

CHASE, J. The levy of an execution on land must show with reasonable certainty what premises were intended to be set off. The requirement of a distinct description (G. L., c. 237, s. 6) is complied with, if by the description the land can be found and identified. *McConihe v. Sawyer*, 12 N. H. 396; *Vogt v. Ticknor*, 48 N. H. 242, 249; *Saunders v. Bank*, 61 N. H. 31; *Chappell v. Hunt*, 8 Gray 427.

The point of beginning is stated with sufficient certainty, and there would be no difficulty in running a line from it south thirty-three degrees west, twenty-five rods, nor in running a line from the end of this line west fifty-five degrees north to the west line of the farm, but these two lines would not enclose a tract of land. There is nothing in the description to indicate what other lines are to be used in connection with these to bound the tract intended. The last line is designated as "a parallel line," but it does not appear with what line it is parallel. It is described as extending to the west line of the farm, "and the same course to the river." This would be impossible, as the river, being on the easterly side of the lots, is situated in the opposite direction from that in which the line runs. If it be supposed that it was intended that this line should be parallel with the northerly line of the lot, and should run from the end of the first described line west fifty-five degrees north to the west line of the lot, and east fifty-five degrees south to the river, as a continuous straight line, it is then a matter of conjecture which of the four parcels formed by the boundary lines of the lot and these interior lines was intended by the description. It may have been the parcel in the northwesterly corner of the lot bounded westerly and northerly by the lot lines, and easterly and southerly by the interior lines, or the corresponding parcel in the northeasterly corner of the lot, or the two as one, or that portion of the lot situated southerly of the line designated as "a parallel line." As the description does not show what land was set off, the levy is void.

The plaintiffs are entitled to judgment in the first action, and the defendant in the second.

Case discharged.

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

HICKEY v. DOLE & a.

The sum to be contributed by each of several defendants in satisfaction of a decree recovered by the plaintiff may be determined in the suit in which the decree was rendered.

IN EQUITY. After a decree rendered in favor of the plaintiff for a conveyance of realty and the recovery of a sum of money (*ante*, p. 336), a question arose between the defendants as to the portion of that sum which each of them should contribute.

Drew & Jordan, for the plaintiff.

E. A. & C. B. Hibbard and *W. & H. Heywood*, for Dole and Stuart.

Drummond & Drummond (of Maine), for Soule's administrator and heirs.

DOE, C. J. A defendant may have affirmative relief against the plaintiff. *Clark v. Clark*, 62 N. H. 267, 268, 272; *Cox v. Leviston*, 63 N. H. 283, 287. Both parties are entitled to just and convenient procedure. *Pearson v. Railroad*, 63 N. H. 534; *Boody v. Watson*, 64 N. H. 162, 171-174, 178, 179. The defendants' situation is such that justice and convenience require in this suit an adjustment of their conflicting claims in regard to contribution. It is not suggested that the plaintiff has any interest in their controversy. If they ask delay in the enforcement of his decree, the reasonableness of delay will be considered at the trial term, where an additional decree will be made when the question of contribution is tried.

All concurred.

SMITH v. LEWISTON STEAM MILL.

In assumpsit for goods sold, on the question of payment alleged to have been made after the cause of action accrued and after the commencement of the suit, the defendant has the burden of proof.

When a payment has not been applied by either party to either of several items of debt, the equitable application made by the law may extinguish first the items for which the security is most precarious.

ASSUMPSIT, for logs sold and delivered. Facts found by a referee. In the winter of 1879-'80 the plaintiff delivered logs to the defendants under a contract which required the agreed price to be paid one half May 1, one fourth September 1, and one fourth November 1, 1880. In March, 1880, the plaintiff and the defendants agreed that \$1,829.50, a part of the price, should be paid by the defendants to a third person, W. S. S., in discharge of