

Hillsborough, }
Dec., 1900. }

LATON *v.* BALCOM.

WRIT OF ENTRY. Trial by the court.

George B. French, for the plaintiff.

Charles W. Hoitt and *Burns & Burns*, for the defendant.

PARSONS, J. The controversy as to the title cannot be settled without a determination of the validity of the tax title under which the defendant claims. This cannot be decided until it is found who was the occupant of the *locus* at the time of the sale. Upon this question the case contains evidence only. It is not advisable to attempt to pass upon the legal questions presented by the remaining facts until this fact is found. *Fellows v. Fellows*, 68 N. H. 611; *State v. Railroad*, *ante*, p. 421.

Case discharged.

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

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SALVAIL *v.* CATHOLIC ORDER OF FORESTERS.

ASSUMPSIT, upon a contract to pay a death benefit. Trial by jury and verdict for the plaintiff. The sole defence was that the deceased was suspended for non-payment of assessments. Before his death all arrearages were paid to the proper officer, and received without objection. The defendants excepted to evidence tending to show that the by-law under which the suspension was ordered had been habitually disregarded, and that the deceased had been assured by the defendants' officers that payment of arrears would restore him to membership.

Bertis A. Pease, for the plaintiff.

Emile H. Tardivel, *Henri T. Ledoux*, and *Henry N. Hurd*, for the defendants.

PARSONS, J. The evidence had some tendency to prove that the by-law upon which the defence relied had been waived or abandoned so that it was no part of the contract sued on. The evidence was competent. No other question is reserved.

Exception overruled.

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

Coös, }
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SARTWELL & a. v. MACK.

ASSUMPSIT, to recover \$155.39 for goods sold and delivered. Facts found by a referee. The defendant sought to recoup damages resulting from the inferior quality of goods sold to him by the plaintiffs at an earlier date. The damages were assessed at \$119.80. Subject to the plaintiffs' exception, the court allowed the defendant to amend by pleading set-off, and ordered judgment for the plaintiffs for \$35.53.

Jason H. Dudley, for the plaintiffs.

Thomas F. Johnson, for the defendant.

PIKE, J. It does not appear that the plaintiffs objected at the time to the trial of the defendant's cause, arising out of the former sale. Nor is there any suggestion that the trial was not fair, or that the plaintiffs have been prejudiced by the course pursued. It is now too late for the plaintiffs to object.

Exception overruled.

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