

town does not appear to have the power to maintain sewers; and it is not necessary to consider whether such a right is public or private within the meaning of the exemption statute.

The rights conveyed to Whitefield were taxable. In accordance with the terms of the transfer to this court, the case will stand for trial upon the facts as to such other questions as the appeal presents.

Case discharged.

PARSONS, C. J., and PLUMMER, J., concurred.

YOUNG, J., *dissenting*. Whitefield purchased the right, among others, to deposit sewage on land in Dalton, and the court holds, as I understand the opinion, that this right is taxable because Whitefield is not exercising it, even though Whitefield was acting in its public capacity when it acquired that right. In other words, the court holds that Whitefield's right to deposit sewage on this land is taxable because it has no sewers. I think that land a town uses for a public purpose is not taxable even though it is in another town unless there is a statute authorizing the town to tax it. Now in this case what Whitefield owns is not land in Dalton but the right to deposit sewage on land in that town and, if that right would not be taxable if Whitefield were exercising it, I cannot understand why the fact Whitefield is not exercising it renders it taxable, for what Whitefield owns and all it owns is the right to use the land for a public purpose.

Rockingham, }
April 5, 1921. }

MARY C. ROGERS & a. v. ANNA C. ROGERS.

The test for the admissibility of relevant evidence which is calculated to create prejudice is whether such prejudice would be so great as to overbalance the assistance the evidence will afford to the trier.

In such case the question of admissibility is one of fact and the conclusion of a master thereon will not be disturbed, if it is supported by evidence.

BILL IN EQUITY, to set aside a deed on the ground it was procured by fraud. James Rogers left three daughters and one son surviving him, all of whom were witnesses. Hearing before a master, who, subject to exception, permitted the defendant on cross-examining the plaintiff and her brother, to introduce letters they had written;

the defendant's purpose being to contradict their testimony. Transferred by Allen, J., without a ruling, from the May term, 1920, of the superior court.

Scammon & Gardner and Frederick J. Grady, for the plaintiffs.

Sleeper & Brown, for the defendant.

YOUNG, J. The plaintiffs do not contend that the letters should have been excluded because they were irrelevant to the matters in issue, using that term in the sense in which it is used in *Darling v. Westmoreland*, 52 N. H. 401, but because they were irrelevant to the matters in issue, within the meaning of that term as it is used in *King v. Chase*, 15 N. H. 9, and calculated to excite undue prejudice. In other words, the plaintiffs invoke the undue prejudice rule. 3 Wig. Ev., s. 1904. This rule excludes relevant facts whenever it appears that the prejudice they would excite will be so great that it is probable they will mislead the trier. *State v. Lapage*, 57 N. H. 245.

In short, such facts are excluded, not because they have no tendency to prove the matter in issue, but because they have too great a tendency to prove it. 1 Wig. Ev. 55-57.

The test therefore to determine the admissibility of relevant facts capable of exciting prejudice is to inquire whether the prejudice they will excite will be so great as to overbalance any assistance they may be to the trier. The issue raised by this inquiry is an issue of fact, and the finding of the master is in the defendant's favor; consequently the question raised by the plaintiff's exception is whether there is any evidence to sustain the master's finding. While it can be said that these letters were capable of exciting prejudice, it cannot be said that their capacity for exciting it is so great that it is probable they misled the master. In other words, notwithstanding the letters might have been excluded under the undue prejudice rule, it cannot be said that the master erred when he admitted them.

Case discharged.

All concurred.