

Columbian Insurance Co., 27 N. H. 157; *Campbell v. Merchants and Farmers' Insurance Co.*, 37 N. H. 35; *Clark v. Union Insurance Co.*, 40 N. H. 333; *Patten v. Merchants' Insurance Co.*, 40 N. H. 375, 381-383; *Leach v. Republic Insurance Co.*, 58 N. H. 245; *Eastman v. Provident Association*, 65 N. H. 176.

But the issue submitted to the jury, whether the plaintiff at the time of the application informed Stevens & Son of the mortgage, was immaterial. Had the jury found the other way on that question, the result would be the same. "The defendants made no claim that the plaintiff failed to have the existence of the Berry mortgage noted in the application and policy by reason of fraud,"—in other words, they conceded that the omission was an innocent mistake. Under the statute, a policy is not avoided by such an error in the applicant's statement of his title. *Truck v. Hartford Insurance Co.*, 56 N. H. 326, 331; *Leach v. Republic Insurance Co.*, 58 N. H. 245.

There was competent evidence tending to show that the defendants waived the proofs of loss required by the policy, and the question was properly submitted to the jury. The instructions given them were correct. To permit the defendants to avail themselves of the plaintiff's omission to make the proofs of loss which they had induced him to abstain from furnishing would do him a great wrong, and it was not improper so to inform the jury.

Although the policy was payable in case of loss to the mortgagee, Mary Simpson, to the extent of her mortgage debt, the action was properly brought in the name of the plaintiff. *Folsom v. Orient Insurance Co.*, 59 N. H. 54; *Hall v. Fire Association*, 64 N. H. 405.

Judgment on the verdict.

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

PARSONS, *Adm'r.*, v. PARSONS, *Ex'x.*

A creditor's appeal from a commissioner's disallowance of his claim against an insolvent estate, under Gen. Laws, c. 200, cannot be entered after the adjournment of the next trial term of this court after the claim of the appeal.

MOTION, for leave to enter an appeal from the commissioner appointed by the probate court to examine and allow claims against the estate of George Parsons, which was settled in the insolvent course. The plaintiff's claim was disallowed by the commissioner, and he seasonably filed a petition for appeal and gave the required notice. By accident and mistake he failed to

67	296
67	335
67	421
87	296
71	620

enter the appeal at the next trial term of this court. After the term had adjourned he filed this motion, to which the defendant (the executrix of George Parsons's will) objected.

James I. Parsons, for the plaintiff.

Thomas F. Johnson, for the defendant.

CHASE, J. "Any creditor dissatisfied with the decision of the commissioner upon any claim by him exhibited may appeal therefrom by petition to the judge, filed in the probate office within thirty days after the acceptance of his report, and shall file therewith a declaration in proper form upon his claim." G. L., c. 200, s. 1. "The judge shall order the administrator to be served with a copy of the petition and declaration, and the creditor shall enter his action at the next trial term of the supreme court, and produce attested copies of the petition, declaration, and order of notice, and evidence of compliance with such order." *Sec. 2.* "If any creditor fails to enter his action, or to recover judgment therein, his demand shall be forever barred, and whatever was allowed by the commissioner shall be struck from the list of claims." *Sec. 7.* The phrase "if any creditor fails to enter his action" refers to the next trial term of the supreme court after the appeal is claimed. By these provisions the plaintiff's claim is forever barred, because of his neglect to enter his appeal seasonably. There is no provision for remedying such mistakes in respect to an appeal from a commissioner, as there is when they occur in taking an appeal from the probate court. G. L., c. 207, s. 7. The latter provision does not apply to the case of a person aggrieved by the decision of a commissioner. *Hilton v. Wiggins*, 46 N. H. 120. Neither does s. 1, c. 234, Gen. Laws, apply to a case of this kind. *Peabody's Petition*, 40 N. H. 342. In *Dyer v. Stanwood*, 6 N. H. 411, a suggestion is made that perhaps such a mistake as this may be remedied by entering the action at a subsequent term as of the first term after the appeal was claimed; but this was doubted by the same judge (*Parker, C. J.*) in *Smith v. McDaniel*, 15 N. H. 474, and cannot be adopted. It is the policy of the law to require the early settlement of estates of deceased persons, especially those settled in the insolvent course, and the statutes contain numerous provisions to that end, of which those under consideration are examples.

Motion denied.

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