

We are of opinion, therefore, that the assignee must, in this case, be adjudged trustee for the funds in his hands, beyond the amount of the claims of those creditors who had become parties, prior to the service of the plaintiff's writ. What was the proper disposition of the other part of the trust fund, is a question with which the plaintiff has no concern, and, upon which, therefore, it is not necessary to form an opinion.

Leeds et. a.  
v.  
Sayward.

*Trustee charged.*

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MARY CRAM, *Libt. versus* JONATHAN P. CRAM.

Where the husband willingly separates from his wife for more than three years together, and makes no provision for her support, having it in his power so to do, but continues to reside in the same town, there is not such desertion as to authorise a divorce.

THIS was an application for a divorce.

The alleged cause was, that the husband had willingly absented himself from the wife for the space of three years together, without making suitable provision for her support, having it in his power so to do.

It appeared, in evidence, that soon after the marriage, and more than three years before the application, a controversy arose between the parties—that the husband, thereupon, moved, with his furniture and provisions, to the house of his father, leaving his wife so destitute that she was obliged to go to her father's house, where she has since resided—that he had made no provision for her support from that time, and had repeatedly declared he never would—that he had a “respectable property” and was “abundantly able to maintain her if he was so

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inclined." And she testified that after her removal to her father's house, as aforesaid, he had not visited her.

It did not appear, however, but that the parties had continued to live in the same town. Nor was there any evidence that they had not often met during the time.

*Lyford*, for the libellant.

*Lovell*, for the respondent.

PARKER J. We are of opinion that this case does not show an absention of himself by the husband within the meaning of the statute.

The statute intended such an absence as to leave the wife without the means of compelling the husband to provide for her support.

But in this case her means are ample. As he refuses to support her he furnishes her with his credit, and any other person may provide her with necessaries and have a valid claim against him for the amount. 2 Strange, 1214, *Bolton v. Prentice*; 4 Burr. 2177, *Thompson v. Hervey*; 1 Ld. Raym. 444; 2 ditto, 1006; 12 Johns. 295, *M'Gahay v. Williams*; ditto, 248, *Lockwood v. Thomas*. And as he is within the State, and possessed of sufficient property, the remedy is of course plain and effectual.

*Libel dismissed.*

### JOHN HORN et. a. versus JOSEPH WHITTIER et. a.

In an action of debt, upon a bond, given to the selectmen of a town, for the use of the town, by a collector of taxes, for the faithful performance of his duty as collector, it was held to be no objection to the validity of the bond that it was made to the selectmen as obligees.

In such a case a release of the action, by one of the selectmen, without the consent of the town, is void.