

in question had not then occurred to the officers or attorneys of the company, but that it is an afterthought on their part, is apparent from the fact that when the town found it necessary to ask the referees for delay in the hearing then pending before them, the plaintiffs made it a condition of granting that delay that the town should give its agreement to remit all claim of interest upon whatever amount of taxes the plaintiffs might finally be awarded to pay from the first day of September, 1885, to the first day of January, 1886, that being the time for which the defendants asked delay. Before imposing this condition the company had given its agreement of April 15, 1885, and after imposing it gave its agreements of April 3, 1866, and April 15, 1887. If they did not understand that they were to pay interest, and such as the statute requires in the case of unpaid taxes, why did they not say so in those agreements, and why did they exact from the defendants the agreement of August 26, 1885?

ALLEN, J. In *Telegraph Co. v. The State*, 64 N. H. 265, it was decided that the statute providing for the collection of interest at ten per cent. upon all taxes not paid on before the first day of December after assessment, from that date, is applicable to cases like this, where an appeal for abatement is pending at the time the running of interest is made to commence. That part of the statute requiring interest at ten per cent. as plainly and forcibly applies, as the provision requiring interest to be paid at all. The agreement of the parties, that, pending the appeal, the plaintiffs would waive notice and sale of their real estate for the taxes due, and that the defendants should forfeit no claims or demands against the estate by reason of their failure to advertise and sell the property, cannot change the result. There was no agreement to waive any part of the interest on such amount as might be found to be due, except the interest from September, 1885, to January 1, 1886, and no interest for that time is claimed. Since the interest is as much a part of the defendants' claim as the tax itself, and the agreement expressly saved the defendants' right to the whole claim, the whole interest upon so much of the tax as was found due and not paid, at the statutory rate of ten per cent., may be recovered by the defendants.

Exceptions overruled.

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

KNIGHTS OF HONOR v. WATSON & a.

The beneficiaries appointed by the holder of a certificate in a mutual benefit association, payable on his death according to his direction, acquire only a contingent interest in the benefit, if the constitution of

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the association reserves to members the power of substituting other beneficiaries in the place of those originally named.

A waiver by the association of any right it may have to insist on a lapse of one of the sums directed to be paid on a certificate, on account of an invalid exercise of the power of direction, does not enable the other beneficiaries appointed by the holder to assert a claim to such sum.

BILL OF INTERPLEADER, by a mutual benefit association, to determine to whom a benefit of \$2,000 accruing on the death of Frank P. Watson, a member of the association, should be paid, and particularly whether Mrs. May Lamprey, one of the defendants, is entitled to receive \$250, part of the \$2,000.

E. A. & C. B. Hibbard, for Mrs. Lamprey.

Jewell & Stone, for the other defendants.

SMITH, J. January 2, 1878, Frank P. Watson received from Aurora Lodge, No. 708, of Knights of Honor, a local lodge of that organization established at Laconia, of which he was a member, a benefit certificate for the sum of \$2,000, payable to Fred C. Watson, one of the defendants. The constitution of the supreme lodge at that time authorized the issuing of a benefit certificate, payable on the death of the member to his family, or as he might direct. In 1881 the supreme lodge called in all certificates issued by local lodges. F. P. Watson surrendered his certificate, and received a new one for the same amount dated February 15, 1883, payable to Mrs. Lamprey, and to three of the other defendants in the sum of \$500 each. In November, 1886, Watson surrendered the second certificate, and directed that a new one be issued to him payable as follows: To C. B. S. Watson \$750, to Mercy Watson \$500, to Fred C. Watson, Hattie Watson, and Mrs. Lamprey \$250 each. November 22, 1886, the certificate in controversy was issued, payable as directed. In 1884 the constitution was changed so as to authorize the issuing of a certificate to a member payable "to some member or members of his family or person or persons dependent on him, as he may direct or designate by name, to be paid as provided by general law." Mrs. Lamprey was not a member of F. P. Watson's family, nor in any way related to or dependent upon him. C. B. S. Watson and Mercy Watson were his parents, and cared for him during his last sickness, in their family, a period of two years. Fred C. Watson was his brother, and Hattie H. was the wife of Fred C. The plaintiffs had no knowledge that Mrs. Lamprey was not a member of F. P. Watson's family, nor that she was not dependent upon him at the time of issuing the last certificate.

The plaintiffs have paid the sum of \$2,000 into court, and the defendants litigate the question of its disposition.

