

Merrimack, }  
Dec. 1, 1914. }

CHARLES F. M. STARK, *Ap't*, v. ARTHUR WINSLOW.

PROBATE APPEAL. The plaintiff was cited into the probate court to settle his account as trustee under the will of Harriet Stark. The court not only charged him with the accumulated income of the trust fund, but ordered him to pay it to St. Paul's School, and from the latter part of the decree he appealed. At the April term, 1914, of the superior court, the appeal was dismissed by *Branch, J.*, and the plaintiff excepted.

*Martin & Howe* (*Mr. Howe* orally), for the plaintiff.

*Samuel C. Eastman* (by brief and orally), for the defendant.

*Foster & Lake*, for St. Paul's School.

YOUNG, J. The probate court has no jurisdiction of the distribution of personal property passing by will. P. S., c. 196, s. 6. Consequently it had no power to make the decree appealed from. The order must therefore be,

*Appeal sustained: decree of the probate court vacated in so far as it relates to the distribution of the accumulated income.*

All concurred.

Coös, }  
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ALFRED A. ST. PIERRE v. PEERLESS CASUALTY CO.

ASSUMPSIT, upon a contract to indemnify against loss of time from accidental bodily injury. Trial by the court. Transferred from the April term, 1914, of the superior court by *Sawyer, J.*

The plaintiff, having suffered injury, furnished the defendants satisfactory proof in which he claimed \$82.50 for six weeks' total disability. The defendants sent him a check for \$61.50, with a letter stating that payment was allowed for only four weeks' total

disability, with two weeks' partial disability. Upon the face of the check was a printed statement that the same was "in full and final settlement for all claims originating prior to the date hereof," and upon the back was a "receipt and indorsement" acknowledging the full satisfaction of all claims. The plaintiff collected the check and two days later requested further payment. The court found that the plaintiff was totally disabled for six weeks and that he accepted payment in accordance with the terms of the check and the indorsement thereon. A verdict was entered and judgment rendered for the defendants, subject to exception.

*Ovide J. Coulombe*, for the plaintiff.

*Allen & Faulkner* and *Rich & Marble* (Mr. Marble orally), for the defendants.

PARSONS, C. J. No question of law is presented. Whether in accepting and collecting the defendants' check the plaintiff assented to the defendants' proposition that the money so received should be deemed to be in full settlement of the claim is a question of fact, not of law. *Pike v. Buzzell*, 75 N. H. 486; *S. C.*, 76 N. H. 120. The fact being found that the plaintiff accepted the defendants' payment in accordance with the terms of the check and the printed indorsement, it would be useless to consider whether the evidentiary facts reported are as matter of law inconsistent with the opposite conclusion. Neither fraud nor mistake is charged. The verdict and judgment for the defendants are the legal results of the findings of fact.

*Exception overruled.*

All concurred.

Coös, }  
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FRED G. PARSONS, *Adm'r.* v. CLARA A. ROBY.

PETITION, for an injunction restraining the defendant from interfering with real estate alleged to be charged with the debts of the plaintiff's intestate, and for instructions as to whether the debts might be considered a charge upon the real estate if the intestate intended to make them so. Upon a trial of the facts it was found