

the exercise of that power till the time for selling the land upon the notice had passed, although injurious to the plaintiff, does not appear to have been practically or theoretically adverse to the public interest.

Any want of fulness and precision in the averment of the facts can be remedied by amendment before the demurrer is disposed of at the trial term. *McDuffee v. Railroad*, 52 N. H. 430, 459. The legal ground of the plaintiff's case being settled, there will be no difficulty in making the declaration sufficient.

*Case discharged.*

BINGHAM, J., did not sit.

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GRAFTON.

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KINNE v. HINMAN.

It is not a cause for quashing a writ, that the blank was filled by a person not authorized by the rules of court to use blank writs, the plaintiff being in no fault.

MOTION, to quash a writ on the ground that the blank was filled by a person not the plaintiff, not an attorney, not a citizen, not of good character, and not authorized by the rules of court to receive or use blank writs.

*Carpenter*, for the defendant.

*Page*, for the plaintiff.

DOE, C. J. The filling of a writ by one who is not an attorney, is not cause for dismissing the action. *Stevens v. Fuller*, 55 N. H. 443. An effort is made to prevent the abuse against which the practice of issuing blank writs needs to be guarded (*Eastman v. Morrison*, 46 N. H. 136, 137) by a rule of court prescribing to what persons the clerks shall not deliver blank writs; for what actions blanks, delivered upon special receipts, may be filled; and by whom attorneys may suffer blank writs to be used. And this rule is enforceable, by proper proceedings, against those who violate it. If it was violated in this case, it does not appear that the plaintiff was aware of its violation, or that he was in any fault: and the rule does not provide, either expressly or by implication, that it is to be enforced by a sacrifice of the rights of innocent parties. While it is the duty of the court to take legal and reasonable precautions for keeping its process out of the hands of persons who would probably make a vexatious, oppressive, or dangerously unskilful use of it, a plaintiff is not punishable for

unwittingly employing such a person, or for the insufficiency of the precautions.

*Motion denied.*

STANLEY, J., did not sit.

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SINCLAIR & a., v. REDINGTON & a.

Where the plaintiffs and other stockholders in an insolvent corporation, supposing themselves to be personally liable for the payment of the corporate indebtedness, join in an agreement with the defendants, who are also stockholders in the same corporation, that the defendants, for the benefit of all the parties to the agreement, shall negotiate for the purchase of the corporation debts, and the defendants effect a purchase of them, paying therefor less than their nominal amount, and subsequently collect them of the corporation, receiving out of the funds of the corporation a sum more than sufficient to pay all their disbursements and expenses, they cannot recover of the plaintiffs any more than the cost of obtaining a discharge of the plaintiffs' personal liability; and, in equity, all the cost having been paid by the money of the corporation received by the defendants, they have no valid claim against the plaintiffs for indemnity or contribution.

BILL IN EQUITY, for an injunction to restrain the defendants from the prosecution of certain suits at law. The cause is heard upon the bill and answers. The facts are stated in the opinion.

*Bingham & Mitchell* and *Carpenter*, for the plaintiffs.

*Farr & Stevens* and *Rand*, for the defendants.

FOSTER, J. The plaintiffs, and all the defendants except F., were stockholders in the White Mountains Railroad. The corporation was insolvent, and the stockholders feared they were personally liable for its debts. They devised a plan for mutual relief, in pursuance of which they severally executed bonds to F., with a condition reciting that the obligor was to be discharged from all liability on a subscription previously signed by him for the purpose of raising a fund for the purchase of the claims against the corporation (a purpose which had not been accomplished); that the creditors of the corporation were to deposit with F. discharges or assignments of their several claims against the corporation and its sureties, to be held in trust by F., for and subject to the order of the creditors, until an amount sufficient to pay such sums as the several creditors should agree to receive in satis-