

support them. *Ela v. Edwards*, 13 Allen 48; *Clark v. Blackington*, 110 Mass. 369; *Hill v. Tucker*, 13 How. 458.

If judgment had been rendered against the intestate previous to his death by a competent tribunal in another state, after a full and fair trial, there would be no doubt that his administrator in this state would be bound by it; and there seems to be no sound reason why, if the judgment had been rendered against his representative instead of him, the same representative would not be bound by it. He is, to be sure, the administrator and representative in Vermont by virtue of Vermont law, and in New Hampshire by virtue of New Hampshire law; but that distinction does not annihilate his identity. He is the same person in one state as in the other, and represents the same interests. He exercises his own individual judgment in both states in behalf of the same estate, and to say that an adjudication of a matter concerning the estate in one state, to which he was properly a party, would not be binding on the parties in another state, because he happened to derive his representative character in both states from different sources, is, it seems to us, a technical refinement not often found in modern legal reasoning. It is not suggested that the assets of the estate would be any differently affected in one jurisdiction than in the other, although the proceedings in each state are had primarily with reference to the assets in that state; nor is it apparent how the same administrator could do any more or any less in his defence against the claim in this suit in one state than in the other.

Having had a fair trial on the merits of his case in Vermont before a tribunal of his own choice, and presenting no special reason with reference to himself why he should have the privilege to retry his case here, we think the plaintiff ought not to be allowed to call on the administrator to incur another bill of expense here in attempting to do what he has already done elsewhere. *Goodall v. Marshall*, *supra*.

The exception, therefore, to the rejection of the brief statement is sustained.

Case discharged.

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

JOHNSON & a. v. ABBOTT & a. & Tr.

An amendment of a writ after entry, inserting the name of a trustee, may be allowed against the objection of subsequent attaching creditors, when it is shown that the trustee was duly served, and he appears and answers and is adjudged chargeable, and a part of the funds

for which he is chargeable has been paid over to the plaintiff without objection from the creditors, and when neither the defendant nor the trustee objects to the amendment.

FOREIGN ATTACHMENT. The writ was served on Farnham, one of the trustees, August 2, 1875, and entered August term, 1875. Counsel appeared at that term for all the defendants and trustees, and the action was continued from term to term until February term, 1880, when it was discovered that Farnham's name was not inserted in the writ as trustee. The plaintiffs moved to amend by inserting it. Neither the defendants nor Farnham object to the amendment, but objection is made by the subsequent attaching creditors.

The question is reserved whether the amendment can be allowed. The other facts appear in the opinion.

Ray, Drew & Jordan and *Dudley*, for the plaintiffs.

Aldrich & Parsons and *Fletcher*, for the subsequent attaching creditors.

STANLEY, J. The court have authority to allow the amendment (*Stebbins v. Ins. Co.*, 59 N. H. 143; *Folsom v. Ins. Co.*, 59 N. H. 54; *Demeritt v. Mills*, 59 N. H. 18; *Gitchell v. Andover*, 59 N. H. 363), and that authority should be exercised to prevent injustice. The writ was served on Farnham. He appeared, and did not object to the writ or service, and he does not object to the amendment. The subsequent attaching creditors had notice of the pendency of this suit in February, 1876, and of the claim of the plaintiffs that Farnham was chargeable as trustee. In Farnham's deposition, taken April 12, 1876, before one of the counsel for the creditors, he stated that he was summoned as trustee in this suit, and there is, attached to the deposition, an agreement of that date, signed by Farnham, agreeing that his deposition in one of the suits may be used in all. In the deposition, he claims that it must be considered, subject to the action of the court, in all previous suits, against him as trustee. After the deposition was taken, at August term, 1876, a receiver was appointed to collect the notes disclosed; and in February, 1879, the receiver, with the knowledge of and without objection from the creditors, paid to these plaintiffs \$250 of the money collected on the notes. If the creditors were not aware that Farnham's name was not in the plaintiffs' writ, they had actual notice of this suit, and that the plaintiff claimed to hold Farnham as trustee; and this was enough to put them on inquiry, and they are chargeable with all they would have learned from inquiry. Moreover, the writ was on file, and that was constructive notice that Farnham's name was not in it. *Stowe v. Meserve*, 13 N. H. 46; *Warren v. Swett*, 31 N. H. 332, 341; *Cooper*

v. *Newman*, 45 N. H. 339, 342. Their consent to the payment by the receiver to the plaintiffs of part of the funds in his hands, and then suffering them to incur the additional expense of this suit upon faith in the validity of their claim, after they might by diligent inquiry have ascertained the facts, was a waiver of the objection now made. *Runlet v. Otis*, 2 N. H. 167; *Lisbon v. Bath*, 23 N. H. 2, 9; *Foss v. Strafford*, 25 N. H. 78; *Corbett v. Norcross*, 35 N. H. 99; *Richardson v. Chickering*, 41 N. H. 380, 385; *Peebles v. Rand*, 43 N. H. 337; *Lyman v. Littleton*, 50 N. H. 42.

The omission of Farnham's name in the body of the writ was evidently a clerical mistake; and it is not shown or claimed that the creditors have changed their position in any respect, or that, if this amendment is made, they will lose any right which they understood they had acquired by their attachments. They all supposed that his name was inserted in this writ as well as in the others, and the amendment will merely make the writ what it was intended to be, and what all parties, in this and the other suits, for a long time supposed it was. The amendment is necessary to prevent injustice, and it should be allowed.

Case discharged.

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

BAILEY v. HARVEY.

When one party, by reason of insanity, is incompetent to testify, a guardianship decree establishing the fact of his insanity is not necessary for the exclusion of the testimony of the adverse party, under Gen. Laws, c. 228, s. 16.

A party's book of accounts, with his suppletory oath, is admissible to prove the payment generally of a sum of money not exceeding \$6.67, but not to prove that it was paid upon a particular debt.

ASSUMPSIT, on the common counts for the price of land deeded by the plaintiff to the defendant. Plea, the general issue. The suit was brought by C. Bailey as next friend of the plaintiff, who was described in the writ as an insane person. E. F. Bailey was appointed guardian *ad litem*. Neither C. Bailey, E. F. Bailey, nor the plaintiff testified. The defendant offered to testify to occurrences which happened when the plaintiff was sane. It had not been judicially determined that the plaintiff was insane; but the court found, as a matter of fact, that by reason of insanity he was incompetent to be sworn as a witness, and excluded the testimony of the defendant. The defendant's evidence tended to show that