

BILL IN EQUITY, to annul a deed of land and a transfer of bank stock.

March 2, 1885, the plaintiff, a citizen of this state, attached the land and stock, and, subsequently having obtained a judgment, levied upon them as the property of A. S. Watkins. March 9, 1885, Watkins filed his petition in the insolvency court of Windham county, Vermont, was by that court adjudged an insolvent debtor March 21, 1885, and on the same day all his estate was conveyed to his assignee by deed, which, by the law of that state, relates to the date of the petition. The defendant and Watkins are citizens of Vermont.

October 17, 1884, Watkins being then insolvent, and indebted to the defendant in the sum of \$2,838.72, gave to the defendant his note for \$3,775.49 and a mortgage to secure its payment. The mortgage covered certain lands belonging to his wife, who joined with him in the mortgage. February 24, 1885, the defendant, at the wife's request, released her property from the mortgage, and in place of and as a substitute for it, Watkins, with no intent or purpose to hinder or delay his creditors, gave the defendant an absolute deed of the land, and a like transfer of the bank stock in question, to be held by him as security for the mortgage debt.

*B. Lovell and Batchelder & Faulkner*, for the plaintiff.

*C. B. Eddy* (of Vermont), for the defendant.

CARPENTER, J. The plaintiff's rights are not affected by the insolvency proceedings in Vermont. *Perley v. Mason*, 64 N. H. 6; *Carbee v. Mason*, 64 N. H. 10, and cases cited.

The conveyance of the land and bank stock to the defendant was absolute in terms, but was in fact a mere security. Watkins, upon payment of the mortgage debt was entitled to a reconveyance. This is a secret trust, and fraudulent in law, though no fraud was in fact intended. *Stratton v. Putney*, 63 N. H. 577, and cases cited.

*Decree for the plaintiff.*

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

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#### WINCHESTER v. CHESHIRE COUNTY.

An order by the county commissioners, under Gen. Laws, c. 25, s. 6, for the removal of a county pauper to the county almshouse, which is not complied with because of the pauper's refusal to be removed, does not discharge the county from liability to the town in which the pauper resides for support afterwards furnished him upon a new application, a new necessity having arisen.

CLAIM, for aid furnished a county pauper, referred by the parties to the court for decision, upon Gen. Laws, c. 25, s. 10. Facts agreed.

Lucia Hammond, a pauper residing in Winchester, had for many years received relief and support from the county, and was liable to grow more helpless and dependent, and therefore, with the approval of the overseer of the poor of the town, was ordered by the county commissioners to be taken to the county almshouse, where suitable support would be provided, and at a time when she could be safely and properly removed, and suitable means were provided for her removal. She refused to go to the county almshouse, and for several months thereafter was furnished with no public relief, though unable to support herself. She then became helpless and wholly dependent, and physically unable to be removed to the almshouse; and the county commissioners claim that the county is not liable for her support, nor for the expenditure of the town in supporting her, since her refusal of the offer of support at the county almshouse.

*H. W. Brigham*, for the plaintiffs.

*Edmund P. Dole*, solicitor, for the defendants.

BINGHAM, J. County commissioners may make all needful regulations and orders for the removal of county paupers to the county poor-farm, or to any other place by them designated; and no town shall be entitled to any compensation for the support of any county pauper after notice and neglect to comply with such order. G. L., c. 25, s. 6. We understand from the case that when the order of removal was made to the county almshouse, it was an order within the statute, and properly made, and placed the county in a condition not to be then charged for her support. It however appears that the pauper refused to go to the almshouse, and for several months following the order she received no public relief, though unable to support herself, when she became helpless, wholly dependent, and physically unable to be moved there; and the question is, whether the order continued in force after the change in her condition. She received no aid as a pauper from the town, or from any other source, after the order; in fact, she supported herself from her own resources, with the aid of her friends, for several months, when her strength and means wholly failed, and she must have public aid or perish. It does not appear whether she was then willing to be moved, or that she still continued to have sufficient mind to assent to or dissent from a removal. This was such a change in her condition and the circumstances relating to her case that the order of the commissioners ought not to bar her right to support on a new application. It was substantially a new case, and the commissioners should have heard and decided it. If they had

done this, suitable aid would undoubtedly have been furnished. The county is liable.

*Case discharged.*

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

LOVERIN & a. v. SCHOOL-DISTRICT No. 3 IN CROYDON & a.

When, by Laws of 1885, c. 43, a school-district is abolished during the pendency of an action against it for the determination of the contested location of its school-house, the defendant's corporate successor, the town district, being the defendant in interest, should be made a defendant of record, and should have notice and an opportunity to be heard.

BILL IN EQUITY, for an injunction against the collection of a school-district tax, and against the building of a school-house on a lot selected by a school committee, and for a decree requiring the house to be built on another lot selected by the county commissioners. Facts found by the court.

*A. S. Wait* and *H. W. Parker*, for the plaintiffs.

*L. W. Barton* and *J. M. Shirley*, for the defendants.

DOE, C. J. Since the trial, district No. 3 has been abolished by c. 43, Laws 1885. The town district, being now the defendant in interest on the question of school-house location, should be made a defendant of record, and should have notice and an opportunity to be heard. The plaintiffs may move at the trial term for an amendment and notice; and the case is continued.

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

BAKER v. BEERS.

To constitute a conversion of goods there must be some repudiation by the defendant of the owner's right, or some exercise of dominion over them by him inconsistent with such right.

TROVER, for twelve tons of hay; tried by the court. The court found for the plaintiff, and the defendant excepted.

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64b	102
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