

[Merrimack, June, 1883.]

PHOENIX MUTUAL LIFE INS. CO. v. CLARK.

*E. D. Rand* and *S. G. Lane*, for the plaintiffs.

*C. R. Morrison*, for the defendant.

DEBT, on a bond. The referee reported the amount legally due, the amount equitably due, and all facts proved before him bearing on the questions of legal and equitable indebtedness, as directed in 59 N. H. 561, 562. Both parties moved for judgment, the plaintiffs for the penal sum of the bond, and the defendant, because on the facts reported nothing was legally or equitably due on the bond. The plaintiffs' motion was granted.

ALLEN and CLARK, JJ., did not sit: the others concurred.

[Merrimack, June, 1883.]

FITCH v. NUTE & a.

*Gould & Martin*, for the plaintiff.

*Leach & Stevens*, for the defendants.

ASSUMPSIT. The objection to the maintenance of the action was, that it was brought in the name of the wrong party. Without deciding the question raised, it was held that the writ might, if necessary, be amended at the trial term, and without terms.

*Case discharged.*

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

[Hillsborough, June, 1883.]

CLOUGH & a. v. CURTIS.

Reported 62 N. H. 409. Facts found by the court. The creditors' motion to dismiss was granted, and the plaintiffs excepted.

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

*Copeland & Dodge*, for subsequent attaching creditors.

62b 700
68 46
68 489

62 700
Case 2
71 576

DOE, C. J. The alteration of the writ being material (*Benson v. Ela*, 35 N. H. 402, 417, *Clough v. Curtis*, 62 N. H. 409, 410, *Moody v. Lucier*, 62 N. H. 584, 587), and made after service, the action was rightly dismissed.

*Exceptions overruled.*

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

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[Hillsborough, June, 1883.]

EGAN & a. v. DIVISION NO. 1, ANCIENT ORDER OF HIBERNIANS.

PETITION for a mandamus to restore the plaintiffs to membership in the Ancient Order of Hibernians. Facts found by a referee.

*J. P. Bartlett*, for the plaintiffs.

*Sulloway, Topliff & O'Connor*, for the defendants.

STANLEY, J. As the plaintiffs were expelled without the trial to which they were entitled under the defendants' constitution, the case is continued to await the result of such a trial.

All concurred.

Upon trial before the tribunal of the association, the plaintiffs were reinstated, and this action was discontinued.

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[Cheshire, June, 1883.]

JEWETT, *Adm'r*, v. KEENE.

CASE for injuries from an obstructed highway, resulting in the death of the plaintiff's intestate, under c. 35, Laws of 1879. No statement of the time and place of the injury and of the amount of damages claimed was filed with the city clerk, according to G. L., c. 75, ss. 7, 8, 9. The defendants demurred.

ALLEN, J. The sworn statement of the time, place, and character of the injury, and of the amount of damages claimed, required by G. L., c. 75, ss. 7, 8, and 9, before suit is brought for