

it was held that this barred the plaintiffs from recovering. *Clay v. Smith*, 3 Pet. 411; *Bodley v. Goodrich*, 7 How. 276; *Baldwin v. Hale*, 1 Wall. 223; *Gilman v. Lockwood*, 4 Wall. 409; *Chafee v. Bank*, 71 Me. 514; *Adlum v. Yard*, 1 Rawle 163; *Rapalee v. Stewart*, 27 N. Y. 310; *McConnell Trustee Process*, s. 329.

*Trustees discharged.*

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

64 8  
67 321

LEBANON v. MEAD & a.

A notice to a third person to come in and assume the defence of a pending suit, which does not state the cause or nature of the action, nor show in what way he may be interested in the result, is not sufficient.

CASE, to recover a sum which the plaintiffs were compelled to pay Eaton as damages for an injury caused by an obstruction placed in a highway by the defendants.

March 19, 1884, while the suit Eaton against the plaintiffs was pending, the following notice was served upon the defendants:

“Grafton ss. Supreme Court, March Term, 1884.

“Albert S. Eaton v. Town of Lebanon.

“It being suggested that Charles Mead (and others, naming all the defendants) may be interested in the defence of the above named action, it is ordered that they be notified to appear at said court, on Monday, March 24, 1884, at four o'clock in the afternoon, and take upon themselves the defence of said action.

“Attest: Chas. B. Griswold, *Clerk.*”

At the same March term the cause was tried by the court, and judgment rendered for the plaintiffs. Two of the seven defendants, at the request of the town, testified as witnesses at the trial; but none of them appeared in response to the notice.

*Spring & Spring*, for the plaintiffs.

*Shirley & Stone* and *W. H. Cotton*, for the defendants.

CARPENTER, J. If by operation of law, a third person is answerable to a defendant for whatever the plaintiff may justly recover, and has due notice of the suit, the judgment obtained without fraud against the defendant is, in an action brought by him against such third person to enforce his liability, conclusive

evidence of the facts determined by it. It would be unreasonable to permit him to contest the justice of the claim in the suit against himself, after having neglected or failed to show its injustice in the suit against the person he is bound to indemnify. *Thrasher v. Haines*, 2 N. H. 445; *Littleton v. Richardson*, 34 N. H. 179; *Philbrick v. Shaw*, 63 N. H. 81. Knowledge of the action and an opportunity to defend it are indispensable to make the judgment evidence. *Burrill v. West*, 2 N. H. 190. Upon the question what constitutes a sufficient notice, the authorities are not uniform. *Miner v. Clark*, 15 Wend. 425; *French v. Parish*, 14 N. H. 496, 502; *Boston v. Worthington*, 10 Gray 496; *Boyle v. Edwards*, 114 Mass. 373; Rawle on Cov. (4th ed.) 221-232. Whether it is sufficient that the party responsible over, though not expressly notified, has knowledge, however acquired, of the pendency and nature of the action, and of the facts upon which his liability depends (*Chicago v. Robbins*, 2 Black 418, *Robbins v. Chicago*, 4 Wall. 657, *Fogg v. Plumer*, 17 N. H. 112, *Parker v. Moore*, 59 N. H. 454, and *Philbrick v. Shaw. supra*), is a question which need not now be considered. It does not appear that these defendants had such knowledge. The written notice served on them did not purport to come from, or to be issued at the suggestion or for the benefit of, the town. It informed them that the court had ordered them to be notified to appear and take upon themselves the defence of an action to which they were not parties. It gave them no reason to suppose the action was not a petition for an abatement of Eaton's taxes, or for a new highway, or a suit on a promissory note. The reason given in the notice for ordering its service on them was, that it had been suggested to the court by some person, whose name is withheld, that they might in some undisclosed manner be interested in the defence of the action. It is not found that they had any knowledge of the cause or nature of the action, or of a purpose of the town to employ against them the judgment which Eaton might recover, or of any fact tending to show that such a judgment could concern them, or of any interest they could have in the defence of the town. If they were tax-payers in Lebanon, they might infer they were invited to resist Eaton's effort to obtain a judgment which would increase their share of the public expense. The written order of notice, and the circumstance that two of them testified at the trial, may or may not be competent evidence upon some material question of fact. These two witnesses may have been called merely to impeach, or to sustain, the general reputation of another witness for veracity. They may have had no knowledge of the controversy, or of any reason why they should undertake the defence, or be bound by the judgment. All information of Eaton's claim, and of every fact tending to show their duty of satisfying or resisting it and indemnifying the town, may have been studiously concealed from them. If a notice would be sufficient that would put a person of ordinary prudence upon

inquiry, it is not found that such a person would have inquired, or by reasonable inquiry would have discovered a ground on which these defendants could be affected by a judgment against the town. If the fact of their knowledge or understanding, or of the town's intention, is material, it is to be found at the trial term.

*Case discharged.*

SMITH and BINGHAM, JJ., did not sit: the others concurred.

---

CARBEE v. MASON & Tr., WILLARD, Claimant.

The payer of a negotiable note made in Vermont, and payable to a citizen of that state, cannot be charged in this state as his trustee.

The insolvent law of one state has no effect in another as against its citizens' holding claims that follow the person of the creditor, unless such citizens submit themselves to the jurisdiction of the state where the law was enacted.

FOREIGN ATTACHMENT. Issue between the plaintiff and the claimant. Facts found by the court. The plaintiff, trustee, and claimant are citizens of this state. The defendant is a citizen of Vermont. The claimant is the assignee in insolvency of the defendant in Vermont. The trustee is indebted to the defendant upon three negotiable promissory notes, made and payable in Vermont; also on account for meal sold and delivered to him by the defendant in Vermont.

*W. F. Westgate*, for the plaintiff.

*J. H. Watson* (of Vermont), for the claimant.

BINGHAM, J. The notes were negotiable, made and payable in Vermont. The payee lived there, and the payer in New Hampshire, at the time they were executed. They were not subject to the trustee process, and the plaintiff obtained no lien by the attachment. *Jones v. Rider*, 60 N. H., 452; G. L., c. 249, ss. 15-17; *Chadbourn v. Gilman*, 63 N. H. 353.

The debt of the trustee for the meal, not being in the form of a negotiable note, stands differently. The plaintiff, trustee, and claimant are all residents of this state, parties to and appear in the proceedings. The claimant was appointed the assignee of the defendant, and his assignment was issued by the court of insolvency of Vermont after the service of this writ upon the trustee.

The issue now being tried is between the plaintiff and the claim-

64	10
66	404
66	558
64	10
69	535
64	10
72	66