

the contract, its net value would have been the extent of their loss. The expense of preliminary work done and necessary to be done before the cutting and hauling could be commenced would be a partial or a total loss according as they cut and hauled a part or none of the timber. The cost of the maintenance of workmen and teams in idleness for such time as was reasonably necessary to enable the plaintiffs to consult counsel upon their being notified to cease cutting, and for a reasonable time after they were compelled to desist, may be a loss for which they are entitled to recover. They can recover for no loss of this character which by ordinary care they could avoid. *Noyes v. Blodgett*, 58 N. H. 502; *Rafferty v. Drew*, 64 N. H. 616; *Dillon v. Anderson*, 43 N. Y. 231, 237. Other questions relating to damages are not considered. At the trial some of them may not arise, and others may be presented in a different shape.

Case discharged.

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

TIBBETTS v. SARTWELL.

At an appraisal to determine the price of goods under a contract of sale, neither party has a right to exclude the other, and a party so excluded may rescind the contract without forfeiting a deposit made to insure an acceptance of the appraisal.

REPLEVIN, of \$400 in bank bills. Facts found by a referee. The plaintiff agreed to sell, and Mrs. George agreed to buy, the furniture in the plaintiff's hotel, at a price to be fixed by Garland & Parker. They placed each \$200 in bank bills in the hands of Parker, with the understanding and agreement that if either party should refuse to accept the appraisal of Garland & Parker, then the \$200 deposited by him or her should become the property of the other. The plaintiff's wife and Mrs. George accompanied the appraisers while they were engaged in their work, the former to point out the property, and the latter to see what she was buying. Occasionally Mrs. George stated to the appraisers her view of the value of the articles of property. During the second day of the appraisal, and while the appraisers were at work, the plaintiff, in harsh and peremptory language, ordered Mrs. George out of the room, and insisted that she should take no further part in the appraisal. Thereupon she declined to proceed with the appraisal, and went home. Nothing further was done by the appraisers, and the appraisal was never completed. At the request of the plaintiff, Parker, before he left for home, deposited the \$400 with the

defendant. The plaintiff, in ordering Mrs. George from the room, did not intend to be understood as rescinding the agreement, and she reasonably ought not to have understood that he intended to rescind it.

Drew & Jordan and *Will P. Buckley*, for the plaintiff.

Smith & Sloan, for the defendant.

CARPENTER, J. It is not found that the conduct of Mrs. George justified her exclusion from the room in which the furniture was appraised. The parties could have agreed that both or neither of them should be present when the appraisal was made. But an agreement cannot be inferred that either should have an exclusive right to be present at the determination of the question of value, in which they were equally and adversely interested. *Hook v. Philbrick*, 23 N. H. 288. The plaintiff, by wrongfully preventing Mrs. George from attending the appraisal, gave her the right she exercised to rescind the contract.

Judgment for the defendant for \$200.

All concurred.

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

The statute (P. S., c. 191, s. 27) giving a remedy to a creditor of the estate of a deceased person who has not prosecuted his claim within the time limited by law, was not intended to apply to a case in which the estate is settled as insolvent.

BILL IN EQUITY, by the administrator of Hezekiah Parsons's estate against the executrix of George Parsons's will, alleging that George was indebted to Hezekiah, that George's estate was administered as insolvent, that the plaintiff's demand was presented to the commissioner and disallowed, that the plaintiff appealed seasonably and gave due notice of the appeal, but accidentally failed to enter it at the proper term of court, and praying for judgment for the amount due. The defendant filed a demurrer, which was sustained, and the plaintiff excepted.

James I. Parsons, for the plaintiff.

Thomas F. Johnson, for the defendant.

CHASE, J. This suit is based upon s. 27, c. 191, P. S., which provides that "Whenever any one has a claim against the estate

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71	620

67	419
72	192

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74	347