

infant from his unrepudiated contract upon the liability of his joint promissor, is a question which does not arise.

The erasure of Hart's name from the note by the defendant, after the contract was rescinded, was an immaterial alteration. *Pequawket Bridge v. Mathes*, 8 N. H. 140; *Burnham v. Ayer*, 35 N. H. 351; *Cole v. Hills*, 44 N. H. 227, 232.

Case discharged.

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

BALL v. DANFORTH.

An amendment introducing a new cause of action cannot be allowed against a defaulted defendant without notice.

ASSUMPSIT, upon the common counts. Facts found by the court. The defendant was defaulted. Subsequent attaching creditors appeared, and objected to the allowance of a bank note for \$500, which the plaintiff had signed as surety for the defendant, but on which he had paid nothing at the time of the trial.

The plaintiff moved to amend by inserting in his declaration two additional special counts, the first alleging a promise on the part of the defendant to pay to the plaintiff five hundred dollars in consideration of a promise by the plaintiff to pay the bank note; the second, that the plaintiff assumed and agreed to pay the bank note, and that, in consideration of such promise, the defendant promised to pay the plaintiff five hundred dollars.

The amendment was allowed, and the creditors excepted.

A. S. Wait and *H. W. Parker*, for the plaintiff.

Ira Colby, for subsequent attaching creditors.

CARPENTER, J. The amendment contained in the new counts on the special contract could not be allowed against the defaulted defendant without notice. Although it is found that it was "agreed that the writ should be made large enough to cover all the indebtedness of the defendant to the plaintiff, including the bank note," yet, so far as appears, the defendant was not a party to the hearing upon which the finding was made, and is not affected by it.

Whether the parties understood that the defendant promised to pay the amount of the bank note on demand before the plaintiff paid the bank, or whether upon any ground there was at the commencement of the suit a breach of the contract on which the

counts could be maintained, are questions upon which the reserved case is not explicit or satisfactory, and on this point a new trial is granted.

Case discharged.

All concurred.

THOMPSON & a. v. PARIS.

The foreclosure of a mortgage according to the provisions of Gen. Laws, c. 122, s. 14, bars the redemption right of the mortgagor and all persons claiming under him, including minor heirs.

BILL IN EQUITY, to redeem a mortgage. Facts found by the court.

Batchelder & Faulkner, for the plaintiffs. It is claimed, that because the statute declares that the right of the mortgagor and all persons claiming under him to redeem shall be forever barred and foreclosed in either of three modes, and because *Williams* followed the strict letter of one of those modes, the rights of the mortgagor who was then dead, and her children who were minors without guardians, are forever gone. This reasoning, if sound as to the second of the statutory modes, ought to be good for the first, which is a foreclosure by suit at law, and if bad for the first must be bad for the second, for the statute makes no distinction between the three modes.

If the foreclosure had been by suit at law, and no guardians *ad litem* were appointed for the minors, although they were personally served with process, the authorities are abundant that the judgment would be erroneous and voidable. The personal service of process is necessary before guardians *ad litem* can be appointed, and the appointment of such guardians is indispensable to the validity of a judgment which affects the interest of minors. *Beckley v. Newcomb*, 24 N. H. 359; *Crockett v. Drew*, 5 Gray 399; *Austin v. Seminary*, 8 Met. 196; *Abdil v. Abdil*, 26 Ind. 287; *Pugh v. Pugh*, 9 Ind. 132; *Herdman v. Short*, 18 Ill. 59; *Rutter v. Puckhofer*, 9 Bosw. (N. Y.) 638.

If it had been by a proceeding in equity, the rights of the minors would have been as carefully guarded—1 Dan. Ch. (1st Am. ed.) 203-224, 2 Kent. Com. 245, 1 Wash. R. Est. 594, *True v. Congdon*, 44 N. H. 48; nor would entry upon the premises and personal notice thereof to their natural guardian affect their rights, as is claimed by the defendant. In *Moomey v. Maas*, 22 Ia. 380, where the minor heirs of a deceased mortgagor and their mother, their natural guardian, were personally served with notice of a foreclosure suit, it was held that the decree was voidable.