

for a new trial might, by the exercise of diligence, have discovered the relationship before trial. *Harrington v. Railroad*, 62 N. H. 77, and cases cited; *Quinebaug Bank v. Leavens*, 20 Conn. 87, 89; *Woodward v. Dean*, 113 Mass. 297.

Motion denied.

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

CAMPBELL & *a.* *v.* MANCHESTER.

When a diseased animal is killed, under Laws of 1889, *c.* 93, the court has no power to compel the city or town to pay the value of the animal before it became diseased.

The appeal provided for in said statute is solely on the question of the value of the diseased animal at the time of the appraisal by the committee.

APPEAL, under the provisions of Laws of 1889, *c.* 93. In their petition the plaintiffs allege, in substance, that in proper proceedings under the statute their horse was adjudged to be infected with the glanders, was ordered to be killed, and was appraised by a committee of three competent and disinterested men, who found that the horse at the time of the appraisal was of no value, and that before it was infected with the glanders it was of the value of \$50; and that the "city refuses to pay the sum of \$50 or any other sum, whereby the petitioners are aggrieved and take this appeal." They pray the court "to order and decree that the city of Manchester pay to them the sum of fifty dollars damages with costs." The defendants demur.

Sulloway & Topliff, for the plaintiffs.

Edwin F. Jones, for the defendants.

ALLEN, J. "The mayor and aldermen . . . when any such [domestic] animal is adjudged by a veterinary surgeon, by them selected, to be infected with any contagious or infectious disease, may, in their discretion, order such diseased animal to be forthwith killed and buried. . . . They may cause all such animals, so ordered killed, to be appraised by a committee of three competent and disinterested men, under oath, at the value thereof at the time of the appraisement, and the amount of the appraisement shall be paid as provided in section 1. In case the owner of the animal shall be aggrieved by the amount of such appraisement, he may by petition appeal to the trial term of the supreme court

next holden in and for the county. . . . Said owner shall enter said petition in said court, and shall be entitled therein to a trial as to the value of said horse at the time of said appraisement by the court or jury." Laws 1889, c. 93, ss. 2, 3, and 4.

The language of the statute is unequivocal and decisive, that the committee are to determine the value of the animal at the time of their appraisal, and that the owner is entitled to payment of its value at that time only. The court have no power, in this or any other form of procedure, to order the defendants to pay the value of the horse before it became diseased.

The owner "aggrieved by the amount of such appraisement" is given an appeal to the sole end that he may have the value of the diseased animal at the time of the appraisal determined by the court or jury. The plaintiffs complain, not of the amount which they claim the committee awarded them, but of the defendants' refusal to pay it. The statute allows no appeal for that cause.

Appeal dismissed.

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

STACK v. CAVANAUGH & a.

An infant may avoid his contract for the purchase of a horse upon accounting for the benefit, if any, derived from the purchase, and upon restoring the animal to the vendor, although its value may have been diminished by his unskilful driving and not by positive tortious acts wilfully committed.

In such case it makes no difference that the infant ratified the contract during infancy.

ASSUMPSIT, to recover \$25 and interest, paid by the plaintiff to the defendants as part of the price of a horse. Facts found by the court.

At an auction sale of horses by the defendants, October 12, 1886, the plaintiff bid off a horse at the price of \$112.50, which was delivered to him on payment of \$25, and upon the understanding that the balance of the price was to be secured by note and a mortgage upon the horse. The plaintiff took the horse away, and upon harnessing him to a wagon found that he was unable to drive him. The plaintiff took the horse back to the defendants' stable that night, told them the horse would n't go, and asked them to refund the \$25. The defendants declined to pay back the money, but offered to exchange horses with the plaintiff; and another horse, which they had bought in the West, had