

## WALDRON v. WOODMAN.

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68	400

A reason of a probate appeal is insufficient if it does not set forth an error that entitles the appellant to a reversal of the decree.

On an appeal from the appointment of a guardian of a minor child, allegations that the child's father was not appointed and was not notified of the proceeding, and that the wish and expectation of a deceased person who left the child a legacy were disregarded, do not set forth sufficient reasons for reversing the decree.

APPEAL from a decree of the probate court appointing the defendant guardian of the plaintiff's child, a minor, more than fourteen years old, who elected the defendant guardian. Three of the reasons of appeal were,—(1) the appointment deprives the plaintiff of the custody of his child; (2) was made without notice to the plaintiff; (3) was in disregard of the known wish and expectation of the defendant's husband, now deceased, who left the child a legacy of \$5,000. To these reasons the defendant demurred.

*Wheeler*, for the defendant.

*White*, for the plaintiff.

ALLEN, J. The facts alleged in these reasons of appeal do not show that the decree is erroneous. If those facts were proved, it would not follow as a conclusion of law that the decree should be reversed. Everything deserving consideration being duly weighed, it might be proper to appoint some other person than the father. The statute does not require notice to be given to the father. The wish and expectation of another person, who gave the child \$5,000, are not decisive of the question who should be guardian. In determining the sufficiency of the reasons of appeal, the question is not whether any or what weight might be given to the father's natural guardianship, and the wish of the child's benefactor, as evidence. The reasons of appeal should show error in the decree. If the plaintiff has a right to appeal on the ground that, upon a consideration of the merits of the whole case, he ought, and the defendant ought not, to be appointed, he could be heard on an appeal setting forth a reason of sufficient breadth.

*Demurrer sustained.*