

Rockingham, }
 June 1, 1937. }

WILBUR C. WHITNEY, *Adm'r v. H. P. HOOD & SONS, Inc.*

Devine & Tobin, for the plaintiff.

Hughes & Burns (*Mr. Burns* orally), for the defendant.

Per Curiam. Amendments of substance are to be allowed at any stage of litigation when necessary to prevent injustice (P. L., c. 334, s. 9), and although they have retroactive effect. *Brown v. Brockway*, 87 N. H. 342, 343. There, as here, "The action was brought within the prescribed time, and when brought it became amendable at any time during its pendency." *Ib.*, 343.

The case is unlike that of *Lewis v. Hines*, 81 N. H. 24, which holds that new parties to a suit become such only from the time they are served with process. What has been done as to other parties cannot affect new ones. But as to a party, he is one from the time suit against him is commenced, and he is then sued for such matters as the declaration, or amendments thereof granted to prevent injustice, may show.

The inquiry whether an amendment is necessary to prevent injustice "is a discretionary question of fact for the trial court not reviewable here except in cases" where abuse of discretion is claimed. *Bacon v. Thompson*, 87 N. H. 270, 271. Here the evidence on which the finding rested is not transferred, and the question of abuse of discretion is therefore not presented by the exception.

Exception overruled.