

SANBORN v. MEREDITH.

Notice of a petition for a highway is properly served, by leaving, at the places of abode of the parties entitled to notice, copies of the petition and order of notice, certified by the clerk of court. A sheriff's attestation of the papers, as true copies, is superfluous, and does not invalidate the service.

PETITION, for a highway. Motion to dismiss for defect in notice, given by the clerk's certified copies, attested and left by the sheriff.

Rollins, for the town.

Jewell, for the petitioner.

FOSTER, J. There was a strict compliance with the law in the service of the papers. Gen. St., c. 63, s. 2. The sheriff's attestation of them was superfluous and harmless. The service was not an official act. It might have been made by the petitioner, or by any other person. The person who left these copies, "as required by law," may make affidavit at the trial term, in proof of his unofficial act.

Case discharged.

BINGHAM, J., did not sit.

 BELKNAP v. CLARK.

Belknap county, plaintiff in a suit, is not properly described as "the inhabitants of the county of Belknap;" but the writ may be amended.

In assumpsit, the court may order an additional specification.

A county may recover, in assumpsit, of the clerk of the court of that county, its money, received by him and not accounted for, when he, in equity and good conscience, ought to account for it.

ASSUMPSIT, on the money counts. In the writ, the defendant is summoned to answer to "the inhabitants of the county of Belknap." The court refused to quash the writ, and allowed an amendment, describing the plaintiff as the county of Belknap, and the plaintiff excepted. The plaintiff having filed a specification, the court ordered an additional one, and the plaintiff excepted.

The suit embraced the defendant's accounts as clerk of that county for five years, as examined and certified by the judges, and was brought to recover the plaintiff's money, received by the defendant

during that time and not accounted for, which the plaintiff claimed that the defendant, in equity and good conscience, should account for. He moved to quash the writ, because the action should have been case, under Gen. St., c. 201, s. 6. Motion denied, subject to exception.

Whipple, for the plaintiff.

Barnard, for the defendant.

BINGHAM, J. Belknap county is a body corporate, for the purpose of suing and being sued. Gen. St., c. 22, s. 1. The plaintiff should have been described as the county of Belknap, and the amendment was properly allowed. *Lebanon v. Griffin*, 45 N. H. 558, 563; *Flanders v. Stewartstown*, 47 N. H. 549.

There was no error of law in the order of the court for an additional specification. *Benedict v. Swain*, 43 N. H. 33; *Saunders v. Osgood*, 46 N. H. 21.

Assumpsit lies. *Wentworth v. Gove*, 45 N. H. 160.

Case discharged.

FOSTER J., did not sit.

CARROLL.

STATE v. CONE.

When the testimony of a witness, given at a former trial, is in writing and signed by him, no exception lies to the ruling that he cannot be asked, on cross-examination, by counsel having the written testimony, what that testimony was.

INDICTMENT, for murder. The defendant excepted to the ruling that a witness called by the state, whose testimony, given at the magistrate's examination, had been written by the magistrate and signed by the witness, should not be asked, on cross-examination, by counsel having the written testimony, what that testimony was.

Tappan, attorney-general, and *Carter*, solicitor, for the state.

Copeland, *Quarles*, and *J. H. Hobbs*, for the defendant.

DOE, C. J. The ruling was in accordance with the practice approved in *Haines v. R. F. Ins. Co.*, 52 N. H. 467, and is not subject to exception.

Exception overruled.

BINGHAM and ALLEN, JJ., did not sit.