

Such a statement could have no possible effect except to give notice of the assignment to Davis. Notice given to him in any other way would be equally effective. Nobody else was entitled to notice or could be prejudiced by the want of it.

Marsh's attachment of the credits due Garney from Davis was a lien only upon Garney's interest in those credits. In the absence of fraud, Garney's previous assignment of the claim takes precedence of the attachment, although no notice of the assignment was given to Davis. *Pollard v. Pollard*, 68 N. H. 356, 357, and cases cited. Marsh can hold only what Garney himself could recover if the action were brought by him. *Forist v. Bellows*, 59 N. H. 229, 231, 232; *Wallace v. Investment Co.*, 68 N. H. 188, 190. The fact that Rollins brought suit upon the claim in the name of Garney does not affect the application of the principle. The rules of law required him to bring the action in that form. By so doing, he did not hold Garney out as the owner of the claim; he neither did, nor omitted to do, anything inconsistent with his title to the claim. His omission to specify in the writ his interest in the suit was merely silence when he had no occasion to speak. Marsh and persons dealing with Garney were chargeable with knowledge that Garney might have assigned or incumbered the claim, the same as they would be if no suit had been brought upon it.

Trustee discharged.

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

Merrimack, }
Dec., 1897. }

STATE v. NARCARM.

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On the trial of an indictment for a second offence of illegally keeping malt liquor for sale, the state may prove a former conviction of the defendant under another name by which he was known and called.

INDICTMENT, against the defendant, under the name Francis Narcarm, for a second offence of illegally keeping malt liquor for sale. Facts agreed. The alleged former conviction was of the defendant under the name Ferrin Narcarm, before a police court. The only record of the conviction was the original complaint and warrant, with minutes indorsed upon the warrant by the clerk of the court, showing that the defendant pleaded guilty and was fined. The defendant's true name is Ferrin Narcarm, but he is also known as and called Francis Narcarm.

George M. Fletcher, solicitor, for the state.

Albin, Martin & Howe, Cornelius E. Clifford, and Daniel B. Donovan, for the defendant.

CARPENTER, C. J. The original complaint and warrant and the minutes indorsed upon the warrant were competent evidence of the former conviction. *State v. Cox*, *post*, p. 246.

The defendant could take advantage of the misnomer in the indictment only by a plea in abatement; and to such a plea a replication that he is known as well by one name as the other would be good. 1 Ch. Cr. L. 445, 451; 1 Arch. Cr. L. & Pl. 261, 262, n, 267; Whar. Am. Cr. L., ss. 536, 537; *Rex v. Berriman*, 5 C. & P. 601; *Commonwealth v. Dedham*, 16 Mass. 141, 147; *Turns v. Commonwealth*, 6 Met. 224; *Commonwealth v. Fredericks*, 119 Mass. 199; *State v. Thompson*, 20 N. H. 250.

Judgment, guilty.

All concurred.

Merrimack, }
Dec., 1897. }

ROLFE AND RUMFORD ASYLUM v. LEFEBRE.

Where the subject-matter of a suit is a public charity, no final disposition thereof can be made unless the state is represented.

Under a devise in trust, on the express condition that the trustees shall hold and apply the estate to a specific charitable purpose, with no power of sale by them during the term of ninety-nine years from and after the time when the will shall take effect, the trustees cannot of themselves make a valid conveyance of the trust property; and such devise, being for a charitable trust, is not within the rule against perpetuities.

If it clearly appears that an alienation of the trust property will be for the benefit of the charity and in furtherance of the purposes of the trust, a court of equity has jurisdiction to authorize such conveyance upon petition of the trustees.

Under a devise in trust for a charitable purpose, and in the event of the failure of the trustees to faithfully comply with its terms and conditions, to L and his heirs, the gift over is void as contrary to the rule against perpetuities.

BILL IN EQUITY, asking for the construction of the will and codicil of Sarah Thompson, called Countess Rumford, and asking the advice of the court as to the power and duties of the

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