

trict. The property given is placed in the hands of three trustees, "who shall have the management of said property for the benefit of said district." The trustees ask the advice of the court whether the income of the property in their hands applicable for school purposes is payable for the benefit of the Enfield town school district as now constituted, another district of the town having been incorporated with the town district since the testator's death, and whether there is any distinction as to the application of that portion acquired before and that since the union of the two districts.

The trust imposed upon the trustees relates only to the management of the property. The identity of the town school district was not lost by incorporation in it of additional territory. As no trust was imposed upon the trustees as to the expenditure of the income available for school purposes for the benefit of the district, their trust will be discharged by payment to the legatee named—the Enfield town school district—of the sums realized from their management of the property which are available for school purposes.

*Case discharged.*

Coös, }  
March 3, 1910. }

STATE (*ex rel.* O'CONNOR) v. DREW.

HABEAS CORPUS. The writ was issued and the petitioner was brought before the court at the April term, 1909. Upon hearing, the court (*Plummer, J.*) ordered the petitioner remanded. An exception to the order was allowed, and the petitioner admitted to bail pending its determination.

At the April term, 1908, of the superior court, the petitioner was indicted for violating section 15, chapter 112, Public Statutes, and at the September term, 1908, was found guilty upon a trial by jury. The court imposed a fine of \$25 and costs and ordered that the petitioner be confined in jail for sixty days. At the solicitation and request of the petitioner, it was further ordered "that jail sentence be suspended, mittimus to issue on call of solicitor." The solicitor called for the mittimus in June, 1909, and the defendant, who is sheriff of the county, arrested the petitioner on the precept and committed him to jail. The petitioner thereupon applied for this writ.

*Carl Abbott*, for the petitioner.

*Bernard Jacobs*, solicitor, for the defendant.

*Per Curiam.* The question presented was decided in *State v. Drew*, ante, 402.

*Exception overruled.*

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Cheshire, }  
March 11, 1910. }

PRENTISS & a. v. NEW ENGLAND BOX CO. & a.

DEBT, on an injunction bond. At the October term, 1909, of the superior court, the defendants' demurrer was overruled by *Wallace*, C. J., and they excepted. The court ordered that the original proceeding in which the bond was given be brought forward for the assessment of damages and that the present case be continued to await such assessment.

*John E. Allen* (by brief and orally), for the plaintiffs.

*Cain & Benton* (*Mr. Benton* orally), for the defendants.

*Per Curiam.* The defendants urge that the declaration is defective because it does not state certain facts. The existence of the facts claimed to be essential is conceded; the objection is merely to the failure to allege them in the declaration. A decision that the defendants are right upon the question of pleading would make it necessary to amend the declaration. As such decision could have no other effect, consideration of the question would be of no conceivable advantage to the parties.

When an alleged defect can be cured by amendment of the pleadings, the amendment is ordered without considering whether it is necessary. *Hub etc. Co. v. Breeders' Club*, 74 N. H. 282, 287; *Morse v. Glover*, 68 N. H. 119, 120; *Sleeper v. Kelley*, 65 N. H. 206; *Peaslee v. Dudley*, 63 N. H. 220.

*Exception overruled.*