

estate precisely as the fund created by the first contract would, if his wife failed to survive. The policy made the same provision as to the disposition of the fund if no payee were named. The plaintiff, the insured's wife, is in no way connected with contract 2 as to the registered bonds. That contract is entirely independent of contract 1 under which she was made a beneficiary. She has no more claim under it than if it were evidenced by an independent instrument in which she was not mentioned. The only inference that can be drawn from the failure to name a beneficiary under this contract is that the insured intended the face amount of the bonds should become assets in his estate. If he had intended his wife should be the payee of the registered bonds, he could have expressed that purpose. If he had desired she should receive the face amount of the bonds, he could have assigned the same to her, as the amount was made payable to his executors, administrators, or assigns. As he failed to express either intent, the fund remains where the purpose he did express leaves it,—in his estate. According to the agreement there must be

*Judgment for the plaintiff for \$1,542 and interest.*

All concurred.

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Hillsborough, }  
Dec. 5, 1916. }

ELIZABETH A. ROBERTSON *v.* HILLSBOROUGH.

ACTION, under Laws 1893, c. 59, for damages to one traveling upon a highway. Trial by jury. The court subject to exception instructed the jury that there was no evidence upon which they could find that the plaintiff's injuries were due to a dangerous embankment within the meaning of the statute. Transferred from the May term, 1916, of the superior court by *Branch, J.*

*Robert W. Upton* (by brief and orally), for the plaintiff.

*Taggart, Burroughs, Wyman & McLane*, for the defendant. *Mr. Wyman* was present for argument, but was not called upon.

*Per curiam.* The question presented was decided in *Wilder v. Concord*, 72 N. H. 259.

*Exception overruled.*

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Hillsborough, }  
Dec. 5, 1916. }

THE CREDITORS NATIONAL CLEARING HOUSE v. LAMOUREUX BROS.

ASSUMPSIT, on a special contract. Trial by the court and verdict for the defendants. The defendants contended that they were induced to sign the contract sued on by the plaintiffs' false representation and were permitted to show, subject to exception, that the plaintiffs made the same representations to others and made them for the same purpose. Transferred from the Manchester municipal court by *Perkins*, J.

*James A. Broderick*, for the plaintiffs.

*William W. Forbes*, for the defendants.

YOUNG, J. The fact, if it were the fact, that the plaintiffs made the same false representations they made to the defendants to others and made them for the same purpose would have a tendency to prove that they made them to defraud. *Hovey v. Grant*, 52 N. H. 569.

*Exception overruled.*

All concurred.

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Rockingham, }  
Feb. 6, 1917. }

ALBERT H. DRAKE v. CONTINENTAL INSURANCE CO. & a.

ASSUMPSIT. Transferred by *Young*, J., from the May term, 1916, of the superior court.

*Ernest L. Guptill*, for the plaintiff.

*Eastman, Scammon & Gardner*, for the defendants.