

No question of limited dedication or revocable license is raised by the reserved case, and *Stafford v. Coyney*, 7 B. & C. 257; *Le Neve v. Mile End Old Town*, 8 E. & B. 1054, and *Morant v. Chamberlin*, 6 H. & N. 551, cited by the defendants, are not in point. In *Jones v. Waltham*, 4 Cush. 299, also cited by the defendants, the defect complained of was a cattle-guard at a place where a railroad crossed a highway on the same level, and the town under the circumstances shown in that case was held not liable. But see *Willey v. Portsmouth*, 35 N. H. 303, and *Sides v. Portsmouth*, 59 N. H. 24. The use by the owner of the Lewis block of the base-ment steps before the sidewalk became a highway was not a limited dedication to public use of the strip of land between those steps and the original highway. It was in his power to prevent the public from acquiring an easement in the sidewalk. He chose not to do so, and the sidewalk having become a part of a public highway by use, the duty of the town toward travellers, imposed by the statute, requires it to take such steps as are reasonably necessary to make the highways suitable for the travel thereon.

*Exceptions overruled.*

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

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LEBANON SAVINGS BANK *v.* WATERMAN & *a.*

The question whether, on petition of an administrator, the probate court should grant license for the sale of the real estate of the intestate for the payment of debts is determinable on the administrator's petition in the probate court, and not on a bill in equity.

BILL IN EQUITY, for the foreclosure of a mortgage.

*J. L. Spring*, for the plaintiffs.

*W. H. Cotton*, for Wood.

DOE, C. J. The plaintiffs' mortgage was made in 1881, by the defendant Thomas P. Waterman. The defendant Wood has no title. He is a creditor of the mortgagor's father, Silas Waterman, a former owner of the land, who died in 1878, and of whose estate no administrator has been appointed. If an administrator should be appointed, and if he should apply to the judge of probate for license to sell this land for the payment of Wood's debt (G. L., c. 201), the question could be raised whether license should be

granted. The statutory proceeding in the probate court is the proper action for the trial of that question. *Joslin v. Wheeler*, 62 N. H. 169; *Hatch v. Kelly*, 63 N. H. 29.

*Decree for the plaintiffs.*

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

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NORRIS v. HAVERHILL.

In an action against a town for damage from a defective highway, the defendant cannot object that the petition upon which the highway was laid out was insufficient in form.

Whether the plaintiff was a traveller at the time of the injury will not be submitted to the jury, when there is no evidence upon which it is competent for the jury to find he was not a traveller.

Complaints of pain, etc., made by the plaintiff to his attending physician after the commencement of the action may be admitted in evidence.

Upon the return of a verdict the court may inquire of the jury as to the grounds upon which they proceeded in making up their verdict, for the purpose of ascertaining whether the case has been properly tried.

BINGHAM, J. The objection is taken that the laying out of the highway was void, because no sufficient terminus was specified as a starting-point in the petition. To avoid unnecessary expense and delay, objections to the form of a petition for a highway should be made, as a general rule, at the first opportunity. This objection being to the form of the petition, and not seasonably taken, was waived. *Bachelor v. New Hampton*, 60 N. H. 207.

The defendants claimed at the trial that the plaintiff, on the facts in the case, was not a traveller on the highway at the time of the accident, and requested the court to submit the question to the jury, under proper instructions, which it refused. The request was properly denied, as there was no evidence in the case upon which it was competent for the jury to find that the plaintiff, at the time of the injury, was not a traveller.

The court properly inquired of the jury as to their verdict and the grounds upon which they proceeded, for the purpose of ascertaining whether the case had been properly tried. *Dearborn v. Newhall*, 63 N. H. 301, 303.

Subject to the defendants' exception, the plaintiff's attending physician was allowed to testify to complaints of pain made to him after the commencement of this action. The rule is settled in this state, that the representations of a sick person of the