

BARTLETT v. LEE.

A petition for leave to file a claim for a traveller's highway damages (G. L., c. 75, s. 9) cannot be maintained in any other county than that in which the suit for the damages must be brought.

When, through accident or mistake, such a petition is entered in a wrong county, it may be transferred to the county in which it should have been entered.

PETITION, upon Gen. Laws, c. 75, s. 9, for leave to file a claim against the defendants for damages caused by a defective highway. The plaintiff resides in Rockingham. The defendants, being a town of Strafford county, moved to dismiss.

Marston & Eastman, for the plaintiff.

A. R. Hatch, for the defendants.

DOE, C. J. The action for a traveller's damages, under the highway act, is local. G. L., c. 75, s. 14. And this petition, being an incident of the action which the plaintiff proposes to bring, and within the reason of the law fixing the venue of the action, is, by implication, required to be brought in Strafford, the county in which the action must be entered.

"No writ, declaration, return, process, judgment, or other proceeding in the courts or course of justice shall be abated, quashed, or reversed, for any error or mistake, where the person or case may be rightly understood by the court," and amendments in matters of form and substance may be permitted in any action, in any stage of the proceedings. G. L., c. 226, ss. 8, 9. If the legislature had intended a writ, declaration, return, process, judgment, or other proceeding should be defeated by an error or mistake of venue, it is to be presumed they would have said "except an error or mistake of venue," or used other words distinctly manifesting their intention to make such an extraordinary exception to the general rule. So unjust an exception cannot be interpolated, by construction, in a statute so explicit and comprehensive in terms, and so equitable and beneficent in design. *Berry v. Osborn*, 28 N. H. 279, 286. A judicial refusal to allow a just claim to be prosecuted anywhere, because, by accident, redress was sought at Exeter instead of Dover, would be such a wrong as it was the evident purpose of the law-making power to prevent. In *State v. P. & O. R. R.*, 58 N. H. 113, an action which should have been entered at the law term at Concord was transferred thither from the trial term at Lancaster, where it was erroneously entered. If the error in this case is jurisdictional, there is jurisdictional power to cure it, as there is adequate power to cure or overlook (3 Bl.

Com. 407) other errors of procedure which have ceased to be fatal under remedial legislation that revived and reëstablished the true principle of the common law, and "cut off those superfluous niceties which so long had disgraced our courts." 4 Bl. Com. 439.

If there are any questions of fact, of actual mistake, negligence, or injustice, or of any facts in the case being rightly understood by the court, such questions will be investigated and determined at the trial term, where the petition can be transferred to the county of Strafford, in which it should have been brought.

Case discharged.

All concurred.

JANVRIN v. JANVRIN & a.

A knowledge of such facts and circumstances as would put a person of ordinary care on inquiry, and, if traced and understood, would lead to a knowledge of title in a third party under an unrecorded deed, is sufficient to charge a purchaser with constructive notice of that title. Such notice may exist without a change of possession under the deed. If a wife has an inchoate claim for alimony at the time of filing her libel for a divorce, it cannot be said to exist after the libel is dismissed; and if the husband subsequently obtains a divorce, and is ordered to pay alimony, a voluntary conveyance by him previous to the filing of his libel is not necessarily fraudulent as against her.

BILL IN EQUITY. Facts found by a referee. George Janvrin married the plaintiff in 1870, having at that time a son and four daughters by a former wife. There was an ante-nuptial agreement that at his decease she should have \$1,000 and all household furniture then belonging to him. April 8, 1874, she left him, and filed a libel for divorce against him, alleging extreme cruelty as the cause, which, at the January term, 1878, was dismissed. February 8, 1878, he commenced proceedings for divorce against her, whereupon a divorce was decreed at the October term, 1878. It was also decreed that he should pay her \$1,400 alimony. On this decree an execution was issued, which, in November, 1878, was levied on a certain piece of real estate in Exeter called the Academy lot.

In 1871, George Janvrin, wishing to settle his worldly affairs, began to give deeds of his real estate to his children and grandchildren. This he continued to do, till the last piece was conveyed to his daughter, Anna D. Curtis, in January, 1877. Two or three of these conveyances were made before his wife left him. All the deeds but one were without any money consideration, but at the time of their execution George was not in debt.