

obstruct, and did not obstruct when they built their road, and which they continued to maintain for thirty-four years afterwards. The conclusion of the commissioners, that the plaintiff has a legally established crossing which the defendants are bound to maintain, is, for the practical purposes of these parties, substantially correct.

The case has been argued as though a petition for a *mandamus* to the commissioners to establish a crossing had been filed; and we have therefore considered the case upon the facts stated in the report. The defendants have used the existence of the plaintiff's path or way as a defence against this petition before the commissioners. *Wilbur v. Abbot*, 60 N. H. 40, 53. There is no lack of remedies for enforcing the plaintiff's rights. If the parties need a decision of the question whether the commissioners can lay a way where the plaintiff's old way was, and still is, it will be considered: but this question may not be material in view of the plaintiff's ancient path preserved by the defendants' charter. The case may be continued to await the settlement of the controversy by agreement, or by such legal proceedings as the plaintiff may see fit to institute.

All concurred.

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HERRICK, *Ex'x*, v. WRIGHT & a.

Under a clause in a will giving "to my sister the promissory note I hold signed by her and by M.; also the sum of my deposit with interest" in a savings-bank, and "three hundred dollars of the sum of my deposit in" another savings-bank "for her support for life, the residue from and after her decease to be equally divided between my nephews and nieces," the legatee takes an absolute title to the note.

ASSUMPSIT, by the executrix of the will of Eliza Wilson, to recover the defendants' joint and several promissory note, payable to the testatrix. The second clause of the will is as follows: "I give and bequeath to my sister Fidelia Wright the promissory note I hold signed by her and Moses Wright; also the sum of my deposit with interest in the Five Cents Savings Bank in Keene, and three hundred dollars of the sum of my deposit in the Cheshire Provident Institution in Keene, for her support for life, the residue from and after her decease to be divided equally between my nephews and nieces hereinafter named."

*Lane & Dole*, for the plaintiff.

*Batchelder & Faulkner*, for the defendants.

CARPENTER, J. The bequest of the note is absolute. That such was the intention of the testatrix is indicated by the nature

of the property as well as by the language of the will. A bequest of the legatee's own note could not form a provision for her support, directly nor indirectly, unless she was possessed of property out of which payment could be enforced. If she had no property except such as is by law exempt from attachment, as an aid to her support, it would be entirely worthless; so that the more she stood in need of assistance the less could she obtain from such a gift.

The clause respecting the note is to be construed as if it were a separate and distinct item in the will, and the next clause as if the words "for her support for life" immediately followed the word "also," and the ellipsis of the words "I give and bequeath" were supplied so as to read, "also I give and bequeath for her support for life the sum," &c.

*Judgment for the defendants.*

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

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SULLIVAN.

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POWERS & a. v. COUNTY OF SULLIVAN AND TOWN OF GRANTHAM.

The county is not liable for costs incurred in prosecuting offences against the police of towns on the complaint of selectmen.

This agreed case presented the question whether the town of Grantham or the county of Sullivan is liable to pay justice, sheriff, and witness fees in the prosecution of persons for being common drunkards, on complaint of the selectmen of Grantham. The respondents were found guilty, and served out their sentences in the house of correction and jail respectively, but were discharged without paying the costs.

*Ira Colby, Solicitor, for the county.*

SMITH, J. "All legal costs attending the arrest, examination, or conveyance of any offender, except when the same is directed or approved in writing by the counsel of the state, or county commissioners, shall be paid by the complainant." G. L., c. 268, s. 13. "No such bills of costs [in criminal proceedings before magistrates] shall be allowed unless an indictment be found in the case, or the prosecution be instituted by the authority and under the direction of the attorney-general or the solicitor for the county." Rule 92. Hall and Thornton were convicted of an offence against the police of towns. G. L., c. 269, s. 17. A person convicted of such an