

all the personal estate, and, having released her right of dower and homestead, one third, in fee, of all the real estate, unlimited by the other provisions of the will. In setting off her real estate, some discretion may be exercised so as not to break up unnecessarily the devises to the children. After her part of the estate is set off and paid over, the rest is to be so divided, distributed, and administered as to carry out the provisions of the will so far as possible, preserving to all the devisees their relative rights.

Case discharged.

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

LYMAN, *Ap't*, v. ELSHER, *Ap'ee*.

When a guardian's account is settled by a decree in the probate court upon insufficient notice, and the settlement is satisfactory to a surety on the guardian's bond, but the surety is entitled to a valid decree for his own protection, he may cause a new proceeding to be instituted in that court for a settlement of the account upon due notice; and the mere want of such notice, without any refusal of the probate court to cause due notice to be given, is not a ground on which the surety can appeal from the decree.

PROBATE APPEAL, from a decree determining the amount in the hands of the defendant as guardian upon a settlement of account. The plaintiff, a surety on the defendant's bond, is satisfied with the amount fixed by the decree, but appeals for the alleged reason that the account was settled upon insufficient notice, and that by reason of this defect the decree will be of no avail to the plaintiff in determining the sum for which he is liable as surety.

Dodge, for the plaintiff.

The purpose of the appeal is to cause the decree of the probate court to be affirmed so as to protect the plaintiff against all parties. The guardian's surety may appeal. *Jones v. Chase*, 55 N. H. 234; *Bryant v. Allen*, 6 N. H. 116; *Tilton v. Tilton*, 41 N. H. 479.

Smith, for the defendant.

BINGHAM, J. The jurisdiction of the probate court in the settlement of guardian accounts is original and exclusive. *Critchett v. Hall*, 56 N. H. 324; *Clark v. Courser*, 29 N. H. 173. If the notice was insufficient to give the probate court jurisdiction, the plaintiff

can cause another proceeding to be instituted, upon due notice, for the settlement of the defendant's account in the probate court.

Appeal dismissed.

All concurred.

ABBOTT v. BUTLER.

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A right of way, granted or reserved without limit of use, may be used for any purpose to which the land accommodated by the way may naturally and reasonably be devoted.

TRESPASS *quare clausum*. Defence, a right of way in the *locus in quo*. Facts agreed. Butler and Chesley owned a tract of land bounded northerly by the highway leading from Durham to Dover, and southerly by a highway leading from Durham to the old Piscataqua bridge. Southerly from this tract, and across the last named highway, was a tract of land owned by Butler. A cart-path passed across Butler and Chesley's land from one highway to the other, and this was used by Butler to accommodate his land. Butler and Chesley conveyed the southerly part of their tract next the Piscataqua bridge road to the plaintiff "with a right of way, for all purposes, across said other adjoining land of the grantors to and from the old Dover and Durham road, being the old way now used, and with all the privilege of fitting, repairing, and keeping in repair said way, reserving to said James Butler and his children during their lives a right of way across the granted premises from the adjoining land of said James Butler to and from said adjoining land of said James Butler and Daniel Chesley." Butler, who conveyed with Chesley to the plaintiff, and who owned the lot to the south, was father of the defendant. The Butler lot had been used for agricultural purposes only, but there was upon it a ledge available for quarrying, and a ready market for the stone at Dover. The Piscataqua bridge road connected with the highway to Dover half a mile west of the plaintiff's land. The defendant with Butler's team hauled stone from the Butler lot across the plaintiff's land in the usual cart-path, and the land of Butler and Chesley to the Dover road; and this was the trespass complained of.

Hall, for the plaintiff.

Hatch, for the defendant.

ALLEN, J. The owner of a way on land of another is limited in its use to the terms of the grant from which the way is derived. If granted for one purpose, he cannot use it for another. *French v.*