it was the negligence of the plaintiff's fellow-servants, the defendants cannot be held liable, and their motion for a verdict should have been granted.

Exceptions sustained.

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

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CLOUGH & a. v. CURTIS.

Subsequent attaching creditors may take advantage of a material alteration of the writ after service, upon a motion to dismiss made after the time for filing a plea in abatement has expired.

ASSUMPSIT. The writ as originally drawn appeared to command the officer "to attach the goods or estate of John W. Curtis and Spiller, both of Manchester in said county, traders and partners under the firm of Curtis & Spiller, to the value of three hundred dollars, and summon them," &c. The writ was altered by erasures with a pen and by interlineations, so that it commanded the officer "to attach the goods or estate of John W. Curtis, of Manchester, in said county, trader, doing business under the firm of Curtis & Spiller, to the value of three hundred dollars, and summon him," &c.

The defendant was defaulted. Subsequent attaching creditors appeared, and moved to dismiss the action because of the foregoing alterations, and offered to show by evidence *aliunde* that they were made after the service of the writ. There was nothing in the writ or record to show when the alterations were made. The plaintiffs objected that such evidence was not admissible on a motion to dismiss. The motion was denied, and the creditors excepted. They then moved for leave to plead in abatement, but the time for filing such a plea having expired, the motion was denied, and they excepted.

W. J. Copeland, for Hill and others, subsequent attaching creditors.

C. R. Morrison and *J. H. Andrews*, for the plaintiffs.

SMITH, J. A subsequent attaching creditor is not admitted to defend a suit in the name of his debtor as a matter of right. When it is said, as it sometimes has been, that his admission is discretionary with the court (*Reynolds* v. *Damrell*, 19 N. H. 394), the meaning is that he is admitted when the fact is duly found that justice requires his admission. He is not allowed to come in for the purpose of pleading in abatement, or to avail himself of mere matters of form, but to prevent the property of the debtor from being diverted from his creditors. And when the objection is one

of substance, especially if it be one which the subsequent attaching creditor might take advantage of after judgment, as if there be no such person *in esse* as the plaintiff, he will, on a motion to dismiss the action accompanied by the necessary proof, be heard. *Kimball* v. *Wellington*, 20 N. H. 439.

A writ cannot be altered after service without leave of court. The alteration in this case was material. Without it, the plaintiffs upon the trial would have been obliged to prove the partnership and a promise by the firm. If it was made after service, and fraudulently made, it was a forgery. G. L., *c.* 276, *s.* 1; *Commonwealth* v. *Mycall*, 2 Mass. 136. If fraudulently made by the plaintiffs, it rendered the suit void, both upon principle and authority. *Burrows* v. *Stoddard*, 3 Conn. 436; *Starr* v. *Lyon*, 5 Conn. 538.

There is no reason why a plaintiff who fraudulently alters his writ should stand any better in respect to that instrument than a creditor who fraudulently alters his debtor's promissory note, and who, it is well settled, cannot recover upon the note itself, nor upon the original consideration for the note. *Smith* v. *Mace*, 44 N. H. 553, 558. When the attention of the court is called to an apparent alteration or mutilation of its record in any form, the matter is investigated, and the law does not allow a party to prosecute to judgment a writ fraudulently altered or forged by the plaintiff, whether the defendant objects or not. For the rule in this jurisdiction on the subject of a misuse of blank writs, see *Dearborn* v. *Twist*, 6 N. H. 44; *Lovell* v. *Sabin*, 15 N. H. 29, 37; *Kidder* v. *Prescott*, 24 N. H. 263; *Hanson* v. *Rowe*, 26 N. H. 327; *Eastman* v. *Morrison*, 46 N. H. 136; *Parsons* v. *Shorey*, 48 N. H. 550; *Stevens* v. *Fuller*, 55 N. H. 443; *Kinne* v. *Hinman*, 58 N. H. 363.

What the effect of the alleged alterations, if made, would have upon the attachment, or whether, if made by leave of court, the attachment would be postponed to that of the subsequent attaching creditors, are questions not necessary to be considered, and upon which no opinion is expressed.

The subsequent attaching creditors moved to dismiss, and offered to show by evidence *aliunde* that the alleged alterations were made after the service of the writ. The evidence should have been received.

Exceptions sustained.

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

FIRST NATIONAL BANK OF FRANCESTOWN *v.* NEWMAN.

Chapter 140, Gen. Laws, is not a bankrupt law.

ASSUMPSIT, on a note. Plea, the general issue, with a brief statement alleging that the defendant, prior to the commencement