

ments made on Vose were paid by him. Vose, being indebted to the defendant, gave her a note for \$600, dated February 1, 1876. In 1877 he gave her a chattel mortgage to secure the note. In 1878 the note was paid out of the proceeds of the sale of the mortgaged property. Vose died insolvent in 1880. The plaintiff offered to prove by parol testimony that Vose gave his certificate of membership to the defendant as collateral security for the note, and that he was insolvent when it was issued, and remained insolvent till his death. The court ordered a nonsuit, and the plaintiff excepted.

The plaintiff does not deny that the defendant was a member of Vose's family within the meaning of the by-laws, and does not claim the amount of the premiums and interest;—but he contends that the association is not an insurance company; that the case is not within the statute; and that if this suit cannot be maintained, any insolvent person can defraud his creditors by joining as many of these associations as will absorb all the money he has and all he can get, if he designates some relative or member of his family as payee. 2 Kent Com. 441–443. Upon our conclusion that the case is one of life insurance, the plaintiff cannot recover the amount insured. *Stokell v. Kimball*, 59 N. H. 13; *Campbell v. N. E. M. L. Ins. Co.*, 98 Mass. 381, 400; *K. L. Ins. Co. v. Weitz*, 99 Mass. 157; *U. M. L. A. Ass. v. Dugan*, 118 Mass. 219; *Norris v. M. M. L. Ins. Co.*, 131 Mass. 294. If fraud had been intended and effected, the defendant's liability to Vose's creditors would have been limited by statute to the amount of premiums and interest.

Exception overruled.

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

E. M. Smith, for the plaintiff.

B. B. Hatch and *A. F. Stevens*, for the defendant.

DAVIS *v.* HAZEN.

A division of a partition fence made by the fence-viewers without giving the notice required by Gen. Laws, c. 43, s. 2, is not binding upon a party who did not attend the hearing, and who has not waived want of notice, and he is not liable for any part of the fence-viewers' fees arising from making the division.

APPEAL from a judgment of a justice of the peace nonsuiting the plaintiff in a suit for one half the fees of fence-viewers. The fence-viewers, on a petition of the plaintiff to divide the partition

fence of the parties, gave them ten days' notice of the hearing. At the time appointed, the fence-viewers attended and divided the fence. The plaintiff was present at the hearing, but the defendant did not appear. Judgment was ordered for the defendant, and the plaintiff excepted.

Sulloway, Topliff & O'Connor and T. O. Knowlton, for the plaintiff.

Burnham & McAllister, for the defendant.

ALLEN, J. Due notice of the hearing by the fence-viewers, required by Gen. Laws, c. 48, s. 2, to be fourteen days before the day appointed, was not given to the defendant. He did not appear at the hearing, and want of legal notice was not waived by him, nor cured by any act of his. The fence-viewers acquired no jurisdiction of the defendant, and their proceedings did not bind him, and furnished no foundation for the suit.

Exceptions overruled.

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

TRINITARIAN CONGREGATIONAL SOCIETY IN FRANCETOWN v.
UNION CONGREGATIONAL SOCIETY IN FRANCETOWN.

Section 17, c. 154, Gen. Laws, does not authorize a religious society owning pews in a meeting-house to maintain a bill in equity against a religious society owning the house, for a sale of the house and a division of the proceeds of sale.

A religious society owning a meeting-house may decide, without interference from the pew-owners, what doctrines shall be preached in their house, and what religious teachers shall be employed to preach them.

BILL IN EQUITY. The substance of the bill is,—In 1773 a Congregational church was organized in Francetown, which has continued to exist and support religious worship and preaching in that town to the present time. In 1801 certain members of the church and others interested in the same kind of religious worship built a meeting-house in the town, upon land deeded to the town in 1772, "for the use and benefit of the inhabitants of said town; and to build a meeting-house, for a burying-yard and training-field." The house was nearly or quite paid for by the sale of pews to individuals, and was used by the church as a place of public worship, and by the town for holding town-meetings, until it was rebuilt in 1837, as hereinafter stated. In 1825 the Union Congregational Society was organized from members of the church and others