

248. It would not be sufficient if the treasurer alone understood that the bills were assigned to the plaintiffs, or that the plaintiffs were subrogated to the creditors' rights; the creditors must also have the same understanding. *Receivers Midland Ry v. Wortendyke*, 27 N. J. Eq. 658, 660; *Coe v. Railway*, 31 N. J. Eq. 105, 134, 135.

There is evidence in the case having a tendency to show that the treasurer and creditors understood that the transactions between them were purchases of the bills, instead of payments. The fact that the money was paid as a matter of convenience to the creditors has this tendency. But this question of fact cannot be determined here. If the plaintiffs renew their motion for leave to amend in the superior court, this question, together with all other questions of fact bearing upon the exercise of the judicial discretion invoked by the motion, will arise and must be determined there. Upon the consideration of the motion it will be necessary to take into account the fact that the creditors' claims against the defendants are several and cannot be prosecuted jointly.

Exception overruled.

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

Merrimack, }
Dec. 4, 1902. }

STEVENS, *Ap't*, v. STEVENS.

A probate appeal, setting forth the rejection and disallowance of the report of a committee appointed to set off dower and homestead, does not state a reason of appeal, within the meaning of section 2, chapter 200, of the Public Statutes.

PROBATE APPEAL, from a decree disallowing the report of a committee to set off dower and homestead. Trial before *Peaslee, J.*, who transferred the case from the April term, 1902, of the superior court.

The reason assigned in the appeal was "the rejection and disallowance of said report." The defendant moved to dismiss because no reason for the appeal was stated, and excepted to a denial of the motion.

The committee made the set-off upon the basis that the homestead was to be a life estate of the value of \$500, and dower was to be assigned in one third in value of the property, without regard

to its yielding an income. The plaintiff excepted to the testimony of the committee showing these facts. They testified without objection that the value of the fee of what was set off for the homestead was not over \$500, and that the income of what they set off as the widow's dower was not more than one third of that of the whole property. The plaintiff then claimed that this was an answer to the objection that the committee had erroneously construed the law, and excepted to a ruling declining to consider the question of value upon this branch of the case. After a hearing, the appeal was dismissed, subject to the plaintiff's exception.

George R. Brown and Martin & Howe, for the plaintiff.

Streeter & Hollis, for the defendant.

BINGHAM, J. The judge of probate has express authority to accept the report of a committee appointed to set off dower and homestead, and implied authority to reject it. P. S., c. 197, s. 3; *Harmon v. Haines*, 68 N. H. 28, 29, 31. Upon the return of the report it is within his province to determine (1) whether the proceedings of the committee were regular or irregular, and (2) whether in their findings of fact they acted in good faith or otherwise. His decree accepting or rejecting the report is not final; the right of appeal in both cases is given by statute. P. S., c. 200, ss. 1, 2; *Eastman v. Barnes*, 62 N. H. 630, 631. If he decrees an acceptance of the report, and, upon an appeal assigning correctionable error, it is made to appear that the proceedings of the committee were irregular, or that in their findings of fact they were "influenced by passion, prejudice, partiality, or corruption, or unwittingly fell into a plain mistake," the appellate court may reverse it. If, on the other hand, he decrees that it be rejected, and, upon a proper appeal being taken, it appears that the proceedings were regular and that the committee in their findings of fact were not influenced or mistaken as above stated, the appellate court may likewise reverse the decree. The judge of probate and the appellate court have authority to try the same questions. *Harmon v. Haines, supra*; *Eastman v. Barnes, supra*.

The appeal must be in writing, setting forth the reasons of appeal (P. S., c. 200, s. 2), and the appellant is restricted to the matters specified therein. "At his instance, no grievances except such as he has assigned will be considered." *Simmons v. Goodell*, 63 N. H. 458, 460.

The appellee's motion to dismiss presents the question, whether the appeal states a reason disclosing error in the decree of the probate judge, sufficient to entitle the appellant to have it reversed.

Eastman v. Barnes, supra. The purpose of the statute, requiring the appellant to state in his appeal the reasons wherein the probate judge erred in accepting or rejecting the report, is to enable the appellate court to see the ground on which he bases his claim for relief. It is the statement of his cause of complaint. The error assigned in this appeal — the rejection and disallowance of the report — is but a recital of the decree made by the probate judge. It is not the assignment of a reason wherein the decree is erroneous, and presents no ground for an investigation, in the appellate court, of questions over which, upon a proper application, it could entertain jurisdiction. No reason for the appeal being stated, the refusal to grant the motion of the appellee was error; but as it appears that after a trial of the facts in the superior court the appeal was dismissed, that order presents no error of law. No other question is considered.

Case discharged.

All concurred.

Grafton, }
Dec. 4, 1902. }

WEED v. WOODS.

71	581
774	152

In the construction of a deed of real estate, it is the duty of the court to place itself as nearly as possible in the situation of the parties at the time the instrument was executed, that it may gather their intention from the language employed, viewed in the light of the surrounding circumstances.

Under a clause in a deed reserving a chapel situated on the premises, together with the land on which it stands, the property retained by the grantor is the chapel lot as it existed at the date of the conveyance, and the buildings thereon devoted exclusively to chapel purposes, when such an intention is shown by the language of the deed, weighed in the light of the attending circumstances.

In the construction of a deed of real estate, meaningless words may be rejected.

Where a deed reserves to the grantor a certain portion of the premises conveyed so long as a religious association may want it, the estate retained is a qualified or determinable fee; and during its continuance the grantor and his successors in title, while they retain possession, have all the rights of tenants in fee simple.

TRESPASS *quare clausum.* Plea, the general issue, with a brief statement of soil and freehold. Facts found by a referee, and case transferred from the May term, 1902, of the superior court by *Pike, J.*