

The sale of the Shepard farm to Randall converted the trust estate into money, which was held by Mrs. Noyes subject to the conditions of the trust imposed upon the land. As she had an estate for life in the land, she had an estate for life in the money received for it; and as money does not belong to that description of property of which the use consists in the consumption, she was entitled to the income or interest only, and the money was the property of the owners of the reversion in the Shepard farm. *French v. Hatch*, 28 N. H. 331; *Healey v. Toppan*, 45 N. H. 243. As Nellie E. Boyce, by her guardian, sold and conveyed her interest in the Shepard farm and received the pay for it independently of the plaintiffs, she had no interest in the two thousand dollars received by Mrs. Noyes from Randall. That belonged to the plaintiffs, subject to the right of Mrs. Noyes to the income during her life. With the assent of the plaintiffs Mrs. Noyes purchased the Penacook property with that money, and by reason of the ownership of the money a trust resulted in favor of the plaintiffs, and upon the facts stated in the bill they are the owners of the property.

*Demurrer overruled.*

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

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MORRILL, *Adm'r*, v. WARNER.

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The refusal of the court to stop a trial by jury upon discovery that one of the jurors is a party to a cause triable by jury pending at the same term, in which counsel engaged on the trial are counsel for him; is not subject to exception.

Whether evidence should be excluded for remoteness is a question of fact, determinable at the trial term.

CASE, on the statute of highways for injuries to the plaintiff's intestate. Verdict for the plaintiff.

After the cause had been on trial for a day and a half, the defendants discovered that one of the jurors was a party to an action triable by jury, and pending in the trial term in this county, wherein the counsel for the plaintiff in this suit were his counsel. They thereupon moved that the juror be excused from the panel, on the ground that by Gen. Laws, *c.* 213, *ss.* 22, 23, he was disqualified, and that the trial be stopped. The court denied the motion, and the defendants excepted.

The condition of the weather at Warner on a certain day was material. Subject to the defendant's exception, the plaintiff was permitted to show what the weather was on that day in Concord.

*A. P. Davis, S. Davis, and Bingham & Mitchell*, for the defendants.

*Albin & Martin*, for the plaintiff.

CARPENTER, J. The exceptions present no question of law. Whether justice required that the trial should be stopped, and whether, by reason of the proximity of the places, proof of the state of the weather in one town had a tendency to show what it was in the other, were questions of fact to be determined at the trial term. *Temple v. Sumner*, Smith (N. H.) 226; *State v. Howard*, 17 N. H. 171, 186; *Wentworth v. Jefferson*, 60 N. H. 158; *Norton v. Wilbur*, 5 Gray 7; *State v. Boston & Maine Railroad*, 58 N. H. 410, 412; *Amoskeag Mfg. Co. v. Head*, 59 N. H. 332, 338; *Tilton v. Society*, 60 N. H. 377, 384; *Cook v. New Durham*, 64 N. H. 419; *Smith v. Earle*, 118 Mass. 531.

*Exceptions overruled.*

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

MOSELEY & a. v. JENNESS.

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A decree of the probate court granting the creditor's petition, in the case of involuntary proceedings in insolvency under *s. 7, c. 85, Laws 1885*, and appointing a messenger to take possession of the insolvent's property, does not avoid a chattel mortgage made by the insolvent within three months before the filing of the creditor's petition, but more than three months before the date of the decree.\*

TROVER, for two horses and other property. Facts agreed. December 15, 1890, one Silver owned the property, and mortgaged it to the plaintiffs to secure the payment of his promissory notes for a greater amount than the value of the property, and given for merchandise before that time sold and delivered to him by the plaintiffs. The mortgage was recorded the same day. The notes have not been paid. The defendant, a deputy sheriff, attached the property January 30, 1891, on writs in favor of certain creditors of Silver, and has held possession ever since. February 21, 1891, Prescott filed his petition in the probate court, setting forth that Silver was owing him more than \$300, and that Silver's property within the state was insufficient to pay all his debts, and praying that a messenger be appointed to take charge of the property, and that Silver be ordered to execute an assignment and

\* See Pub. St., c. 201, s. 26.—REPORTER.