

Were the defendant now a member of the corporation, as a guardian in right of a ward, as an executor in right of a testator, or as a trustee to any general uses, it would not be pretended, that, though he represented the same shares, which he formerly owned in his own right, his liability to an action for the assessments would revive. No liabilities attach to him, which did not belong to those he represents; and they, being subsequent stockholders, were unaffected by the promise. So in this case, he belongs to the corporation not as an original member, but as a subsequent stockholder; and by the re-purchase, merely represents, his immediate vendor. The promise, therefore, no more binds him on account of this re-purchase than it bound his vendor, or than, if after his first sale, he had still continued, devoid of any interest whatever in the company.

F.G. Company
vs.
C. Alexander.

Judgment on the verdict.



THE TOWN OF WALPOLE vs. THE TOWN OF MARLOW.

For what defects in a declaration judgment must be arrested, and what defects are cured by a verdict.

This was an action of *assumpsit*. It was alleged in the declaration, that the town of *Walpole* had relieved and maintained one *F. M.* a pauper, having her legal settlement in the town of *Marlow*, which was by law chargeable for her support, and had expended in her support \$129 71, of which the said town of *Marlow* had had due notice, &c. and thereby became liable, and in consideration thereof promised, &c.

The cause was tried here at May term, 1820, upon the general issue, and a verdict returned in favor of the town of *Walpole*.

J. C. Chamberlain, of counsel for *Marlow*, moved in arrest of judgment: and he contended that the declaration was defective, in not alleging that the pauper had no relations in the line of father or grandfather, &c., of sufficient ability to maintain her. The statute of Feb. 15, 1791, sec. 7, enacts, "that the relations of any poor person standing in need of

Walpole
vs.
Marlow.

“relief, in the line of father or grand father, &c., of sufficient ability, shall be liable to maintain and relieve them, &c.; and in case any one standing in need of relief have no such relations of sufficient ability; then, and in every such case, the town or place in this state where such person was born or last an inhabitant, shall be considered as the town or place liable to relieve and maintain such person, &c.”(1) It is clear that towns are liable to maintain paupers only in cases, where there are no relations by law bound to maintain them. The declaration in this case contains no allegation, that *F. M.* the pauper, had no relations by law bound to maintain her: it is therefore most manifestly bad.

(1) 1 N. H. Laws 356.

Field, for the plaintiff.

RICHARDSON, C. J. It is contended in this case that judgment must be arrested, because the declaration does not allege, that the pauper had no relations by law bound to support her. If the title stated in the declaration be defective, the judgment must be arrested. But if this be only an instance of a title defectively stated, the defect is cured by the verdict. The true distinction between a defective title, and a title defectively stated, is this: when any particular fact is essential to the validity of the plaintiff's title, if such fact is neither expressly stated, in the declaration, nor necessarily implied from those facts which are stated, the title must be considered as defective, and judgment must be arrested; but if such fact, although not expressly stated, be necessarily implied from what is stated, the title must be considered only as defectively stated, and the defect is cured by a verdict.(2)

(2) 4 D. & E. 470, Bishop vs. Hayward.—1 Saund. 228, note I.—1 D. & E., Spiers vs. Parker.

The declaration in this case contains an allegation that the town of *Marlow* was by law chargeable with the support of the pauper. This allegation necessarily implies and could not be proved without evidence, that the pauper had no relations by law bound to support her. For if she had such relations, the town of *Marlow* was not chargeable with her support. This then is an instance, not of a defective title, but of a title defectively stated. The defect is cured by the verdict, and judgment must be rendered on the verdict.