

too narrow. The duty is imposed upon towns to keep their highways "in good repair suitable for the travel thereon"; and the statutes subject them to the liability of being fined if they neglect this duty, and in certain cases to responsibility for damages suffered by travelers from defects in highways. P. S., c. 75, s. 1; Laws 1893, c. 59, ss. 1, 2. The presence of dirt, rubbish, and ashes in a street may cause it to be in a bad state of repair and in an unsuitable condition for travel. *Parsons v. Manchester*, 67 N. H. 163. It certainly has a tendency to cause such a condition. When gathered in receptacles, the substances are none the less obstructive and objectionable. The fact that they are placed in the street by owners of abutting lands does not relieve the town from its duty (*Johnson v. Haverhill*, 35 N. H. 74; *Palmer v. Portsmouth*, 43 N. H. 265), nor the fact that they are not within the ordinary lines of travel upon the street. *Bartlett v. Hooksett*, 48 N. H. 18; *Darling v. Westmoreland*, 52 N. H. 401. Any act that is reasonably necessary to put or keep a street in "good repair suitable for the travel thereon" is "repairing" or "maintaining" the street, within the meaning of the statute under consideration; and it cannot be said, as matter of law, that the removal of dirt, rubbish, and ashes from the streets and from receptacles on or near streets is not such an act.

*Exception overruled.*

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

Hillsborough, }  
March 7, 1905. }

THORPE v. PACKARD & a.

Where a conveyance of real estate has been procured through fraud, an offer of restitution is not a condition precedent to the maintenance by the grantor of a bill in equity for a cancellation of the deed.

In such case the court has power to impose the conditions upon which relief will be granted, and may make at any time before judgment such orders respecting a return of the consideration received by the plaintiff as justice requires.

BILL IN EQUITY, for the cancellation of a deed. Trial before *Pike, J.*, at the May term, 1904, of the superior court, and decree for the plaintiff.

The defendants reside in Massachusetts, and the plaintiff in this state. Prior to August 24, 1899, the plaintiff had talked with

Packard about trading a farm in Hillsborough for Massachusetts real estate. On that date the plaintiff met Packard in Boston, and agreed to deed the farm and pay \$3,000 in cash for land in Brookline, Massachusetts, owned by Packard, if the latter would find a purchaser for the land. The land was mortgaged to one Rogers for \$4,500, and the legal title was in one Hyde. Packard produced as a purchaser one Peterson, and it was agreed by the three parties that Packard should have the Brookline land conveyed to Peterson, that the plaintiff should convey his farm and pay \$3,000 to Packard, and that Peterson should give the plaintiff his note for the purchase price of the Brookline land, secured by a second mortgage of the premises. The conveyances necessary to effectuate this agreement were duly made.

Soon after these transactions Peterson went into bankruptcy and has obtained a discharge. The plaintiff foreclosed his mortgage in December, 1900, and remained in possession of the property until December, 1902, when the Rogers mortgage was foreclosed. The plaintiff filed this bill upon learning of the fraud which had been practiced upon him, but he did not offer to deliver the Peterson note to Packard before doing so. The Brookline land was never worth more than the amount due on the Rogers mortgage.

At the close of the evidence the defendants moved to dismiss the bill, on the ground that the plaintiff was not in a condition to return the consideration he received from Packard. The motion was denied, and they excepted.

*Andrews & Andrews and Taggart, Tuttle, Burroughs & Wyman,*  
for the plaintiff.

*William C. Rogers* (of Massachusetts) and *Burnham, Brown,*  
*Jones & Warren,* for the defendants.

YOUNG, J. The consideration the plaintiff received for his farm was the Peterson note. He gave Packard his farm and \$3,000 for that note. Since the note has not been paid and is in his possession, he is in a position to return the consideration he received for his farm, if equity requires that he should do so. It is unnecessary, both in this state and in Massachusetts, for the injured party to offer to return the consideration he has received before filing a bill to rescind a conveyance which was procured by fraud. That is, the making of an offer of restitution is not a condition precedent to the right to maintain such an action in either state, although such an offer is necessary in Massachusetts in order to maintain a possessory action to recover property obtained by

fraud. Neither is it necessary to make such an offer in the bill itself, for the court has power to impose the conditions upon which it will give relief. *Thomas v. Beals*, 154 Mass. 51, 54. The court has power to compel "the plaintiff to do what he equitably ought to do." *Wheeler v. Stock Exchange*, 72 N. H. 315, 321. If such an order has not been made, the court can make it at this time. *Mead v. Welch*, 67 N. H. 341.

*Exception overruled.*

All concurred.

Sullivan, }  
March 7, 1905. }

PAUL, *Adm'r*, v. PHILBRICK & a.

Words in a will cannot be ignored, nor can words be interpolated by interpretation, unless the testator's intention would thereby be more clearly or fully expressed.

In the construction of a will, certain bequests to individuals and religious societies deemed to be contingent upon the decease of a grandson prior to the death of the testator's widow.

BILL IN EQUITY, by the administrator *de bonis non* with the will annexed of the estate of John McLaughlin, for directions as to the execution of his will. Facts found, and case transferred from the May term, 1904, of the superior court, by *Wallace, C. J.*

The testator died June 19, 1884, leaving a will dated May 7, 1881, the first clause of which directed the payment of his debts and funeral charges and the erection of gravestones. The second clause is as follows: "I give and bequeath to my beloved wife Mary E. McLaughlin all my household (property) furniture and provisions I may have on hand at the time of my decease. Also I give and devise to my said beloved wife all my real estate wherever found provided she requires it for her comfort and support, it being left for her to act her own good judgment." By the third, fourth, and fifth clauses, specific bequests of the testator's wearing apparel and other articles are made. The remaining provisions are as follows:

"Sixth I give and bequeath to my beloved wife Mary E. McLaughlin all the residue and remainder of my estate whether personal or real bank books or notes to use for her support during her life, if there should be anything left at her decease I dispose of it in the following manner,