No such interest vested in the beneficiaries named in the first and second certificates issued to F. P. Watson as prevented him from surrendering the same for one payable to others. Under the plaintiffs' constitution, the power of direction as to the object of the benefit made payable in the certificate of membership did not need to be exercised at the time Watson became a member, and when exercised the power was not exhausted, so that another beneficiary could not be substituted. The beneficiaries named in the first and second certificates acquired only a contingent interest which Watson had the power to defeat, and did defeat, by exercising the power of substitution in the appointment of the beneficiaries named in the last certificate. *Barton v. Provident Mutual Relief Association*, 63 N. H. 535. The power of selection being unlimited as to persons, and limited as to time only by the death of the member, the beneficial interest did not vest irrevocably in the beneficiaries as it does when the power of substitution is not reserved. *Bank v. Whittle*, 63 N. H. 587.

Whether Mrs. Lamprey is entitled to the benefit of \$250 payable to her by the last certificate is a question in which the other defendants have no interest. In no event are they entitled to it. They can receive no more than the sums made payable to them respectively. If the direction by which the sum of \$250 was made payable to Mrs. Lamprey was invalid because she was neither a member of F. P. Watson's family nor dependent upon him, the benefit to that extent lapses, if the plaintiffs so elect, for want of a valid exercise of the power of direction. But the question whether it was valid can be raised by no one but the plaintiffs, and they do not raise it. *Brown v. Mansur*, 64 N. H. 39. By paying the money into court they have expressed their willingness to have it paid to Mrs. Lamprey. The money does not belong to Watson's administrator, nor to his heirs. *Eastman v. Association*, 62 N. H. As the plaintiffs promised to pay her that sum, and do not object to paying it, and no other person has the right to object, or any interest in the money, she is entitled to a decree that it be paid to her.

It is contended by the other defendants that the money directed to be paid to Mrs. Lamprey should be distributed *pro rata* to them by virtue of s. 6, art. 9, of the plaintiffs' constitution, which directs the whole benefit to be paid *pro rata* to the surviving beneficiaries in the event of the death of one of them before that of the member. They also call attention to s. 7, art. 9, which directs the benefit to be paid to the heirs of the member in the event of the death of all of the beneficiaries before that of the member; and it is claimed that Mrs. Lamprey, "for the purposes of this case, may be considered as not in existence, or as dead." We do not see the application of these sections to the case. All the persons named as beneficiaries are alive.

A decree will be entered up at the trial term directing the pay-

ment of the benefit with the interest that may have accrued thereon to the several defendants in the proportions named in the certificate.

Case discharged.

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

GARDNER v. WEBSTER.

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In determining the location of a private way, reserved in a deed by words which do not define its route, parol evidence showing the topography of the premises, the comparative benefit or injury to each party of any proposed location, and such other facts as may enable the court to read the reservation by the light under which the parties wrote it, is admissible.

Where the location and limits of a way reserved in a deed are not specified, a reasonably convenient and suitable way is intended.

TRESPASS *qu. cl.*, for crossing the plaintiff's field. Plea, the general issue, with a brief statement of a right of way. Facts found by the court.

The defendant owns farm No. 1, and the plaintiff owns farm No. 2, adjoining No. 1 on the east. The northern boundary of both is a highway. In 1882 the defendant, owning both farms, conveyed No. 2, "reserving the right to pass and repass at all time across the above described land to my pastures and the 'Point,' so-called." The defendant's grantee conveyed to the plaintiff. The lot called the Point is the most southern part of No. 1, and is bounded on the north by the pasture of No. 2, and on other sides by water. It had sometimes been a pasture under former owners. Sometimes it was divided by a fence, a part of it being a field and the rest a pasture. Sometimes no use was made of any part of it. Since 1870 it has not been divided by a fence, and the defendant has made but little use of it as a pasture. It was not used for that purpose in 1882, when he conveyed No. 2, and has never been divided into two pastures.

From 1868 to 1870 the defendant's father, owning both farms, and from 1870 to 1882 the defendant, owning both farms, used a path from the highway across the field of No. 2, to and across the south-east corner of No. 1, and thence across the pasture of No. 2 to the Point. The way reserved by the defendant in his conveyance of No. 2 must cross the plaintiff's pasture: the question is, whether it also crosses the plaintiff's field. The plaintiff's field and the defendant's pasture are adjoining lots, and are bounded northerly by the highway. Across the defendant's pasture from