

admit new members, except by a two-thirds vote, was a lawful exercise of a society right. No injustice has been done which the equity powers of the court can remedy, and the grounds of complaint are of a character so intangible as to elude the grasp of judicial cognizance.

Bill dismissed.

STANLEY, J., did not sit.

BANCROFT v. DAMON & Tr.

A plea in abatement, that the writ has not been served on the defendant, should state facts showing that it could have been served on him. An averment, that at the date of the writ and ever since he has been an inhabitant of the state, is not sufficient.

FOREIGN ATTACHMENT. The defendant is described in the writ as "of Charlestown in our county of Sullivan." The writ was served on the trustee, but not on the defendant. At the first term, the action was continued for notice. At the second term, the defendant appeared specially, and pleaded in abatement that on the day of the date of the writ, and for a long time before, he was and ever since has been an inhabitant of said Charlestown, and no service of the writ has been made upon him. The plaintiff demurred.

Faulkner, for the plaintiff, cited *Currier v. Gilman*, 55 N. H. 364; *Adams v. Hodsdon*, 33 Me. 225; *Baker v. Compton*, 2 Head 471; *Pearson v. French*, 9 Vt. 349; *Morse v. Nash*, 30 Vt. 76.

Woodward & Wellington, for the defendant.

DOE, C. J. The plea should state facts showing that the writ could have been served on the defendant. The averment that he was an inhabitant of the state is not sufficient.

Demurrer sustained.

ALLEN, J., did not sit.

BROOKS & a. v. HOWARD.

In chancery, a decree may be made upon facts established, to the satisfaction of the court, in a trial before a jury, a referee, or the court, without regard to such errors in the issue, the verdict, or the report, as, being explained by evidence, may be rightly understood.

BILL IN EQUITY, to compel the defendant to surrender a deed alleged to have been fraudulently obtained by him from the plaintiffs. The question of fraud was tried by jury, and found for the plaintiffs. In the issue thus tried, the deed was described as dated May 15, 1872. In the bill, it was described as dated Jan. 15, 1873. The plaintiffs offer to show that the date in the issue was erroneous, and that the question actually tried related to the deed described in the bill; and they move to amend the issue.

Lane and Carleton, for the plaintiffs.

Faulkner and Forbes, for the defendant.

DOE, C. J. The plaintiffs will be entitled to the decree sought by the bill, if they show that the validity of the deed described in the bill was the question actually tried. In chancery, a decree may be made upon facts established to the satisfaction of the court, in a trial before a jury, a referee, or the court, without regard to such errors in the issue, the verdict, or the report, as, being explained by evidence, may be rightly understood. The amendment moved for is not necessary.

Case discharged.

ALLEN, J., did not sit.

KITTREDGE v. HOLT.

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When goods, taken from their owner by a sheriff on an execution against another person, have been replevied by the owner, and the sheriff has recovered judgment for their value, in the replevin suit, because replevin was not a legal remedy in such a case, the owner may recover their value of the sheriff in trover.

TROVER, for chattels attached while in the plaintiff's possession by the defendant (a deputy sheriff), as the property of H. G. K., and receipted for by the plaintiff, who reserved in the receipt his right to claim and hold the property as his own. Afterwards, the defendant having an execution against H. G. K. issued on a judgment in the suit in which the chattels were attached, they were, on demand made, delivered by the plaintiff to the defendant, who advertised them for sale. The plaintiff then replevied them, and the defendant recovered a judgment against the plaintiff for their value, on the ground that replevin is not a legal remedy in such a case. *Kittredge v. Holt*, 55 N. H. 621. The plaintiff then brought this suit.