

*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.*