
Robinson v. Aiken.

ery by a surety before actual payment, without which the consideration may be regarded as having failed.

The opinion of the court, then, is that the measure of damages will be the amount paid by the plaintiff at any time before the trial; and that, if no such payment be shown, nominal damages can be recovered, and no more.

The decisions which establish the doctrine that the plaintiff may recover for any amount paid by the surety before trial, necessarily imply that in case of no such payment, nominal damages may be recovered. Otherwise no action could be maintained unless payment had been made before suit; inasmuch as there must have been cause of action at its commencement; and so the doctrine is assumed to be in the cases cited.

As there is no provision for judgment in this case, no further direction is necessary, but the cause must be retained for farther proceedings.

ROBINSON *v.* AIKEN.

The official services of a mayor of a city, under an annual salary, are "labor performed," within the meaning of chapter 208, section 9, of the Revised Statutes; and a city cannot be charged as a trustee, on account of such services, rendered after the service of the trustee process, or within fifteen days prior to such service.

THE facts of this case sufficiently appear from the opinion of the court, delivered by

DOE, J.* The defendant Smith was the mayor of Manchester, at a salary of \$1,000 a year, payable quarterly. The statute provides that no person summoned as trustee

* BELLOWS, J., did not sit.

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shall be charged as such, on account of any labor performed by the debtor, after the service of the process, or within fifteen days prior to such service. Rev. Stat., ch. 208, sec. 9. And the question is, whether the trustee is chargeable for such portion of Smith's salary as accrued after the service of the process, and within fifteen days prior to such service? We are of opinion that the official services of Smith as mayor may well be considered as labor performed, within the meaning of the statute.

Trustee discharged.

Kittredge and Bellows, for the plaintiff.

J. B. Clark, for the trustee.

PITTSFIELD BANK v. CLOUGH.

It is within the discretion of the court to allow the plaintiff to withdraw his election to put a trustee to answer interrogatories, and to elect to try the question of his liability by the jury, although his disclosure is commenced and not completed.

FOREIGN ATTACHMENT. The plaintiff elected to put the trustee to answer interrogatories, and, nine interrogatories having been answered, but, the disclosure not having been completed or sworn to, the plaintiff moved the court for permission to withdraw his election to put the trustee to answer interrogatories, and that he be allowed then to elect to try the question of the trustee's liability by the jury, upon such reasonable terms, if any, as the court