

desired to question the validity of the findings, the evidence upon which they are based should be reported.

We have examined the other questions raised by the exceptions taken at the trial and do not find that they are well founded. That such action may be taken in the superior court as justice requires, the order is,

*Case discharged.*

All concurred.

---

Rockingham, }  
Feb. 1, 1910. }

MILLER *v.* BOSTON & MAINE RAILROAD.

CASE, for personal injuries sustained by the plaintiff while walking on the defendants' right of way and alleged to have been caused by the negligence of their servants. Trial by jury and verdict for the plaintiff. Transferred from the January term, 1908, of the superior court by *Chamberlin, J.*, on the defendants' exceptions to the admission of certain evidence and the denial of their motion for the direction of a verdict in their favor. Upon consideration of the case in the supreme court the order was,

*Exceptions overruled.*

*Eastman, Scammon & Gardner*, for the plaintiff.

*Kelley, Harding & Hatch* and *Page & Bartlett*, for the defendants.

---

Grafton, }  
March 1, 1910, }

CLOUGH *& a.*, *Trustees*, *v.* ENFIELD TOWN SCHOOL DISTRICT.

PETITION, by trustees under the will of Ira Copeland, for advice as to the performance of their duties. Transferred from the September term, 1909, of the superior court by *Chamberlin, J.*

*John H. Noonan*, for the plaintiffs.

*Per Curiam.* By the testator's will, the subject of the bequest—"the new brick block"—is given to the Enfield town school dis-

trict. The property given is placed in the hands of three trustees, "who shall have the management of said property for the benefit of said district." The trustees ask the advice of the court whether the income of the property in their hands applicable for school purposes is payable for the benefit of the Enfield town school district as now constituted, another district of the town having been incorporated with the town district since the testator's death, and whether there is any distinction as to the application of that portion acquired before and that since the union of the two districts.

The trust imposed upon the trustees relates only to the management of the property. The identity of the town school district was not lost by incorporation in it of additional territory. As no trust was imposed upon the trustees as to the expenditure of the income available for school purposes for the benefit of the district, their trust will be discharged by payment to the legatee named—the Enfield town school district—of the sums realized from their management of the property which are available for school purposes.

*Case discharged.*

Coös, }  
March 3, 1910. }

STATE (*ex rel.* O'CONNOR) v. DREW.

HABEAS CORPUS. The writ was issued and the petitioner was brought before the court at the April term, 1909. Upon hearing, the court (*Plummer, J.*) ordered the petitioner remanded. An exception to the order was allowed, and the petitioner admitted to bail pending its determination.

At the April term, 1908, of the superior court, the petitioner was indicted for violating section 15, chapter 112, Public Statutes, and at the September term, 1908, was found guilty upon a trial by jury. The court imposed a fine of \$25 and costs and ordered that the petitioner be confined in jail for sixty days. At the solicitation and request of the petitioner, it was further ordered "that jail sentence be suspended, mittimus to issue on call of solicitor." The solicitor called for the mittimus in June, 1909, and the defendant, who is sheriff of the county, arrested the petitioner on the precept and committed him to jail. The petitioner thereupon applied for this writ.