

[REDACTED]

conduct does not reflect well upon the state or the commission, both of which should realize their obligation to demonstrate fair play. However, the extraneous evidence admitted lacked probative value in its own right and was largely confined to petty matters. We are convinced that the admission of this testimony was not prejudicial to plaintiff's cause.

In view of the result reached, we have no need to deal with plaintiff's further assignments of procedural error, which involve charges relating to matters other than the picnic. Nor do we need to consider the state's suggestion that we review the evidence respecting the alleged instances of misconduct as to which the commission failed to find substantiation.

Finally, we note that the state's offer to bear half the costs of the appeal is equitable.

Appeal dismissed.

All concurred.

[REDACTED]

Rockingham
No. 7689

ROGER BOUCHER & a.

v.

OLLIE D. BAILEY

July 11, 1977

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

reason, the judgment in the first action is conclusive. *Developments in the Law—Res Judicata*, 65 Harv. L. Rev. 818, 825 (1952). The Restatement (Second) of Judgments § 61.1, Comment *d* (Tent. Draft No. 1, 1973), states that a defeated party may not institute another action “. . . seeking . . . approximately the same relief but adducing a different substantive law premise or ground. This does not constitute the presentation of a new claim when the new premise or ground is related to the same transaction or series of transactions”

Plaintiffs here seek the same relief which they attempted to gain in their presentation of a cross-petition for easement by adverse possession in the prior action. The underlying facts of the two cases are identical. Plaintiffs “cannot escape the bar of the judgment . . . in the first action arising out of the same transaction and based upon the same allegations of fact.” *Lougee v. Beres*, 113 N.H. 712, 714, 313 A.2d 422, 423 (1973). Conflicting claims flowing from a common source should be determined in a single action, thus avoiding vexatious litigation and conflicting judgments. A. Vestal, *Res Judicata/Preclusion V-91* (1969). Plaintiffs are barred from bringing an action for an easement by implication.

Exception sustained; remanded.

Bois, J., did not sit; the others concurred.

Hillsborough
No. 7698

THE STATE OF NEW HAMPSHIRE

v.

LEWIS L. LAINEY

July 11, 1977