

“The plaintiff is entitled to be compensated according to the magnitude of his loss. The defendant ought only to be liable to compensate him according to the magnitude of his loss.” *Foote v. Merrill*, 54 N. H. 490, 494.

The damage, or loss of valuable use, to the plaintiff by the defendant's occupation is to be computed with reference to his whole estate. It is not to be found by first considering what the acre would be worth if it could be used with the estate, and adding thereto the decrease in value of the estate if this acre were taken from it. By such a process the same item of damage might be recovered twice—once because the acre was taken from the estate and again because the estate was deprived of the acre. It may be possible to apportion the worth of property valuable only for a common use between the parts of it; but the process is an unsatisfactory one, and quite likely to result in an over-estimate on the whole. *Cocheco Co. v. Strafford*, 51 N. H. 455. Unless circumstances render such division necessary, the logical and proper method is to treat the estate as a whole in making up the assessment.

Exceptions sustained.

All concurred.

Hillsborough, }
Nov. 2, 1915. }

ELLEN H. BURKE, *Adm'x*, v. BENJAMIN T. BARTLETT.

CASE, for negligently causing the death of the plaintiff's intestate. Trial by jury. Transferred from the January term, 1915, of the superior court by *Branch, J.*, on the plaintiff's exception to an order of nonsuit.

Jones, Warren, Wilson & Manning (*Mr. Manning* orally), for the plaintiff.

G. K. & B. T. Bartlett and Taggart, Burroughs, Wyman & McLane (*Mr. McLane* orally), for the defendant.

Per Curiam. The question raised by the exception is whether there was evidence tending to prove (1) that the defendant's fault did, and (2) that the decedent's negligence did not, contribute to

cause the accident. The evidence warranted a submission of both issues to the jury, and the order is

Exception sustained.

Rockingham, }
Jan. 4, 1916. }

PASSACONAWAY COUNCIL v. GEORGIANA DOW & a.

BILL OF INTERPLEADER, to determine the right to a funeral benefit payable upon a certificate of membership issued to Frank L. Knowles.

The by-laws provided that funeral benefits are payable only to legal dependents of a deceased member and that such dependent must be the wife, children, parents, sisters or brothers, grandparents, or grandchildren or other blood relative or other person who is dependent upon the member.

Before his death Knowles notified the council to make his insurance payable to the defendant, Mrs. Dow, his aunt, who was a blood relative but not dependent upon him and at his death he had not recalled this notice. The court ordered payment to the defendant widow, Mrs. Knowles, and the defendant Dow excepted. Transferred by Young, J., from the April term, 1915, of the superior court.

Ernest L. Guptill, for Mrs. Dow.

Eastman, Scammon & Gardner, for Mrs. Knowles.

PARSONS, C. J. Counsel for Mrs. Dow has not attempted to sustain her exception by argument or brief and no ground occurs to us upon which to question the validity of the order to which the exception was taken.

Exception overruled.

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