

or leave to either of these parties an appeal from that adjustment by a suit at law. *Supervisors v. Briggs*, 2 Hill 135—*S. C.*, 2 Denio 26. If the settlement is erroneous, it may be reopened and corrected by proper proceedings,—by simple motion to the court and notice to the defendant; and this action may be continued in the trial term without costs to await the result. *Northumberland v. Cobleigh*, 59 N. H. 250, 256.

Case discharged.

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

WHITE v. WHITE.

Objections to defects of service and entry of a libel for divorce are waived by a general appearance and a motion for a continuance.

LIBEL FOR DIVORCE, commenced by writ of attachment and summons, in the ordinary form of such writs, commanding the defendant to be summoned to answer to the plaintiff "in a libel for divorce hereunto annexed." Then followed, as a declaration inserted in the writ, a libel for divorce in the ordinary form, containing a prayer for alimony, and signed by the plaintiff. The writ was dated June 18, 1880, and was served by an attachment and giving a copy to the defendant June 21, 1880. On the first day of the first term, the defendant entered a general appearance on the docket, and moved for a continuance. The motion was argued and denied. Afterwards, within the first four days of the term, the case was tried on its merits; and at the trial, the defendant moved to dismiss because the libel was not filed till the first day of the term, no order of notice was issued, and no legal service made. The court denied the motion, and the defendant excepted.

Weeks and Gafney, for the defendant. A plea in abatement, or motion to dismiss, is not excluded by the defendant's general appearance. *Colby v. Knapp*, 13 N. H. 175; *Jones v. Jones*, 18 Me. 308.

Copeland & Edgerly, for the plaintiff.

STANLEY, J. An order of court authorizing the attachment was not necessary (Laws of 1879, c. 57, s. 28); and there is no occasion to inquire whether there were any defects of notice or entry. If objections to such defects were not waived by the defendant's general appearance (*Colby v. Knapp*, 13 N. H. 175;

Wright v. Boynton, 37 N. H. 9, 19; *March v. Eastern R. R.*, 40 N. H. 548, 583), they were waived by his appearance and motion for a continuance. His motion to dismiss, although made within the first four days of the first term (*Seaver v. Allen*, 48 N. H. 473), was not seasonably made after his motion for a continuance was submitted. *Smith v. Whittier*, 9 N. H. 464; *Downer v. Shaw*, 22 N. H. 281; *State v. Richmond*, 26 N. H. 232, 242; *Gilmanton v. Ham*, 38 N. H. 108; *Robinson v. Potter*, 43 N. H. 191; *Peebles v. Rand*, 43 N. H. 342; *Candia v. Chandler*, 58 N. H. 127.

Exceptions overruled.

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

JENNESS v. JENNESS.

Single instances of neglect by one having the means to provide his wife with the necessaries of life, or to furnish her with medical assistance, unaccompanied by circumstances showing danger or reasonable apprehension of danger to her life or health, do not, as matter of law, constitute extreme cruelty as a cause of divorce.

LIBEL FOR DIVORCE. The petition charged extreme cruelty, and specified acts which, if true, would support the charge. A referee reported that the libellant was not entitled to a divorce, and at her request also reported that the libellee, being of sufficient ability, failed in a few instances to make the provision for his wife that he ought, and that upon one occasion, more than five years previous to the libel, he neglected to procure a physician in her sickness. The court denied the motion of the libellant to recommit the cause for further hearing, and dismissed the libel. The libellant excepted.

J. H. Hobbs, for the libellant.

S. B. Carter, for the libellee.

ALLEN, J. What conduct constitutes extreme cruelty as a cause of divorce is matter of law. Whether such conduct exists is matter of fact to be proved by competent evidence. *Janvrin v. Janvrin*, 58 N. H. 144. Isolated instances of neglect by a husband having the ability to provide his wife with the necessaries of life, or to furnish a physician in case of sickness, unaccompanied by circumstances showing danger or apprehension of danger to her life or health, are not, as matter of law, extreme cruelty. Whether