

BILL IN EQUITY, for a homestead. The parties agreed upon the following facts for the opinion of the court:

May 28, 1878, the plaintiff, Stephen B. Cole, was the owner of one undivided half of the premises described in the bill, being about sixty acres, part mowing and part wood land; and he had no other real estate. On the above day, the defendants, having an execution against him, caused the same to be levied on said land, subject only to the wife's right of dower. Said land never had any dwelling-house on it, and the petitioners were then residing about three miles away.

Barnard & Barnard, for the plaintiffs.

Hibbard, for the defendants.

DOE, C. J. Upon the facts stated, the bill should be dismissed. The case does not show occupation, use, or intention. It does not appear that the premises are a part of the place of the plaintiffs' home.

Case discharged.

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

FOLSOM v. ORIENT FIRE INS. CO.

A suit brought by F. on a policy of insurance, issued to him, payable in case of loss to B., as his interest may appear, may be maintained for the benefit of B. if he appears as plaintiff in interest, even though F. has no title to the property insured.

Judgment may be rendered on a verdict for the plaintiff, in such a suit, for the benefit of B., if after verdict he appear as plaintiff in interest.

ASSUMPSIT, on a policy of insurance on the plaintiff's half interest in a dwelling-house and furniture therein and in a shed, "loss if any payable to B., as his interest may appear." The plaintiff had no legal title to the property insured at the time of the fire, nor when the policy was issued, though the deeds conveying the property from B. to him had been made and executed, but had not been delivered. The defendants' agent knew the true state of the title. The defendants moved for a nonsuit because the plaintiff had no title and no insurable interest in the property destroyed at the time of making the policy nor at the time of the fire.

Motion denied, and the defendants excepted.

The plaintiff had a verdict which the defendants moved to set aside.

Stone and Barnard, for the defendants.

Hibbard and Whipple, for the plaintiff.

STANLEY, J. The policy was, in terms, "payable in case of loss to B., as his interest may appear." The defendants had full knowledge of the state of the title. With that knowledge they issued the policy and received the premium therefor. At the time of the fire the whole title was in B. On these facts the action may be maintained in the plaintiff's name for the benefit of B., and, if he shall elect to come in and prosecute this suit as plaintiff in interest, there may be judgment on the verdict. Gen. St., c. 207, ss. 8 and 9.

Stebbins v. Ins. Co., post. Whether the suit could be maintained in the name of B. (*Martin v. F. F. Ins. Co.*, 9 Vroom 140; *Bailey v. N. E. M. L. Ins. Co.*, 19 Am. Rep. 329 and *n.*) is a question we need not consider.

Case discharged.

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

PLUMMER v. OSS�PEE.

An action for personal injuries to a married woman should be brought in her name alone.

Expressions indicative of pain are competent evidence of suffering at the time.

Evidence of wheel tracks is relevant to the question of where the usual travel on a highway is, and competent to show the limits of a highway established by use.

Evidence of an obstruction in a highway at one point is evidence that a similar object may be an obstruction at another point.

The record of the laying out of a highway in 1792, though it contains no statement of a petition for a highway, nor notice of a hearing, nor award of damages for land taken, is competent evidence on the question of laying out.

Material and relevant testimony given by a witness in answer to a proper interrogatory is not to be excluded because it is not responsive to the interrogatory.

The extent to which a witness, on cross-examination, may be inquired of as to his bad conduct and bad faith, for the purpose of impeaching his credit, is to be determined by the judge at the trial, according to the nearness or remoteness of the subject of the inquiry to the facts of the case.

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74	394