

Heath v. West, 26 N. H. 191; *Wilson v. Kimball*, 27 N. H. 300; *Stantons v. Thompson*, 49 N. H. 272; *Bell v. Woodward*, 34 N. H. 90; *Hammond v. Barker*, 61 N. H. 53.

Exception overruled.

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

Merrimack, }
June, 1894. }

STATE (*ex rel. Thorndike & a.*) v. COLLINS & a.

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A petition under P. S., c. 205, s. 5, may be amended by substituting a legal voter for a petitioner who is not a legal voter.

PETITION, by twenty-one persons alleged to be legal voters in Concord, for the abatement of a liquor nuisance in that city. Two of the petitioners were not such voters. The petition was amended by substituting two voters for them, subject to the defendants' exception.

William H. Sawyer and *Burleigh & Adams*, for the state.

Albin & Martin and *Bingham & Mitchell*, for the defendants.

CHASE, J. The statute required the petition to be signed by not less than twenty legal voters of Concord. P. S., c. 205, s. 5. It purported to be so signed, and was therefore sufficient upon its face; but it turned out that only nineteen of the signers possessed the requisite qualification. Was the defect amendable? There is nothing in the nature of this action (*State v. Saunders*, 66 N. H. 39; *Rancour's Petition*, 66 N. H. 172) that excludes it from the operation of the general rule, authorizing the court to allow amendments to be made in civil actions by adding new parties or substituting new ones for original parties, if justice requires the change to be made. P. S., c. 222, ss. 7, 8, 11; *State v. Batcheller*, 66 N. H. 145; *Annis v. Gleason*, 56 N. H. 16; *Judge of Probate v. Jackson*, 58 N. H. 458; *Boudreau v. Eastman*, 59 N. H. 467; *Buckminster v. Wright*, 59 N. H. 153; *Hazen v. Quimby*, 61 N. H. 76; *Willoughby v. Holderness*, 62 N. H. 661; *Fitch v. Nute*, 62 N. H. 700; *Owen v. Weston*, 63 N. H. 599, 603, 604; *Smith v. Hadley*, 64 N. H. 97. The requirement that there shall be twenty petitioners who are legal voters in the town

where the alleged nuisance exists was designed to prevent frivolous and vexatious suits. So many persons of mature age, having an opportunity to learn whether a nuisance exists, by a residence in the vicinity for six months at least (P. S., c. 31, ss. 1, 8), are not likely to join in a petition unless there is reasonable cause for instituting the proceeding. As a guaranty of the necessity and good faith of the suit, the petition of such persons may well be regarded as equivalent to an information filed by the solicitor of the county. P. S., c. 205, s. 5. The object of the requirement is not defeated by substituting a qualified person for one not qualified. The substitute will not become a party unless he approves of the proceeding. Moreover, in legal effect, he becomes a petitioner from the beginning of the action. *Whittier v. Varney*, 10 N. H. 291, 302, 303.

Whether justice required that the amendment should be made is a question of fact that is not reviewable here. *Broadhurst v. Morgan*, 66 N. H. 480.

Exception overruled.

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

Merrimack, }
June, 1894. }

STATE v. SPIRITUOUS LIQUORS.

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68 302

A warrant to search for and seize spirituous liquors for the purpose of forfeiting them must be supported by a complaint charging that the liquors were kept for sale in violation of law.

An officer who makes a search under an invalid warrant cannot justify under P. S., c. 251, s. 6, or c. 258, ss. 1, 2.

LIBEL, filed March 13, 1894, for the forfeiture of spirituous liquors. Facts agreed. The liquors were on March 2, 1894, owned and unlawfully kept for sale in the building and place named in the libel, by one James M. Collins, who appears as claimant. On that day a deputy sheriff entered and searched the premises, and seized the liquor under and by virtue of a complaint and search warrant which charged that Collins was a common seller of spirituous liquor, but contained no allegation that the liquor was kept for sale in violation of law.

William H. Sawyer and Burleigh & Adams, for the state.

Bingham & Mitchell, for the claimant.