

354; *Smith v. Smith*, 27 N. H. 244; *Ladd v. Wiggin*, 35 N. H. 421, 426. Whether a note was agreed to be received in payment is a question of fact. *Wilson v. Hanson*, 20 N. H. 375; *Foster v. Hill*, 36 N. H. 526. So is the question, whether it was agreed to extend the time of payment for the goods. The mere reception of the notes, assuming them to have been given for the goods, as it was not a payment for them, did not have that effect. It was evidence to be considered, with the other evidence, on the question whether or not there was an agreement for an extension, but it was not conclusive, and the verdict establishes the fact that there was no such agreement. The offer to return the notes to be cancelled was seasonably made, and the plaintiff, on filing them with the clerk, is entitled to

Judgment on the verdict.

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

HALL v. NELSON & a.

59	573
71	252
59	573
72	527

Whether a wagon is exempt from attachment as a farming tool, or a tool of the debtor's occupation, is a question of fact.

TRESPASS, for the caption and conversion of a wagon. The defendants justified under an attachment in July, 1879. Facts found by a referee.

The wagon was the only one owned by the plaintiff. He used it for ordinary family purposes, and in 1878 and 1879 he used the hind wheels in connection with a rack and other wheels to draw the hay cut on his farm to the barn, and in harvesting other crops. The plaintiff's main business was that of a showman, and his principal use of the wagon was to transport himself and the views and apparatus illustrating his astronomical lectures about the country. When the wagon was attached, the plaintiff objected, and claimed that it was exempt from attachment.

The referee found for the plaintiff, and assessed his damages, and the court ordered judgment, and the defendants excepted.

Flanders, for the defendants.

Shirley, for the plaintiff.

STANLEY, J. The question at issue was, whether the wagon, when attached, was exempt either as a farming tool, or a tool of the plaintiff's occupation. This was a question of fact to be determined by the referee upon all the evidence, and the finding for the

plaintiff was a finding of every material fact upon which the plaintiff's right of recovery depended. *Allard v. Hamilton*, 58 N. H. 416; *Noyes v. Patrick*, 58 N. H. 618; *Rice v. Wadsworth*, ante 100; *Richards v. Hubbard*, ante 158; *George v. Fellows*, ante 206.

Exceptions overruled.

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

WADLEIGH v. EATON.

A ward may be allowed an appeal from a probate decree, denying his petition for a revocation of his guardianship, when he was prevented from appealing through the misfortune of being unable to furnish an appeal bond, having no means to indemnify sureties, his property being in the hands of his guardian.

PETITION, for leave to appeal from a decree of the probate court. Facts found by a referee. The plaintiff, Achsah C. Wadleigh, is the defendant's ward. Her petition for a revocation of the guardianship was dismissed by the probate court. She intended to take an appeal, and at her instance the judge fixed the amount of the appeal bond, but she was unable to obtain the required sureties, having no means to secure them, all her property being in the hands of her guardian. She was thereby prevented from appealing within the sixty days allowed for that purpose.

A. F. L. Norris and *Hawthorne*, for the plaintiff.

Gould, for the defendant.

BINGHAM, J. Any person aggrieved by any probate decision, who was prevented from appealing within sixty days, through mistake, accident, or misfortune, and not from his own neglect, may be allowed an appeal. G. L., c. 207, s. 7. The law having placed the plaintiff's property under the control of her guardian, she was unable to give a bond, with sufficient sureties, as required by Gen. Laws, c. 207, s. 3. This was a misfortune. The court may exercise its discretion as to requiring the plaintiff to furnish security for costs. G. L., c. 207, s. 10. She will not be ordered to do so at this time. The defendant has her property in his hands, and if he is finally entitled to costs they can be adjusted in the settlement of his account.

Appeal allowed.

All concurred.