

## DAVIS v. SCHOOL DISTRICT IN HAVERHILL.

Counsel claimed to appear for a school district under authority from a vote of the district; the plaintiff offered evidence that at a subsequent meeting of the district such authority was revoked:—

*Held*, that it was competent for the counsel claiming to appear for the defendants, to show that the vote of revocation was passed by illegal votes.

A school-district meeting, called to see if the district will vote not to defend a suit brought against them for labor and materials in building a school-house, is not a meeting "for raising money or building or repairing a school-house," within the meaning of section 2, chapter 222, of the Pamphlet Laws.

ASSUMPSIT, for labor and materials in building a school-house for the defendants. N. B. Felton appeared for the defendants under a vote of the district for that purpose.

At a subsequent special meeting of the district, it was voted not to defend the suit, and the authority of Mr. Felton to appear was revoked; and the plaintiff produced a certified copy of the vote from the clerk of the district, and also the record, which was in due form, importing that the meeting which passed the vote was duly called and held for that purpose, unless it be a ground of objection that the meeting was notified by posting up a copy of the warrant calling the meeting, only twelve days prior to the day of meeting.

In reply to this it was proposed to prove that the vote not to defend, and to revoke the authority of Mr. Felton, was obtained and carried by illegal votes. And the questions were whether such evidence could be received as an answer; and whether the notice of the meeting, being only twelve days, was sufficient.

*Hibbard* (with whom was *Bryant*), for the plaintiff.

*Felton*, for the defendants.

BARTLETT, J. As it may be shown that a suit is prosecuted without the consent of the plaintiff on the record (*Bank v. Fellows*, 28 N. H. 307; *Bridgton v. Bennett*, 10 Shepl. 422), it follows that the question of the authority of an attorney to appear for a party may be tried where it is properly raised. If the revocation of Mr. Felton's authority was passed by illegal votes, it is insufficient; and we do not see why this may not as well be examined as the legality of a town-meeting, where a tax is in question. *Osgood v. Blake*, 21 N. H. 550; *Rogers v. Bowen*, 42 N. H. 108. We do not think the record of the vote is conclusive in this case that it was passed by legal voters. *Sudbury v. Stearns*, 21 Pick. 148. The question here is not between third parties, but between Mr. Felton, who claims to have authority to appear, and the plaintiff, who denies that he has such authority. Such an inquiry may sometimes prove inconvenient, but that furnishes no sufficient objection to it. *Winship v. Conner*, 42 N. H. 341. The meeting was called to act upon the question of defending the suit, and revoking Mr. Felton's authority, and although the suit was for labor in building a school-house, we

do not think it a meeting "for raising money or building or repairing a school-house" within the meaning of the second section of chapter 222 of the Pamphlet Laws. The notice, therefore, appears to have been sufficient. How it might be if it had appeared that the transaction was in fact a fraudulent evasion of the statute, we need not inquire, as no such case is made here. It is, therefore, our opinion that the fact offered to be proved by Mr. Felton was competent, in answer to the alleged vote of revocation, and that upon the facts stated the notice was sufficient.

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### TOWN OF GRAFTON v. COUNTY OF GRAFTON.

Where a man, having no settlement in this State, married a woman who had a settlement in the town of G, and becoming a pauper was relieved by C; it was held that under the Revised Statutes the town of G was not liable to C for such support.

Where the overseers of the poor of G, in the county of G, supposing their town liable for the support of such a pauper, in good faith removed him from C, in another county, to G, and supported him there, it was held that the town of G might recover of the county of G for such support.

A woman having a settlement in the town of Grafton, in this county, was married to a man who had no settlement in the State, and they removed to Columbia, in the county of Coös. The husband becoming a pauper, was relieved by Columbia, and a bill therefor was presented to and paid by the town of Grafton, which now claims the amount of the bill from the county of Grafton. Afterward, the selectmen of Grafton, who were the overseers of the poor, supposing their town liable for his support, in good faith removed him to Grafton and there supported him; and the town of Grafton now claims to recover of the county of Grafton for such support.

BARTLETT, J. In *South-Hampton v. Hampton Falls*, 11 N. H. 140, it was held that an alien pauper, having no settlement in this State, was entitled to support in the town where his wife had her settlement, and that such town was liable to any other town by which such assistance might be rendered, though it had its ultimate remedy against the county. This decision was founded upon the explicit provision of the act of 1828 (Laws 1830; 300, sec. 1), which was repealed by the Revised Statutes, and our laws now contain no such enactment. Grafton was under no obligation for the support of the husband in Columbia, nor is the county liable to refund to Grafton the amount so paid. But Grafton subsequently sent for the pauper and has since supported him in Grafton. Although the pauper might, perhaps, be returned to Columbia by an order pursuant to section 10, of chapter 67, of the Revised Statutes, yet this will not discharge Grafton from the duty of supporting him while