

if the evidence concerning the sale justified the conclusion that the value of the property was only \$6,900, there must have been error in applying or estimating the weight of the other testimony. For these reasons no judgment can be entered upon the report.

The plaintiff's sale presumably was made for the purpose of settling the testator's estate, and the expenses incurred in making it should not be charged to the defendant, directly or indirectly, in any view of the case.

*Case discharged.*

All concurred.

Merrimack, }  
Dec., 1899. }

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GUAY v. KEHOE & a.

In the absence of an agreement, a landlord is not liable for the value of improvements made by his tenant.

ASSUMPSIT. Facts found by a referee. In 1896, the defendant Mary Kehoe had an equitable and later a legal title to certain real estate, a part of which she let the plaintiff have the use of for \$5 per year. At this time he wanted to buy or lease, but she declined on the ground that she did not have a perfect title. Within the year, he cleared the land and erected some small buildings on it, for which he claims to recover. These improvements were made with the knowledge of Kehoe, but not with any definite arrangement or understanding between the parties. February 17, 1897, she conveyed the premises to the defendant Ann Dixon. Guay, after the expiration of the year for which he hired the premises, paid a monthly rental to Dixon. He made some improvements on the premises after the sale, but against her objection. The court ordered judgment for the defendants, and the plaintiff excepted.

*David W. Perkins*, for the plaintiff.

*Sullivan & Broderick*, for the defendants.

WALLACE, J. The plaintiff has no rights against the defendants, or either of them, arising out of a partially executed oral contract to purchase the land, as claimed by him, because the case discloses no such contract. Neither does it show an express or implied promise to pay for the improvements which the plaintiff made. He made the improvements for which he seeks to recover while in the occupation of the premises as a tenant. His labor in

clearing and otherwise improving the land was performed for his own benefit and to enhance his enjoyment of the leased premises. No reason appears why the defendants, or either of them, should pay for this labor.

*Exception overruled.*

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

Merrimack, }  
Dec., 1899. }

DANA, *Ex'r*, v. SANBORN & a.

Where a will provides that an estate shall be held in trust for the benefit of G for life, remainder for the benefit of his children, and in case G should die without issue, remainder to persons named discharged of all trusts, the latter take a vested remainder, subject to be divested upon the birth of a child to G.

In such case the trust terminates upon the death of G without issue, and the trustees have no authority to further administer it by a sale of real estate.

Under a devise in remainder "to my following named nephews and nieces, their respective heirs and assigns," the legal representatives of a devisee who died during the continuance of the life estate are entitled to share.

BILL IN EQUITY, by the surviving trustee under the will of Shadrach Seavey, for the interpretation of the will and directions as to the distribution of the estate. He devised the residue of his estate to his executors, in trust for the following purposes:

First. To manage and carry on the estate.

Second. To pay over the net income thereof to his son Gilbert during his life.

Third. "After the decease of my said son, to hold said property for the benefit of his children who may survive him."

Fourth. "In case my said son shall die without issue surviving him, or in case all said children shall die before arriving at the age of twenty-one years without issue surviving them, then all said rest, residue, and remainder to go to my following named nephews and nieces, their respective heirs and assigns, in equal shares, discharged of all trusts."

January 8, 1899, the testator's son Gilbert died, leaving no issue surviving him, and never having had any. Prior to January, 1899, five of the nephews and nieces named in the will died. The plaintiff asks instructions as to the following particulars: