

ment of the savings-bank, should be held by the trusteeing creditors. *May Insurance*, ss. 6, 454, 457. It may be stated, as a general rule, that no one except the nominal assured, or his assignee, after loss, can claim, either from the insurers or from the party to whom the loss has been paid, any part of the proceeds of the policy unless by express agreement, or unless the policy covered property in which the claimant had an interest, and was intended and was effected, in part or in whole, for his benefit and at his expense. *Steele v. Franklin Ins. Co.*, 17 Penn. St. 290. In order to give the right to intervene between the insurer and the insured, the party intervening must have some relation to or concern with the contract of insurance; but a creditor who acquires title to an estate under a levy of execution, the time of redemption having expired, has no relation to or concern with a contract of insurance, as between the former owner of the estate and the insurers, upon which to found a claim upon the latter for the amount of the loss or any part of it. *Plimpton v. F. M. Ins. Co.*, 43 Vt. 497. Scott, by an agreement to assure for the plaintiff's protection, might have given him an equitable lien upon the fund, but in the absence of any such agreement, no lien in equity or at law exists.

*W. H. Dodge and Copeland & Edgerly*, for the trusteeing creditors.

DOE, C. J. Upon principles established by the authorities, the bill cannot be maintained.

*Case discharged.*

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

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BABB v. BABB.

The plaintiff, holding land by conveyance through a third person from her husband, and also claiming in the land a homestead against her husband's creditors, no homestead having been assigned, cannot recover, by virtue of the homestead right, in an action of trespass *quare clausum* against her husband's creditor, who has set off the land upon an execution in his favor.

If any recovery can be had, it must be upon the validity of the plaintiff's title by the conveyance; and on a trial of the action the question of fraud in the conveyance is material.

TRESPASS *quare clausum*. The plaintiff claims title to the premises by deed from her husband through the intervention of a third person, and also a right of homestead against her husband's creditors. No homestead has been assigned. The defendant's title is

the set-off of the land upon an execution in his favor against the husband; and the defendant claims that the conveyance to the plaintiff was voluntary and in fraud of her husband's creditors. The jury were instructed that the plaintiff had a homestead right in the land of the value of \$500, and if they should find the value of the land not to be greater than that sum, the question of fraud in the conveyance would be immaterial, and need not be considered, and the plaintiff could recover. The defendant moved to set the verdict aside, and for a new trial, on the ground of error in the instructions.

*J. C. Caverly* (with whom was *T. J. Smith*), for the defendant.

*Copeland & Edgerly*, for the plaintiff.

ALLEN, J. The plaintiff cannot recover in this action on any claim of a homestead right in the land, the homestead not having been assigned; nor in this proceeding could the jury rightfully determine the value of the land. *Tidd v. Quinn*, 52 N. H. 341, 343.

If the plaintiff can recover at all, it must be by virtue of her title derived from her husband's conveyance in fee simple; and if that conveyance was in fraud of his creditors, her title fails without regard to the value of the land, and notwithstanding her homestead right. If the conveyance was not fraudulent, the plaintiff's right of recovery would be clear. If fraudulent, though the question would then arise, whether, in spite of that fact, she would be entitled to a homestead on appropriate proceedings to assign and set it out, she could not recover in this action. The question of fraud in the conveyance was material upon the trial, and the instructions upon the subject were erroneous. The verdict is set aside, and a

*New trial granted.*

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

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STATE v. CLOUTMAN.

Money drawn as a prize in a lottery may be the subject of embezzlement.

INDICTMENT, for the embezzlement of \$1,000, the property of S., who held a ticket in the Kentucky State Lottery, which drew a prize of \$1,000 payable in New York, and employed the defendant to collect the money, giving him the ticket and a written order for that purpose. He went to New York, collected the money, and,