

Ayer as tenants in common, Baldwin's share being one third. Since Baldwin's death, in 1872, all of it has been exclusively occupied and used by Ayer and others claiming under him, who paid the plaintiffs an agreed rent for the use of one third until May 1, 1882, when the defendants gave the plaintiffs written notice that from various causes the rent had become unreasonable, and that no more rent would be paid until a satisfactory arrangement was made. Since this notice was given, no arrangement has been made and no rent has been paid. The heirs and representatives of Baldwin have not attempted to use or occupy any part of the premises, and have not objected to the defendants' use and occupation. The plaintiffs have paid one third of the taxes. Expenses incurred by the defendants in repairing the common property and protecting it against fire are estimated by the referees at \$400 a year. Allowing expenses which an owner would reasonably be expected to incur in the care and preservation of the premises, and estimating the balance due from the defendants on an equitable accounting, the referees find the reasonable compensation to which the plaintiffs are entitled for the use of one third is \$1,500 a year.

R. M. Wallace, for the plaintiffs.

H. B. Atherton, for the defendants.

DOE, C. J. When the plaintiffs file a bill in equity as an amendment of the declaration, they will be entitled to judgment. *Gage v. Gage*, ante, pp. 282, 296.

Case discharged.

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

BARNARD v. PEOPLE'S FIRE INSURANCE CO.

Under the act of 1885 (*c. 93, s. 2*), where there is a total loss of insured property, and over-insurance was not fraudulently obtained, a grossly excessive and false statement of value in the proof of loss does not prevent the recovery of "the amount expressed in the contract as the sum insured."

DEBT, upon an insurance policy of \$800 on the plaintiff's cottage, which was entirely consumed by fire. The contract of insurance was made March 5, 1887. Verdict for the plaintiff for \$800. The defendants excepted to the refusal of the court to instruct the

jury that the plaintiff cannot recover if his statement of the value of the cottage in his proof of loss was false or grossly excessive.

W. B. Clement, J. F. Briggs, and O. E. Branch, for the plaintiff.

D. Cross and R. E. Walker, for the defendants.

DOE, C. J. "In any suit . . . against an insurance company to recover for a total loss sustained by fire, . . . the amount of damage shall be the amount expressed in the contract as the sum insured, and no other evidence shall be admitted on trial as to the value of the property insured. . . . Nothing in this section shall be construed to prevent the admission of testimony to prove over-insurance fraudulently obtained." Laws 1885, c. 93, s. 2. The loss in this case being total, and there being no "over-insurance fraudulently obtained," the plaintiff is entitled to "the amount expressed in the contract as the sum insured," and his statement of value in his proof of loss is not a defence.

Judgment on the verdict.

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

MUDGETT, *Guard.*, *v.* MELVIN, *Ap't.*

When a guardian, in the settlement of his account in the probate court, charges himself with a balance of \$38, and the balance for which he is charged by that court is \$275, and on his appeal the balance for which he is finally charged is \$216.66, judgment may be rendered without costs to either party.

PROBATE APPEAL. In the settlement of the defendant's account as guardian, in the probate court, he charged himself for a balance of \$38. The probate court charged him for a balance of \$275, and he appealed. In this court he was charged for a balance of \$216.66. No costs were allowed either party, and the appellants excepted.

J. P. Bartlett, for the plaintiff.

T. O. Knowlton, for the defendant.

ALLEN, J. The exception cannot be sustained. *Griswold v. Chandler*, 6 N. H. 61; *Wendell v. French*, 19 N. H. 205, 214;