

The evidentiary facts stated are not necessarily inconsistent with a finding that justice did not require such action in this case; consequently the dismissal of the motion presents no error of law. *Fulton Pulley Co. v. Company*, 71 N. H. 384; *Reed v. Prescott*, 70 N. H. 88; *Clough v. Moore*, 63 N. H. 111, 113; *Warner Bank v. Clement*, 58 N. H. 533.

Exception overruled.

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

Carroll, }
March 7, 1905. }

BOSTON & MAINE RAILROAD v. BERRY & a.

BILL IN EQUITY, to enjoin the defendants from occupying or trespassing upon a tract of land adjoining the plaintiffs' track in Wolfeborough. Upon hearing the bill was dismissed by *Stone, J.*, at the June term, 1904, of the superior court.

Arthur L. Foote, for the plaintiffs.

Oscar L. Young and *Edwin H. Shannon*, for the defendants.

PARSONS, C. J. As the court found for the defendants, the consideration of their exceptions to the evidence by which the plaintiffs sought, but failed, to maintain their case would serve no useful purpose. No error of law is necessarily involved in the dismissal of the bill upon the evidence reported. None has been pointed out by argument or brief.

Exceptions overruled.

All concurred.

Carroll, }
June 6, 1905. }

HUTCHINS v. BERRY & a.

BILL IN EQUITY, to determine the gristmill right, so called, to water for power at the Pickering dam on Smith's river in Wolfeborough. Transferred from the June term, 1904, of the superior court by *Wallace, C. J.*

May 2, 1855, Elphronzo G. and Sarah D. Colby, who were the

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