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be used as proof of a deed or record which has been lost by time or accident, or of a prescriptive right which always presupposes a grant. Such a title may well be called a prescription, agreeably to the ancient use of that term, though it depends upon a period of twenty years, and has no connection with the time of legal or actual memory. *Fletcher v. Wallace*, 30 N. H. *ante*; *Bow v. Allenstown*, 34 N. H. *ante*; *Dare v. Heathcote*, 36 E. L. & E. 564.

We shall only therefore be carrying out and applying the same doctrines and principles in this case, and for the same reasons, which have been applied by the court in the other cases in this state already referred to and we think the doctrines of those cases are not only well founded upon authority, but also upon sound reason, and that there can be no reason urged in this case against its application, which might not have been urged with equal force at least against its application in *Bow v. Allenstown*, and that therefore there must be, upon the finding of the court,

Judgment for the plaintiff.

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42	338
71	374

A highway tax to be expended in the winter may be legally raised, and a neglect to pay it will prevent the gaining of a settlement, although payment had never been demanded.

42	338
74	440

ASSUMPSIT, for money expended and supplies furnished by the plaintiffs, for the support of Thomas Wait, a pauper, alleged to have his settlement in Newport. Writ dated January 4, 1861. Plea, the general issue.

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It was agreed by the parties that Wait was in Bradford, was poor and in need of relief, and that the relief was furnished by Bradford; that Newport was duly notified, and that judgment should be rendered for Bradford for the sum of forty-nine dollars and costs, unless, upon the following statement of facts, the court should be of opinion that Wait gained a legal settlement in Bradford, under the tenth mode of the Revised Statutes (ch. 65, sec. 1); in which case the plaintiffs were to be nonsuited.

Wait resided in the town of Bradford from 1846 to 1854; was taxed each year, and paid all taxes legally assessed against his poll and estate for that time, except those for 1850, the facts in regard to which are as follows:

In the warrant for the annual town meeting in 1850 were the following articles: 13. "To see what sum of money the town will raise to keep the roads in repair the present year;" 14. "To see what sum of money the town will raise to defray town charges the present year." At the meeting the following votes were passed: "Voted to raise the same amount for the repair of highways as was raised last year, to be laid out in the same way and manner;" "Voted to raise the same amount for a winter tax as is to be raised for the repair of highways the present year;" "Voted to raise twelve hundred dollars, to defray town charges the present year." The amount raised in 1849 for the repair of highways was twelve hundred dollars. A state, county, town and school tax of one dollar and ninety cents, and a highway tax of one dollar and five cents, were legally assessed against Wait in 1850, both of which were paid. "A winter highway tax" of one dollar and five cents was assessed against Wait in 1850, in accordance with the vote of the town to raise money "for a winter tax," and committed to the surveyor of highways in Wait's district, for collection in the ordinary way of collecting highway taxes: to wit, in labor, or, in default of payment in labor, by making dis-

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gress upon the goods of Wait. This last named tax of one dollar and five cents has never been paid.

Tappan & Hazelton, for the plaintiffs.

Burke & Wait, for the defendants.

BELLOWS, J. The question is, whether the winter highway tax of \$1.05 was legally assessed, and if so, whether the want of a written notice to pay it, by the surveyor, would excuse the non-payment so as to give a settlement.

The article in the warrant to see what sum of money the town will raise to keep the roads in repair the present year is, we think, sufficient authority to vote the tax. Nor do we see any objection to the voting one sum to be expended for the summer highway tax, and another for the winter. Indeed, this is distinctly laid down in *Thompson v. Fellows*, 21 N. H. 425, where it is held that the selectmen may issue a separate warrant for each tax; which indeed would have the legal effect of one warrant for the separate sums. *Brackett v. Whidden*, 3 N. H. 19; and see *Orford v. Benton*, 36 N. H. 493. Such designation of the amount of highway tax to be expended in the summer and in the winter, accords, we think, with a practice that prevails extensively in this state, and we can see no substantial objection to it.

Neither do we think that there is any uncertainty in the terms of the vote, such as to affect its validity. It is substantially to raise the same amount for a winter tax, as is already voted for highways the same year. And we think that it clearly means a winter highway tax, and can mean nothing else.

So we think a tax must be paid to gain a settlement, and it avails nothing that payment was not demanded, or even that payment was excused by vote of the town, or the tax abated by the selectmen. *Lisbon v. Bath*, 21

 Winship v. Conner.

N. H. 319, 333; *Jaffrey v. Cornish*, 10 N. H. 505. In *Shrewsbury v. Salem*, 10 Pick. 389, it was held that a vote of the town discharging the tax was not equivalent to payment. *Attleborough v. Middleborough*, 10 Pick. 378; *Robbins v. Townshend*, 20 Pick. 945.

There must be, therefore,

Judgment for the plaintiffs.

 WINSHIP v. CONNER.

When it is made to appear to the court that the defendant had been absent from his home and family for more than seven years before the suit was brought, without having been heard from, the court will not render judgment, unless the presumption of death is repelled.

Nor is the presumption affected by proof of absence, so long continued as to render it probable that he had wholly abandoned his old domicile.

THIS was an action of assumpsit against Napoleon B. Conner, commenced November. 13, 1858, by the attachment of all the defendant's real estate in Henniker, and entered at the March term, 1859, and notice was given by publication in the *New-Hampshire Statesman*, but no appearance was ever made by the defendant himself.

At the August term, 1859, Sally H. Marsh, a sister of the defendant, and daughter of James Conner, late of Henniker, who died in November, 1858, leaving real estate in that town, was permitted to appear and defend, upon giving the usual bond, which was done at the February term, 1860.

At the August term, 1859, W. E. Chandler was appointed a commissioner to report the facts; and at the