

There are several answers to this. The statute regulating bail provides that the creditor, intending to charge the bail, shall deliver his execution to the officer, with the name and place of residence of the bail. If, then, the defendant had notified the officer that Rider had been admitted to bail, as the creditor had not delivered to him the name and place of residence of the bail, it would at least be questionable whether any duty would have been imposed upon the officer to give notice, or make any attempt to charge the bail.

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Another answer is, that it does not appear from the case that such information was not given to the deputy who had the execution, nor does there seem to be any ground on which to infer it. The return of the officer is, that he called at the gaol, and he was not there, and that he could not find him; but he does not return, nor is there any evidence that he did not receive information, that he was bailed; nor is there any allegation in the declaration that such information was not communicated.

Another answer is, that if in fact information was not given upon due enquiry, and if for this neglect on the part of the gaoler an action might be sustained for the recovery of damages, this would not constitute an escape, nor sustain the present suit, in which no grievance of that description is alleged.

Judgment for the defendant.

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COVENTRY vs. BOSCAWEN.

Where, under the Provincial acts of 1719 and 1771, the selectmen issued a warrant, reciting that certain persons therein named had lately come to sojourn and dwell in the town, and requiring the constable to warn them to

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depart, who returned that he had warned them, but did not state in his return the time of their abode in the town—*held*, that the warning was insufficient.

Prior to 1796, a settlement might be gained by residing in a town one year, without being warned to depart.

ASSUMPSIT, for the support of one Betsey Bawley.

There was evidence that the pauper was the wife of John Bawley, jr., who was born in Methuen, in Massachusetts, August 31, 1752. His father, John Bawley, came to reside in Boscawen; and on the 27th of April, 1773, the selectmen of that town issued a warrant to one of the constables, reciting that said John, with his family, had "lately come to sojourn and dwell in the town," and requiring the constable to warn him and his wife Elizabeth, together with three children, naming them, to depart, &c. The officer returned that he had warned them, &c. but no time of their residence was stated. Said John was not named in the warrant.

It appeared from the testimony of said John Bawley, jr., that he resided in Methuen until some time after he was twenty-one years of age—that he came to Boscawen in 1774, and enlisted as a soldier, and was absent eight months—that he then returned to Boscawen, and lived there a little more than one year, when he again enlisted and was absent eighteen months, after which he returned and resided in that town nineteen years, or more. He had not gained any settlement since that time.

A verdict was taken for the plaintiffs, by consent, subject to the opinion of this court.

Bell, for the plaintiffs.

Nesmith, and *Bartlett*, for the defendants.

GREEN, J. The pauper is the wife of John Bawley, and of course has his settlement. The expenditures were made by Coventry, and notice given, as the statute requires.

The only question is respecting the settlement of John Bawley, her husband. The plaintiffs say he gained a settlement in Boscawen, derived from his father. John Bawley, the father, was a resident in Boscawen in 1773, and on the 27th of April, of that year, was warned out, with his wife, and all the children but his son John, who was absent. If this proceeding was legal, the father gained no settlement in Boscawen. It is objected that John, the son, was not named in the warrant, and consequently not warned as the other children were. He was at that time under twenty-one years of age, and not in the town; and it was clearly unnecessary to warn him. If the father gained no settlement, the son could derive none from him.

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But there is another objection to this warning, which is decidedly fatal. The provincial act, of the 17th of May, 1719, provided, "That if any person or persons come to 'sojourn or dwell in any town within this province, or precinct thereof, and be there received and entertained by the 'space of three months, not having been warned by the 'constable, or other person whom the selectmen shall appoint for that end, to leave the place, and the names of 'such persons, with the time of their abode there, and when 'such warning was given them, returned unto the court of 'quarter sessions, every such person shall be reputed an 'inhabitant of such town, or precinct of the same, and the 'proper charge of the same, in case through sickness, lameness, or otherwise, they come to stand in need of relief." *Prov. Laws* 140.

By the act of January 16, 1771, the three months named in the former act was extended to one year. *Prov. Laws* 263.

The warrant or return neither of them state the time John Bawley and his family had resided in Boscawen. As the statute has made this one of the requisites to prevent a settlement, and this not being contained either in the warrant or return, this proceeding was clearly defective; and

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consequently, if the father was in Boscawen one year, he gained a settlement therein, and the settlement of his wife and minor children followed. 1 *N. H. R.* 13, *Loudon vs. Deering.*

But there are other facts arising from the testimony of John Bawley, the husband of the pauper, which make it clearly appear, that if he had no settlement in right of his father, he afterwards gained a settlement in his own right, in the town of Boscawen.

Sometime in 1775, after he had become of age, and was emancipated, he came into that town, and lived there, as he states, a little more than a year; and again, in the year 1778, he commenced residing there, and remained in the town nineteen years, or more. In neither instance of said residences does it appear that he was warned to depart from the town, and consequently the requisites of the law at that time to prevent a settlement were not complied with. 6 *N. H. R.* 302, *Nottingham vs. Barrington.*

Judgment for the plaintiffs.

HOLLISTER vs. BARKLEY.

Where an injunction has been obtained on the filing of a bill, it is a general rule, that on the coming in of an answer, denying all the equity of the bill, the injunction will be dissolved.

There may be exceptions to this rule, where, from the nature and circumstances of the case, the court in its discretion will continue the injunction.

But where the bill prayed an injunction against a suit at law, in which the defendant sought to recover of the plaintiff in equity the value of certain work and labor performed by the former, the bill alleging that such work and labor was performed for the benefit of a partnership, which existed between the parties, and ought to be taken into the partnership account; the answer having denied all the equity of the bill—*held*, that there was nothing in the