

ELSHER v. HUGHES.

The form of action may be changed by amendment, and the amendment may be made after a verdict for the plaintiff, without a new trial, when the verdict could not have been affected by the amendment if it had been made before the trial.

TRESPASS, *qu. cl.* Verdict for the plaintiff.

Dodge and Copeland, for the defendant.

T. J. Smith and Worcester, for the plaintiff.

DOE, C. J. The plaintiff is entitled to damages for the defendant's use and occupation of the plaintiff's store. The measure of damages given to the jury was the same as would have been given in *assumpsit*. Whether, upon the evidence in the case, the value of the occupation should be recovered in *trespass* or *assumpsit*, is an unnecessary question. *Merrill v. Perkins*, 59 N. H. 343. When the plaintiff amends the declaration by adding a common count in *assumpsit*, there will be

Judgment on the verdict.

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

PIKE v. SCOTT.

RACKLEY v. SCOTT.

FOOTE & a v. SCOTT.

A lien for lumber and materials used in erecting a building, and furnished by virtue of a contract with the owner, is secured by an attachment made within ninety days from the time the last materials were furnished under the contract.

In a suit brought to secure the lien, it is not necessary to allege in the declaration that they were furnished under a contract. It is enough if it appear, from the writ and return, that the purpose is to secure and preserve the plaintiff's lien.

ASSUMPSIT, to recover for materials furnished to the defendant for erecting a dwelling-house. In the first action, the writ contained a special command to attach the dwelling-house on a lot of land (particularly described), and the interest of the defendant in