

There was no such delivery as would have prevented Wentworth's creditors from attaching and holding the whole number.

The fact that Wentworth was paid for the ties with supplies furnished from time to time by the plaintiff, does not change this result. They were advances to be applied in payment, after the completion of the contract; and the contract was not completed, because the plaintiff's ties were not separated from the whole number. The defendants are not estopped to deny that the delivery was complete. They took no part in the settlement made by Cole with Wentworth, and had no interest in either of his contracts.

*Judgment for the defendants.*

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

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NOYES *v.* RICHARDSON.

In a writ of entry on a mortgage, the declaration may be amended so as to embrace a lot of land included in the mortgage and accidentally omitted from the description of the mortgaged premises in the declaration.

WRIT OF ENTRY, on a mortgage. The plaintiff was allowed to amend so as to embrace a lot of land omitted by mistake from the declaration, but covered by the mortgage; and the defendant excepted.

*Shurtleff*, for the plaintiff.

*Dudley & Remick*, for the defendant.

CLARK, J. The amendment cured a defective description of the land embraced in the mortgage. It changed neither the form nor the cause of action. If the plaintiff had brought separate actions for the foreclosure of his mortgage upon the separate parcels of land, the court would have consolidated them, upon a suggestion that the several parcels were embraced in one mortgage; and upon the same principle, to save an additional bill of costs, this amendment should be allowed. Its allowance imposed no hardship upon the defendant: its rejection would have caused injustice to both parties. *Stebbins v. Insurance Co.*, 59 N. H. 143.

*Exceptions overruled.*

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