
Chesley v. Pierce & Sawyer.

This act would seem to indicate quite clearly the intention of the Legislature to place the stockholders in this respect on the ground of partners.

This list, which is filed with the town clerk, is for the benefit of those who deal with the company. They may resort to it to see who are the stockholders, that they may the better know whether to trust the corporation or not; and it is the names that they find there to which they give credit, and not those that may have been there a year before, or may be there a year after.

And by the express terms of the act, also, it is those whose names are then there who are liable for debts *then* contracted, and not for debts contracted thereafter; and those who subsequently become members are not liable for the debts previously contracted.

As the decision of this point in the case goes to the foundation of the plaintiff's right of recovery, we have found it unnecessary to examine the other questions.

According to the agreement of the parties, as expressed in the order of transfer, there must be

Judgment for the defendants.

FOX v. WHITNEY.

In petitions for mandamus, costs follow the event of the suit.

Where, on a petition for mandamus, an alternative mandamus issued, and before the return day thereof the petitionee complied with the order, but not within the period therein specified, whereby the petitioner was subjected to delay and expense in another court — *held*, that, although the failure to comply seasonably with the order was in contempt of the authority of the court, the costs of the delay in another tribunal could not be added to the costs of the proceedings on the petition for mandamus.

PETITION FOR A MANDAMUS, to compel the petitionee to furnish the petitioner with copies of certain records made by the

Fox v. Whitney.

petitionee, as justice of the peace for the county of Hillsborough, filed July term, 1855. At that term an alternative mandamus issued, commanding the petitionee to furnish the petitioner, or his attorneys, with the desired copies, before the fourth Tuesday of October, 1855, his legal fees therefor being first paid or tendered, and to appear at this term and show cause why he had not, or did not, furnish them. This writ was duly served upon the petitionee on the 29th of September, 1855, and his fees for the copies tendered. The petitionee failed to appear at the present term, and was defaulted. The copies desired were furnished to the attorneys of the petitioner, but not within the time specified in the order, and, by reason of their not being so furnished, the petitioner was compelled to permit his suit in the Common Pleas to be continued, thereby subjecting him to delay and expense. The petitioner then moved for costs of the delay in the court below, and for costs in the proceedings here.

G. & B. Wadleigh, for the petitioner.

FOWLER, J. By section 1, of chapter 191, of the Revised Statutes, it is provided that "costs shall follow the event of every action or petition, unless otherwise directed by law or by the court." We are not aware that writs of mandamus are, by law or practice, excepted from the general rule, and see no good reason why the petitionee should be exempted from its operation. But there is no ground, apparent or suggested, upon which this court can allow the petitioner the costs of any delay in the court below, occasioned by the petitionee's neglect of duty. The costs there are within the discretion of that court, and beyond our control. The petitionee's neglect to obey the order was in contempt of the process of this court, and for it he might, perhaps, be punished by fine, were it deemed expedient to adopt the proper proceedings for that purpose. As, however, it appears that the object desired has been at length attained, though not within the period specified in the order, and there is no sugges-

 Lakeman v. Moore.

tion of any application for process for contempt, we think the petitioner should have judgment and execution for his costs arising in the suit here, and that further proceedings be thereupon stayed.

JOHN LAKEMAN v. ROBERT MOORE.

By section 26, chapter 1, Revised Statutes, it is declared that the repeal of a statute shall not affect any act done, or right acquired, or accruing, or any suit or proceeding had or commenced in any civil case before the repeal takes effect. Section 4, chapter 147, requires the parties to a proposed marriage to cause their intention to be published, and section 12 of the same chapter gives a penalty against the minister or magistrate joining persons in marriage without a certificate from the town clerk of such publication. By the act of July 14, 1854, section 4, all acts and parts of acts inconsistent with that act are, in terms, repealed. The parties are required to cause notice of their intentions to be filed in the town clerk's office, and a penalty is prescribed for joining persons in marriage without a certificate from the town clerk that notice has been so filed. In a suit brought after the repeal took effect, for a penalty incurred under section 12, prior thereto — *held*, that section 12 was repealed, as being repugnant to the repealing act, but that the repeal was to be limited in its operation, by virtue of the provision of section 26, chapter 1, in the same manner as if the repealing act had contained a saving clause of all penalties previously incurred.

THE facts in the case sufficiently appear in the opinion of the court.

G. & B. Wadleigh, for the plaintiff.

A. W. Sawyer, for the defendant.

The opinion of the court was delivered by
 SAWYER, J. This is an action of debt against the defendant, a justice of the peace, to recover the penalty prescribed by sec. 12, chapter 147, Revised Statutes, for joining in marriage a

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70	157

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