plaintiffs. The location of a disputed boundary being found by the referee, and no error of law appearing in his finding, judgment was rendered on his report.

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

[Grafton, June, 1880.]

HENRY v. PRESBY.

TRESPASS *de bonis*, for a colt. Facts found by a referee. One Allard, having mortgaged his mare to the plaintiff, made with the defendant a contract by which the defendant, for the price of \$50, was to have a colt to be raised from the mare, and to be taken by the defendant when four months old. When the colt was two months old, Allard mortgaged it and the mare to the plaintiff. When it was four months old, Allard delivered it to the plaintiff, who had been informed of the contract. The defendant took the colt from the plaintiff's possession, and refused to pay him the \$50.

S. B. Page, for the plaintiff.

Foster and Carpenter, for the defendant.