

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;

Mathes v. Bennett, 21 N. H. 188, 203; *Kingman v. Kingman*, 31 N. H. 182, 192; *Clarke v. Clay*, 31 N. H. 393, 404; *Whitcher v. Benton*, 50 N. H. 25; *Olcott v. Thompson*, 59 N. H. 154, 157; *Nutter v. Varney*, 64 N. H. 334. The question of justice presented by the appellant's motion for costs, was a question of fact determinable at the trial term. The decision of that question required a consideration of evidence that is not stated in the case. It does not appear that wrong would have been done if the appellee had recovered a portion or the whole of his costs.

Exception overruled.

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

STIRN & LYON v. McQUADE & a.

A discharge under the insolvency law of this state is no bar to an action brought by a creditor who is a citizen of another state and has not proved his claim in insolvency.

ASSUMPSIT, for goods sold and delivered. Writ dated March 29, 1889. Facts agreed. At the time of the sale of the goods, the plaintiffs resided and did business, and have ever since resided and done business, in New York. The defendants resided and did business, and have ever since resided and done business, in Manchester. July 25, 1888, the defendants were adjudged insolvent upon the petition of one of their creditors residing in Boston. September 19, 1888, they filed an agreement for compromise, and received a discharge from the insolvency court. The plaintiffs received notice of the assignment, but did not appear, nor prove their claim, nor take any part in the proceedings. The goods were sold before the commencement of the insolvency proceedings. The court ordered judgment for the plaintiffs, and the defendants excepted.

D. F. O'Connor, Sulloway & Topliff, and *J. H. Riedell*, for the defendants.

Drury & Peaslee, for the plaintiffs.

CLARK, J. It is settled that the insolvent law of one state has no effect in another state against the citizens of the latter holding claims that follow the person of the creditor, unless they place themselves under the jurisdiction of the law by voluntarily becom-