

Whether the town shall account for any portion of the money recovered back, to Mr. Benton or any other person, is a question with which we have now nothing to do. It is sufficient that the town has advanced to the defendant a sum of money upon a consideration that has totally failed; and there must be

*Judgment on the verdict.*

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ELIZA O. BURT v. MARCUS A. KINNE & AL.

A declaration containing the usual money counts, and counts for goods sold and delivered, and for work and labor and materials found, cannot be amended by introducing a special count upon a lease, for unliquidated damages, for breach of the tenant's agreement to carry on the farm in a husbandlike manner, and the like.

ASSUMPSIT on the general counts, for money lent and advanced to, paid, laid out and expended for, money had and received by, interest on money due from, for goods, wares and merchandise sold and delivered to, and services and labor done and performed and materials provided for defendants at said defendants' request.

Under general leave to amend, obtained at a former term, the plaintiff at this term filed amendments, one being a special count on a lease, and another upon an account annexed. These amendments were objected to, more particularly the first, and they were disallowed by the court, and plaintiff excepted. Said amendments are not to be printed, but sent to the chief justice with the printed case, to be treated as part of the case.

*Rands*, for plaintiff.

*Binghams*, for defendant.

BELLOWS, J. The special count offered by way of amendment is for breach of defendant's stipulations in a lease of a farm, he being the tenant of the plaintiff's, and the damages sought to be recovered are unliquidated. The breaches alleged are that defendant did not carry on the farm in a husbandlike manner, did not repair the fences or buildings, did not harvest all the crops in good order, and deliver one half of the same to the plaintiff, did not tend and manage the stock in a husbandlike manner, and others of a similar character; and we think this matter is wholly inconsistent with the original counts in any aspect in which it can be viewed, and therefore it is not admissible; *Wood v. Folsom*, 42 N. H. 70, and cases cited; and the other new count appears to be unnecessary.