

rily determined, as a question of fact, by the natural weight of competent evidence. *Rice v. Society*, 56 N. H. 191, 197, 203; *Brown v. Bartlett*, 58 N. H. 511; *Kimball v. Lancaster*, 60 N. H. 264, 273.

It is claimed by the heirs that Joseph Fowler died intestate as to the deposits in the savings-banks and the railroad stock. When a person makes a will, he usually intends to dispose of all of his property. This will does not contain, in form, the general residuary clause; but items one, four, and five, considered in connection with the property of the testator, and the fact that all of it, except what is specifically devised, is not enough to satisfy the bequests in items two and three without taking a part of the savings-bank deposits or of the railroad stock, quite clearly indicate that the testator understood and intended that item four with the remainder clauses in items one and five disposed of the residue of his property, and no occasion existed for inserting the ordinary residuary item to make the church in fact his residuary legatee; and we think it manifest, upon the examination of the will itself, that it was the intention of the testator to give the bank deposits and railroad stock to the church. 2 Red. Wills 111 *n.*; 2 Jarm. Wills 375; *In re Miller*, 48 Cal. 165—*S. C.*, 17 Am. R. 422; *Hall v. Hall*, 27 N. H. 275, 286; *Clark v. Atkins*, 90 N. C. 629—*S. C.*, 47 Am. R. 538; *Morton v. Perry*, 1 Met. 446, 448.

It is true that the case of *Mann v. Mann*, 1 Johns. Ch. 213, is a strong case favoring the defendants' view of this will, but the will in that case differed from this in at least two essential particulars;—first, it contained a general residuary clause; and second, the testator in it repeatedly used the word "moneys" in a way indicating that he understood its strict technical sense, and nothing in the will shows that he intended to use it in a more extended sense, while the contrary is true of the will in this case.

This conclusion renders it unnecessary to consider the admissibility of the evidence offered by the parties.

Case discharged.

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

LANGLEY & *a.* *v.* BARNSTEAD & *a.*

Towns may be "situate in the vicinity" of each other within the meaning of that phrase as used in Gen. Laws, *c.* 68, *s.* 10, although not adjoining.

PETITION for a new highway in the towns of Barnstead and Alton. Upon the petition of Alton, under Gen. Laws, *c.* 68, *s.* 10,

and notice thereof, the town of Farmington appeared at the hearing before the commissioners, who, in their report, assigned \$500 of the expense of making the highway to be paid by that town. Farmington objected at the hearing that the commissioners had no authority to make such assignment, because Farmington is not in the vicinity of the proposed highway and of the town of Alton, and now moves to set aside their report for that cause. The court overruled the objection and denied the motion, and Farmington excepted.

E. A. Hubbard and *E. H. Shannon*, for the plaintiffs.

George N. Eastman, Jewell & Stone, J. W. Currier, and Thos. Cogswell, for the defendants.

ALLEN, J. "Words and phrases shall be construed according to the common and approved usage of the language." G. L., c. 1, s. 2. Etymologically and by common understanding, the phrase "in the vicinity" means in the neighborhood, and neighborhood, as applied to place, signifies nearness as opposed to remoteness. Whether a place is in the vicinity or in the neighborhood of another place depends upon no arbitrary rule of distance or topography. One village may be said to be "in the vicinity" of another village without being joined or incorporated with it, and one house may be said to be near, "in the vicinity" of, or in the neighborhood of, another house, and not structurally adjoin it. Vicinity admits of a more indefinite and wider latitude in place than proximity or contiguity, and, as applied to territory, may embrace a more extended space than that lying contiguous to the place in question, and as applied to towns and other territorial divisions, may embrace those not adjacent.

The chief object of the statute is to distribute with greater equality and uniformity the public burdens, and relieve those towns where the burdens are excessive and disproportionate to the benefits derived by placing them in part upon other towns more largely benefited by the improvement. Actual proximity of towns is not the statute test of a right to relief, but an "excessively burdensome" expense upon one town for a public improvement, by which another town or other towns in the vicinity are "greatly benefited." G. L., c. 68, s. 10. A town separated by the territory of another town from that where the new highway is established might be benefited by it immensely more than the adjacent town lying between; and a reasonable construction of the statute, as well as the requirements of justice, demands that the expense should be apportioned upon the towns in the vicinity "greatly benefited," disregarding contiguity of boundary lines of towns. Giving to the term "vicinity" its natural meaning, and that lying in the common understanding and approved by common usage, and considering the

leading object of the statute, the intent of the legislature must have been to apply the act to towns in the neighborhood of that in which the highway is established, and not to confine it to towns adjoining. The question of vicinity being one not fixed by technical and arbitrary rules, but depending upon reasonable nearness as contrasted with remoteness, and upon excess of burden upon one town contrasted with enlarged benefits to the neighboring town, is a question of fact, and the finding of the board of commissioners upon that subject, upon competent evidence, will not be revised here. *Haley v. Ins. Co.*, 12 Gray 545.

Exception overruled.

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

WHITTREDGE v. EDMUNDS & a.

A mortgage given to secure a note made for a larger sum than the amount actually due from the mortgagor is not invalid as against creditors of the mortgagor, if it appears that it was not made to hinder, delay, or defraud those creditors.

BILL IN EQUITY, to set aside a mortgage from the defendant Susan H. Edmunds, to the other defendant George S. Edmunds, as constituting a cloud on the plaintiff's title under the levy of an execution on a portion of the mortgaged premises, as the estate of the defendant Susan. Facts found by the court.

January 26, 1881, the defendant Susan gave the defendant George a note for \$1,225, and secured it by a mortgage upon the real estate described in the bill. The court found the note and mortgage were a valid debt and security to the amount of \$925.75 and interest from September 15, 1880, and that the same were not made to hinder, delay, or defraud the plaintiff. The court ordered the bill dismissed, and the plaintiff excepted.

Harry G. Sargent, for the plaintiff. The mortgage was a cover upon the property to the amount of \$279.79. The debt which it pretended to secure did not exist. If the mortgage had been made for the amount actually due, the plaintiff could have levied upon the equity, and satisfied his execution to the amount of \$279.79. He had no knowledge, and could have had no knowledge, but that the debt which the mortgage secured was \$1,225. The record showed it to be that amount, and the defendants so claimed it in their answer.