

trial whether the camp became the defendant's property the instant the clock struck twelve on the night of August 13th, he would say, no. If it is conceded there is no evidence to warrant this statement, that furnishes no reason for disturbing the verdict; for as has already appeared the camp did not become the defendant's property at that time and had not become his property at the time of the trial and that was all counsel was asking the jury to find when he made this statement.

Exceptions overruled.

All concurred.

Strafford, }
April 4, 1916. }

CHARLES H. FOSS v. ALVAN P. PLACE & a.

Where the mayor of a city has adequate power to prevent the misapplication of the city's funds on the part of other officials by refusing to draw his warrant therefor, he cannot maintain a bill in equity to enjoin such misappropriation.

BILL IN EQUITY, by the plaintiff individually as a taxpayer and officially as the mayor of Dover against the police commissioners and the chief of police of the city, to restrain the defendants from seeking to appropriate the funds of the city to the payment for an automobile patrol wagon. The defendants purchased the wagon intending to use the city's money in payment therefor. The question transferred without a ruling by *Sawyer, J.*, from the September term, 1914, of the superior court relates to the legal right of the defendants to purchase the wagon for the city or on its credit. The ordinances of the city provide that no money shall be drawn out of the city treasury except upon the written order of the mayor. It is unnecessary to report other facts in view of the opinion.

James B. Adams, city solicitor, and *Hughes & Doe*, for the plaintiff.

James McCabe and *F. Clyde Keefe*, for the defendants.

WALKER, J. So far as appears from the case the plaintiff is not entitled to relief in equity. If the defendants had no authority to purchase the automobile for the use of the police department of Dover or to pledge the credit of the city to pay for it, the plaintiff as the mayor of the city and as its representative has the power

under the city ordinances to refuse to draw his warrant for the payment for the machine. His injunctive power is adequate to prevent the application of the public funds to this purpose, until the right of the defendants to reimbursement is established by appropriate proceedings at law. No irreparable injury will result. *Perkins v. Foye*, 60 N. H. 496; *Williams v. Mathewson*, 73 N. H. 244; *Claremont v. Rand*, 76 N. H. 116. Under these circumstances it is not advisable to consider at this time the question argued by counsel. No reason appears why the bill should not be dismissed.

Case discharged.

All concurred.

Hillsborough, }
April 4, 1916. }

MARTHA L. JONES v. MASON.

In proceedings for the laying out of a highway the court has no power to revise the commissioners' findings, but merely to see that their proceedings have been regular and that neither fraud nor surprise has vitiated their conclusions.

Whether there is public necessity for a highway is a question of fact, and the weight of the evidence is exclusively for the commissioners.

APPEAL, from the laying out of a highway over the plaintiff's premises. The county commissioners found there was necessity for the proposed highway. Many witnesses testified before them, giving their opinions upon the question and their reasons therefor. There are no houses on the new highway except one at the end, called the Newell place. The occupants of the Newell place have a way by prescription over the route of the proposed highway. The plaintiff moved to vacate the finding of the commissioners. The motion was denied, and the plaintiff excepted.

Transferred from the September term, 1915, of the superior court by *Sawyer, J.*

Henry A. Cutter, for the plaintiff.

Herbert J. Taft, for the defendant.

PARSONS, C. J. The report of the commissioners having been returned into the court might be recommitted or rejected by the court (P. S., c. 68, s. 8), but it has always been held that "the court