

constituted an entire change in the law which it cannot be found from the language of the General Statutes was then intended.

The plaintiffs' suit is an action at law, and it is urged that there is no statute authority for such proceeding. The objection is well taken as matter of form. Any method which lays before or submits to the court the disputed claim is, in substance, within the terms of the statute. But the liability of counties to towns for the support of paupers is entirely statutory. There is no statute authorizing in terms or by implication the enforcement of such liability by a suit in assumpsit, or any common-law action. Hence, the defendants are not liable in an action of assumpsit. But the form of proceeding is not material, and the error may readily be cured by amendment if necessary. Considering the plaintiffs' suit merely as a proceeding to submit to the court a claim previously submitted to the commissioners as to which disagreement has arisen between the claimants and the commissioners, the plaintiffs may proceed to a trial upon the merits; but if they prevail they will not be allowed any costs of the action as such, which would not properly attend the submission authorized by the statute.

Motion to dismiss denied.

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

Coös, }
June, 1895. }

SMITH *ſ* a. v. HAMMOND *ſ* Trs.

An attachment of the property of a non-resident member of a partnership, for his individual debt, is not dissolved by proceedings in insolvency, instituted upon petition of the partners.

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ASSUMPSIT. Facts agreed. The defendant was a member of the partnership of Hammond & Allen, who, previous to May 21, 1894, were engaged in business in West Stewartstown. At that time, Hammond, a resident of Vermont, and Allen, a resident of this state, made an assignment in insolvency to the judge of probate of all the property of the firm, and the messenger took possession of it, together with Hammond's individual property in this state. June 5, 1894, the plaintiffs brought this action to recover a debt due from Hammond alone, and summoned the messenger as trustee, claiming to charge him for the individual

property of Hammond in his possession. The assignee appointed by the probate court appeared as claimant.

Drew, Jordan & Buckley, for the plaintiffs.

Thomas F. Johnson, for the assignee.

*Per Curiam.** It is conceded that a debtor who is not an inhabitant of this state cannot make an assignment under the statute relating to insolvency. P. S., c. 201, s. 6. *Smith v. Stanley*, 67 N. H. 328. It is equally plain that a decree of insolvency cannot issue against him upon petition of his creditors, since section 42 only authorizes such proceedings to be taken against "a debtor residing in the county." *Ayer v. Weeks*, 65 N. H. 248. Both the non-resident and his creditors are precluded from instituting insolvency proceedings for the liquidation of his indebtedness, and attachments of his property are not dissolved thereby, as they are in the case of the insolvency of a resident debtor. P. S., c. 201, s. 26. The legislature did not intend that attachments of the debtor's property should be defeated by voluntary insolvency in a case in which they would not be defeated if the decree of insolvency were made upon the petition of creditors. If Hammond had not been in partnership with a resident, and had made an assignment of his property under the statute, it would have been void. The circumstance that he was a partner with Allen did not give the court jurisdiction to settle his individual estate upon the petition of both. His individual creditors could not have accomplished that result, and their legal disability to do so is strong evidence that the legislature did not intend to provide means for its accomplishment by the partners. This reasonable inference must prevail in the absence of an express provision of the statute authorizing the members of a firm to assign the individual property of a non-resident member. His assent to the assignment is immaterial. It "could not confer jurisdiction if it did not otherwise exist." *Ayer v. Weeks, supra*.

The provisions of the statute, that "the insolvency of a partnership shall render each partner insolvent within the meaning of this chapter" (s. 46), and that "the certificate of discharge shall be granted or refused to each partner as though the proceedings had been against him alone," but that "in all other respects the proceedings against partners shall be conducted as though against a single person" (s. 47), do not make it necessary to hold that the individual property of a non-resident member of a firm in insolvency vests in the firm's assignee. These statutory provisions relate to partnerships all of whose members are residents, and perhaps to partnerships some of whose mem-

*See foot-note on page 22.

bers are non-residents, but not to the individual estate of such members as reside outside the territorial limits of the state. Whether a partnership of residents and non-residents is, or is not, subject to our insolvency laws (*McDaniel v. King*, 5 Cush. 469, 476), it is unnecessary to inquire.

Case discharged.

All concurred.

Coö's, }
June, 1895. }

DUNN v. MERRIMACK COUNTY ODD FELLOWS' MUTUAL RELIEF
ASSOCIATION.

An insurance association's receipt of assessments, in justifiable ignorance of the fact that the insured had forfeited his membership, does not estop it to insist upon the forfeiture.

ASSUMPSIT. Facts found by a referee. The plaintiff is the widow of John Dunn, who was admitted to membership in the defendant association, December 28, 1882. In his application for admission he agreed "to abide by the laws, rules, and regulations of the association now in force or that may be hereafter made." The certificate of membership provided that he "is a member" of the association and he "is entitled to all the privileges and benefits thereof so long as he complies with the by-laws as now made, and such as may hereafter be made, and no longer." The by-laws provided that, "to retain membership in this association, the member must retain membership in good standing in his lodge," and that "should a member be suspended or expelled from his lodge, his membership immediately ceases in this association; nor is the association bound to his widow . . . for any pecuniary benefit." At the time of his admission Dunn was a member of a lodge in Gorham. February 16, 1884, he was suspended from membership in that lodge. He then resided in Connecticut. After his suspension he paid to the association all the assessments that were made until his death, November 20, 1886. These assessments amounted to \$28, which the association received in ignorance of the fact that Dunn had been suspended from his lodge. Upon learning that fact, they sent to the plaintiff a draft for \$28, which was returned. The insurance feature of the association is entirely distinct from the business of the lodges. The insurance was made payable to the plaintiff, who is entitled to recover \$1,000 and interest, if the action can be maintained.