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Smith v. Greeley.

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lot which would be conveyed by the deed as thus corrected, be confirmed and established to the plaintiff, so far as may be consistent with the legal rights of other persons not parties hereunto. And it is ordered and decreed that the respondents be perpetually enjoined from claiming, possessing, conveying, or in any other manner interfering with the tract so truly described as aforesaid, and for the purpose of enabling each party to be quieted and to have their several rights appear on the public records, that the defendants execute deeds of release accordingly.

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#### BATCHELDER vs. BATCHELDER.

A libel for divorce from a marriage contracted without this state, must aver specially a residence within this state prior to the time when the cause of divorce arose.

To sustain a libel for divorce on account of habitual drunkenness, it must be shewn that the libellant had a legal domicile in this state for the whole of the three years during which the drunkenness existed.

Testimony in general terms, that the libellee is an habitual drunkard, is insufficient to maintain a libel for that cause. The facts should be given in detail, that the court may judge whether or not they amount to habitual drunkenness.

**LIBEL** for a divorce, alleging that the husband (the libellee,) is and has been for more than three years past an habitual drunkard. The libel stated that the parties were married at Lowell, in Massachusetts, on the 21st day of July, 1833, but did not set forth any time as that at which they came to reside in New-Hampshire. They were, however, described in the libel as of the town and county of Hillsborough.

One witness testified that the parties came to reside in Hillsborough in August, 1841, but there was no other evidence of a change of residence from Lowell.

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*Batchelder v. Batchelder.*

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As to the fact of the alleged habitual drunkenness, the facts were stated to some extent in the libel ; but the evidence in the case went no farther than that several witnesses swore in general terms *that he is an habitual drunkard, grossly so, one of the most beastly that they ever knew.*

PARKER, C. J. The libel is insufficient. It appears on the face of it that the marriage was without this state, and yet it contains no averment that the parties were residents, or ever came to reside in this state. The general description of the parties, as of a certain town and county within this state, does not supply the want of a direct averment, and would not sustain our jurisdiction. 12 *N. H. Rep.* 80, *Smith vs. Smith* ; 12 *N. H. Rep.* 200, 202, *Greenlaw vs. Greenlaw* ; 13 *N. H. Rep.* 222, 225, *Kimball vs. Kimball*. One of the witnesses testified that the parties came to reside in Hillsborough in the month of August, 1841. The alleged cause of divorce is three years habitual drunkenness. We have uniformly held that the parties must have been inhabitants of this state at the time when the cause of divorce arose. See the cases above cited, and 8 *N. H. Rep.* 21, *Clark vs. Clark* ; *Ditto* 161, *Fellows vs. Fellows* ; 10 *N. H. Rep.* 61, *Frary vs. Frary*. It is not sufficient that they were resident here when the cause of divorce became complete. If, therefore, the parties removed from Massachusetts to Hillsborough in August, 1841, three years of habitual drunkenness have not elapsed, and so no cause of divorce accrued since they became residents in this state.

A rule similar to that laid down by this court in *Frary vs. Frary*, above cited, in cases of desertion, holds also in cases of habitual drunkenness for three years together, viz. : that there must have been a legal domicile within this state during the whole period fixed by the statute as establishing a cause of divorce.

The proof is also insufficient as to the fact of drunkenness. The witnesses testify in strong general terms that the

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libellee is an habitual drunkard ; but this is not enough. They should have given the particular facts and instances of drunkenness, and left it to the court to judge whether or not they amounted to habitual drunkenness.

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### PETERBOROUGH vs. LANCASTER.

Where money is paid with a full knowledge of all the facts, or with the means of such knowledge, it cannot be recovered back on account of the payment having been made in ignorance of the law.

But if it be paid in ignorance of a material fact, and without reasonable means of ascertaining it, it may be recovered back.

When money is paid, it will be presumed to have been paid with a full knowledge of all the facts, in the absence of evidence to the contrary.

If a town, not liable for the support of a pauper, pay for such support upon request by another town, what would be the effect of such payment, *quere?*

A town not chargeable with the support of a pauper agreed with a town by whom the pauper had been maintained, to pay for the future support for a specified time. In an action against the town where the pauper had a settlement—*Held*, that such agreement was no answer to the suit.

A town, not chargeable with the support of a pauper, paid to the plaintiff by whom the pauper had been relieved the sum expended for that purpose. In a suit against the town where the pauper had a settlement—*Held*, that as the plaintiff had not been called upon to repay the sum expended, it could not be recovered of the defendant.

If a pauper have not a settlement in a town, the selectmen cannot make the town chargeable therefor by their agreement with another town to pay for his support.

A notice of relief furnished a pauper was not dated, but was served on the 11th of April, 1839, and stated that on the 15th day of January, *last past*, the relief was furnished, and that the pauper had been supported since that time.—*Held*, that the time when the support was rendered appeared with sufficient precision.

Under the 11th section of the act of December 16th, 1828, a notice of supplies furnished a pauper must be returned to the clerk's office within twenty days from its service ; otherwise an action for the sum expended cannot be maintained.

Where the writ described the relief as "board and *washing*," and the notice de-

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