

objection is waived unless taken before the case is submitted to the trier of fact. Hening, N. H. Digest, Tit., Procedure, 1242.

Even if the procedural difficulty were obviated and the assumption adopted that the evidence is fully transferred, the defendant's position would not be improved. He failed to prove before the referee a special term of his contract of purchase upon which he relied as a defence. The referee's rejection of the defendant's evidence upon this point presents no question of law.

Exception overruled.

Grafton, . }
March 5, 1935. }

ALBERT R. COLLINS, *Adm'r*, & a. v. LEON C. COLLINS & a.

Harold E. Wescott, by brief and orally, for the plaintiffs.

Alwin F. Wentworth, for certain defendants, furnished no brief.

Per Curiam. The question transferred is idle. The will gave Arista either full or partial title to certain property. If it was partial, he acquired the remaining interest as the sole heir of the testatrix. In that view it was undisposed of and passed by inheritance. He thus became the sole owner in fee of the property.

Case discharged.