

show that these things were any less furniture than any of the various articles recited in the mortgage. If there is any question that they were not, at the time the mortgage was made, in the Summer house as articles of common household use or ornament, it is a question of fact to be determined at the trial term. Unless the plaintiff desires to try that question, there must be judgment for the defendants, damages to be assessed at the trial term.

Case discharged.

STANLEY, J., did not sit: the others concurred.

MURPHY v. CRAIN.

A defect in a bastardy warrant will be waived, if the respondent, with full knowledge of the defect and opportunity to avail himself of the objection, pleads the general issue.

COMPLAINT FOR BASTARDY. The complaint was made before one W., a justice, who inadvertently omitted to sign the warrant. The officer arrested the respondent, and carried him before one G., a justice, who discharged him because the warrant was not signed. The warrant was then signed by W., and the return being torn off was delivered to the same officer, who in less than an hour after the respondent's discharge again arrested him, carried him before G., and made another return like the first. The respondent was arraigned upon the complaint, pleaded not guilty, waived an examination, and recognized, as ordered, to appear at the next term of the supreme court. The respondent appeared as ordered, and pleaded these facts, and moved to be discharged. The complainant demurred. The court sustained the demurrer, and denied the respondent's motion, and he excepted.

After the close of the term, and before the reserved case was drawn, the respondent's counsel, by letter, claimed that they had just learned, and offered to prove, that W. was not a justice, his commission having expired four days before the complaint was made. The presiding justice declined to open the case in vacation for proof of further facts without the consent of the complainant.

Twitchell & Evans, for the respondent.

Chaffin, for the complainant.

SMITH, J. Whether the warrant could be used again after the respondent had once been discharged without a trial, it is unnece-

essary to consider. If the objection could be interposed, it should have been made when the respondent was brought before the magistrate. Any objection to the exercise of jurisdiction intended for the benefit of a party must be taken by him at the earliest practicable opportunity after he has become aware of it, or he will be deemed by his delay to have waived it. *Warren v. Glynn*, 37 N. H. 340. The plea of the general issue alone is a waiver of such defence. *Hanson v. Hoitt*, 14 N. H. 56. Appearance by the respondent before the magistrate and pleading to the merits, with full knowledge of the alleged defect and with full opportunity to avail himself of the objection, cured the defect in these proceedings, and the objection now comes too late. *Collins v. Connors*, 15 Gray 49. See, also, *Hanson v. Hoitt*, 14 N. H. 56; *Rogers v. Odell*, 39 N. H. 417; *Corey v. Summer*, 52 N. H. 479; *Murphy v. Spence*, 9 Gray 399; *Hawes v. Gustin*, 2 Allen 402.

The objection that W.'s commission as justice of the peace had expired cannot be considered, unless the case is amended to show the fact.

Exceptions overruled.

DOE, J., did not sit: the others concurred.

DODGE, *Adm'r*, v. LEAVITT.

A declaration by a debtor to his creditor that there is but a small sum due to him, but offering to pay \$107.30 if he would take it in full settlement; and a declaration to the creditor on a subsequent occasion that "he wanted the matter fixed up, and was willing to pay him what he owed him, and was owing him some \$13 or \$14, and would pay him;" and a declaration to the creditor on a later occasion, that "he would pay him what was his due, and calculated that he had done so,"—are evidence of a new promise to pay no more than \$13 or \$14, and are not sufficient to take the case out of the statute of limitations beyond that amount.

ASSUMPSIT, for services of the plaintiff's intestate. Plea, the general issue and the statute of limitations. Replication, a new promise. Facts found by a referee.

October 7, 1872, the defendant wrote a letter to Dr. Winch, the plaintiff's intestate, claiming that there was but a small sum due, but offering him \$107.30 if he would take that amount in full settlement. The offer was not accepted. The defendant testified as follows: "In the summer of 1876 I met Dr. Winch at the depot

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