

The statute tends to discourage the breeding of a certain class of cattle for the supply of the milk market. The difficulty of guarding against the adulteration of milk may have influenced the legislature in fixing a standard of richness. Practically it makes no difference whether milk is diluted after it is drawn from the cow, or whether it is made watery by giving her such food as will produce milk of an inferior quality, or whether the dilution, regarded by the legislature as excessive, arises from the nature of a particular animal or a particular breed of cattle. The sale of such milk to unsuspecting consumers for a price in excess of its value is a fraud which the statute was designed to suppress. It is a valid exercise by the legislature of the police power for the prevention of fraud and the protection of the public health, and as such is constitutional.

These remarks dispose of the respondent's offer to show that an analysis of samples of milk from his cows, made by the same person who analyzed the samples taken by the milk inspector, shew less than thirteen per cent. of milk solids.

The offer to show that the respondent's cows were properly fed, not having been made for the purpose of discrediting the analysis put in by the state, was properly rejected. The evidence was immaterial.

*Exceptions overruled.*

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

*C. H. Burns*, for the respondent.

*D. Barnard*, attorney-general, and *S. W. Emery*, solicitor, for the state.

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HALL & a. v. FIRE ASSOCIATION OF PHILADELPHIA.

A mortgagee to whom a policy of fire insurance is made payable in case of loss is not bound by an adjustment of a loss made without his knowledge or consent by the mortgagor with the insurance company.

ASSUMPSIT, on a policy of insurance issued by the defendants on the property of Hall, and made payable in case of loss to Woodman, mortgagee, as her interest might appear. After the property was destroyed by fire, the defendants, by agreement with Hall, without the knowledge, consent, or authority of Woodman, referred the question of the amount of the loss to referees, who awarded a sum less than the mortgage debt due to Woodman. The defendants claim that Woodman is concluded by the award.

64	405
67	296
64	405
71	447

*Marston & Eastman*, for the plaintiffs.

*Daniel Barnard*, for the defendants.

CARPENTER, J. It is not material whether Woodman could or could not maintain an action in her own name against the defendants. If she brings suit in the name of Hall, her interest as the real plaintiff will be as fully protected as if she were the plaintiff of record. *Scoby v. Blanchard*, 3 N. H. 175, 176; *Cameron v. Little*, 13 N. H. 23; *Webb v. Steele*, 13 N. H. 230, 239; *Dunklee v. Greenfield Steam Mill Co.*, 23 N. H. 245; *Jordan v. Gillen*, 44 N. H. 424; *Folsom v. Orient Ins. Co.*, 59 N. H. 54.

The policy might have been avoided by Hall's breach of its conditions, because such was the contract. *Baldwin v. Phoenix Ins. Co.*, 60 N. H. 164. But at the moment of the loss the rights of the parties were fixed. Whatever amount was secured by the policy to the extent of the mortgage debt was due to Woodman. To her the defendants were bound to pay it. Hall could not release the defendants from their obligation, nor defeat Woodman's right. He could no more adjust the amount of the loss than he could release it. *Harrington v. Fitchburg Ins. Co.*, 124 Mass. 126, 131; *Brown v. Roger Williams Ins. Co.*, 5 R. I. 394, 399; *Browning v. Home Ins. Co.*, 71 N. Y. 509. Woodman not being a party, or privy to the reference, is not concluded or affected by the award. *Mahagan v. Mead*, 63 N. H. 130.

*Case discharged.*

All concurred.

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66 233

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HAVERHILL IRON WORKS v. HALE.

A bill in equity may be inserted as a declaration in a writ of summons, and may be served upon the defendant by giving him a duly attested copy of the writ and declaration.

IN EQUITY. The bill was inserted in the place of a declaration in a writ of summons and attachment. The officer's return of service is that he "summoned the within named William Hale, as within commanded, by this day giving to him an attested copy of this writ and complaint." The defendant, appearing specially, moves that the bill be dismissed for want of legal service.

*Frink & Batchelder*, for the defendant.

*S. C. Eastman*, for the plaintiffs.