

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.

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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.