

BINGHAM, J. The indictment charged an illegal sale of cider to Hannah J. Nason. The state was permitted to prove sales to other parties in the year next preceding the first day of the term when the indictment was found. It was competent to prove that the respondent kept cider for sale; that he was in the business. *State v. Shaw*, 58 N. H. 72; *State v. Havey*, 58 N. H. 377, 378, 379. The evidence tended to show it.

*Exception overruled.*

LANGMAID, *Ex'r*, *v.* HURD & *a.*

D by will gave to "H and family, jointly" one thousand dollars. *Held*, that the legacy should be divided in equal shares between H, his wife, and daughter, who constituted the family at the death of the testator, and that a child born afterwards took nothing.

BILL IN EQUITY, by the executor of Charles C. Drake, asking direction from the court as to his duty under the following clause in the will: "I give and bequeath unto Frank Hurd and family, jointly, the sum of one thousand dollars." At the time of Drake's death the family of Frank Hurd, besides himself, consisted of his wife and one daughter, now about six years old. Since then another daughter has been born, who is now about three months old.

*H. G. Sargent*, for the plaintiff.

*E. H. Woodman*, for the defendants.

DOE, C. J. The bequest "unto Frank Hurd and family, jointly," is not a clear expression of an intention to create a joint tenancy. The testator seems to use the word "jointly" in its ordinary sense, to signify such a collective body as "joint heirs," who are "deemed tenants in common." G. L., c. 135, ss. 14, 15. A gift to Frank and his family of a carriage "for family use," or of a house "for a family home," might keep the property undivided during Frank's life, or so long as the donees desired to hold it in common. Here is a gift of money with no expressed purpose, and no evidence sufficient for the inference of a purpose, that the fund shall be or may be unequally divided or unequally enjoyed, or shall be held in trust, or that the ascertainment of the number and identity of the legatees and the amount of Frank's share shall be postponed until Frank's death. The will does not expressly fix the time when a person must be a member of Frank's family in order to receive a share of the one thousand dollars. If the testator

had meant the money should not be distributed in Frank's lifetime, it is probable that the will would not have been silent on that point. If Frank's share is ever to be paid to him, the day of the testator's decease, when the will became operative, is the time probably intended for finding the legatees described as Frank's "family." Had the testator's attention been called to the effect of the will in view of various contingencies, he might not have left it in its present form. The words he used give the one thousand dollars, in equal shares, to Frank and his wife and child, who were Frank's family at the time of the testator's death, to the exclusion of the child subsequently born.

*Case discharged.*

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

---

DUBE *v.* MASCOMA MUTUAL FIRE INS. CO.

64	527
67	578
64	527
69	370

An assignment by a debtor of all his property, under the statute, for the benefit of his creditors, operates as an assignment of a fire insurance policy held by him which contains a provision that it shall be void if assigned without the assent of the company.

ASSUMPSIT, on a policy of insurance on the plaintiff's stock of goods contained in a store in Suncook, for one year from March 13, 1886. The property insured was totally destroyed by fire Jan. 11, 1887. The policy contained a provision that it should be void, if, without the assent of the company, "said property shall be sold or this policy assigned." January 1, 1887, the plaintiff made an assignment for the benefit of his creditors under the statute, and on the same day a messenger was appointed to take charge of the property. The defendants moved for a nonsuit on the ground that the evidence showed an alienation of the property and an assignment of the policy without the assent of the company before the loss occurred. The motion was granted *pro forma*, and the plaintiff excepted.

*H. G. Sargent* and *Wm. L. Foster*, for the plaintiff.

*W. H. Cotton* and *Chase & Streeter*, for the defendants.

ALLEN, J. The policy, which is the contract of insurance, provides, among other things, that it shall be void if it is assigned without the consent of the company. Ten days before the loss by fire the plaintiff assigned all his property, under the insolvent laws