

## ROBERTS v. HOLMES.

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A person who would justify his acts as a public officer, must show that he is such an officer *de jure*.

A collector of taxes, deriving his authority from the appointment of selectmen *de facto*, is an officer *de jure*.

This court has power to allow the amendment of town records conformably to the fact.

TRESPASS for an assault and battery and false imprisonment. The defendant justified as collector of taxes of the town of Jefferson. The defendant produced the record of his appointment by the selectmen, and also the original appointment, and neither the record nor the original showed any evidence that the defendant was sworn into said office, except the following certificate at the bottom thereof: "Personally appeared W. W. Holmes and swore to the above affidavit." The defendant moved that the record be amended so as to show that the oath required by law was administered; and, upon satisfactory proof being shown to the court that the fact was so, said amendment was ordered to be made. The plaintiff objected, that, inasmuch as the record did not show that the defendant was collector *de jure* at the time of the arrest, the amendment would not cure the defect so that the defendant could justify his acts done before the amendment was made. The court ruled otherwise, and the plaintiff excepted. The plaintiff offered to prove that the warrant for the annual town-meeting, at which the persons signing the defendant's appointment were elected selectmen, was not posted at the place of the meeting as required by law. This evidence was excluded, and the court ruled that it was sufficient to show that they were acting selectmen, that is, selectmen *de facto*, and the plaintiff excepted.

A verdict was ordered for the defendant, which is to stand or be set aside according to the opinion of the whole court upon the foregoing exceptions.

Case reserved.

*Fletcher & Heywood*, for the plaintiff.

*Burns & Heywood*, for the defendant.

FOSTER, J. This court has power to allow the amendment of town records, when they are offered in evidence, conformably to the truth; and this power was properly exercised at the trial of this cause. *Gibson v. Bailey*, 9 N. H. 168; *Pierce v. Richardson*, 37 N. H. 306, 311.

The amendment being made, the record shows that the defendant was at the time of the alleged trespass an officer, deriving his authority, not from the vote of the town-meeting, which was, perhaps, illegally

organized, but from the appointment of selectmen. Doubtless a person against whom a suit is brought, who justifies as a public officer, must show that he is such an officer *de jure*. *Brewster v. Hyde*, 7 N. H. 207; *Blake v. Sturtevant*, 12 N. H. 567. This the defendant has done by proof of a regular appointment by the selectmen.

He need not go so far as to show that the selectmen were regularly chosen. The suit is not against them, and their official title cannot be questioned in a suit between third persons. *Tucker v. Aiken*, 7 N. H. 113; *Baker v. Shephard*, 24 N. H. 208; *Pierce v. Richardson*, before cited. Infinite obstruction of the public business would ensue, if a party, called upon to justify his official conduct, were to be required to go to the root of all derivative authority, and show that, even from the primary fountain and through all its thence flowing course, the stream of his power was pure and unobstructed. For example, it would be too inconvenient to be established as law, that the deputy of a sheriff, being required to justify his acts, must show that the "high" sheriff, from whom he derived his appointment, was himself appointed by an executive legally elected.

*Judgment on the verdict.*

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CHANDLER v. COE & A.

*Contract—Disclosed and undisclosed principals—Agent.*

Where a principal carries on business in the name of his agent as a business name, the principal is liable upon a contract made by his agent for him in the agent's name, whether it is verbal or written; and if written, whether it is negotiable or not, and whether the agent disclosed his agency or not.

An undisclosed principal is liable to be sued and entitled to sue upon an express verbal contract, and also upon a simple written contract not under seal, but not upon a negotiable instrument, made by his agent for him in the agent's name.

A disclosed principal is not liable to be sued nor entitled to sue upon a written contract made by his agent for him in the agent's name.

A principal is not liable to be sued nor entitled to sue upon an implied contract arising from the passage of the consideration between his agent and the other contracting party where there was an express contract in the agent's name, whether verbal or written, unless an action might be sustained by or against him upon the express contract.

Where an agent is sued upon a written instrument executed in his own name, whether it is negotiable or not, and whether he disclosed his agency or not, parol evidence that he contracted only as agent is not admissible for the purpose of discharging him from liability.