

The question in this case is between the legal representatives of Charles C. Green and the defendant. The association having paid the money without objection to the equitable right of the defendant, the representatives of Green cannot insist upon any objection which the association has waived. The defendant is entitled to the money, and the clerk may pay it to her under the agreement.

Bill dismissed.

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

STRAFFORD.

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HAYES v. ROCHESTER.

An application for leave to file a claim against a town for damages (G. L., c. 75, s. 9) is seasonably made if filed and presented to the court within the prescribed six months, and notice may be given to the defendant after that time.

PETITION, under Gen. Laws, c. 75, s. 9, for leave to file with the defendants' clerk a claim for damages. Within six months of the alleged injury, the petition, which should have been entered in the county of Strafford, was filed in Belknap and presented to the court, but was not then entered on the docket. After the lapse of the six months, the court ordered the case to be entered on the Belknap docket and transferred to Strafford, where an order of notice was made and served on the defendants, who expected to a denial of their motion to dismiss.

Worcester & Gafney, for the defendants.

T. Cogswell, for the plaintiff.

DOE, C. J. The statute does not require notice of the petition to be given during the six months within which the application must be made. The application was made to the court when the petition was filed and presented to the justice holding the trial term (*Clark v. Slayton*, 63 N. H. 402); and this was done seasonably. Notice in such cases is not to be indefinitely delayed; but no fault of that kind appears. The only error was in making the application in a wrong county, and that was cured by the transfer. *Bartlett v. Lee*, 60 N. H. 168.

Exception overruled.

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