

without interest, whereas interest ought to have been allowed.

J. Probate  
v.  
Robbins.

*C. G. Atherton*, for the plaintiff.

*B. M. Farley* and *G. F. Farley*, for the defendants.

*By the court.* It may be conceded, that the decree of the judge of probate, allowing the widow's distributive share in her husband's estate to her administrator, was, with respect to these sureties, *res inter alios acta*, and not conclusive against them. 3 N. H. Rep. 491, *Gookin v. Sanborn*. But there is no ground on which that decree can be impeached. There is no doubt that the widow was entitled to her distributive share in the personal estate of her husband. She was by law entitled to it as an heir. 3 P. Williams, 48, *Davers v. Dewes*; 4 Burns' Eccl. Laws, 331; Lovelass, 67; Prov. Laws, 105.

And the administrator of her estate is now entitled to receive the same.

The claim made in this case, on behalf of the administrator of the widow, for interest, cannot be allowed. He was entitled to receive the distributive share of the widow, but the amount was to be settled by a decree of the judge of probate. That amount has been settled by a decree to which he was a party. He is, therefore, bound by the decree. If he was not satisfied with the decree, an appeal was the appropriate remedy.

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### GEORGE HERRICK *versus* JOHN FULLER.

Where a plaintiff brings an action in this court, or in the court of common pleas, upon a claim exceeding \$13,33, and recovers less than that sum, the costs will not be limited, except in cases where there can be no reasonable expectation of recovering more than \$13,33.

ASSUMPSIT upon a contract, made by the defendant on the 13th June, 1826, to pay the plaintiff \$156,75, in neat

Herrick  
v.  
Fuller.

stock, at cash price, in three years, with interest from April 1, 1827.

The cause was tried here, upon the general issue, at February term, 1830, when it appeared that the sum of \$54 was paid under the contract, on the 14th June, 1826, and that there was due, on the 13th June, 1829, the sum of \$116,29.

The defendant having procured three men to appraise two oxen and three cows, and they having appraised the same at \$126, he delivered them to the plaintiff under the contract. But the plaintiff having afterwards procured other men to appraise the same cattle, and they having appraised them at \$91, he brought this suit to recover the difference between that sum and the amount due under the contract. It was submitted to the jury to find the value of the cattle, and they found them to be of the value of \$116, and returned a verdict for the plaintiff, with twenty-nine cents damages.

The defendant moved the court to limit the costs.

*Brown*, for the plaintiff.

*B. M. Farley*, for the defendant.

*By the court.* If the costs in this case are to be restricted, it must be upon the ground that the plaintiff had no reasonable expectation of recovering more than \$13,33, and might have obtained complete justice in a suit brought before a justice of the peace. But he had obtained the opinion of men in whose judgment he probably confided, and according to their estimation of the value of the cattle, there was due to him \$25. This sum could not be recovered in an action brought before a justice of the peace. And although a jury have now found that a few cents only are due to the plaintiff, yet, considering how very various the opinions of men are in estimating the value of cattle, we cannot say that the plaintiff had not, under the circumstances, a reasonable expectation of recovering more than \$13,33, and are of opinion that the motion must be overruled.