

for her personal injuries. The parties desire the opinion of the court upon the question what damages the plaintiff is entitled to recover. No plea or demurrer has been filed. The facts alleged are neither admitted nor denied. What the issues will be is mere matter of conjecture. It does not seem necessary or useful to consider how far the common-law right of the husband to the services of his wife has been affected by *c.* 2040, *s.* 1, Laws 1865 (G. S., *c.* 164, *s.* 1), until the facts are found by agreement or otherwise, or something is presented more substantial than a hypothetical case. *State v. Stevens*, 36 N. H. 59; *Sceva v. True*, 53 N. H. 627.

*Case discharged.*

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

*Sulloway & Topliff*, for the plaintiff.

*J. Foster and D. Cross*, for the defendants.

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[Merrimack, June, 1882.]

ELA v. ELA.

LIBEL, for divorce. At the trial term the facts were found, a divorce was decreed, and the defendant excepted.

*S. C. Eastman and J. Y. Mugridge*, for the plaintiff.

*S. Dana and C. P. Sanborn*, for the defendant.

STANLEY, J. There was evidence for the plaintiff on the questions of fact, and no error of law appears.

*Exceptions overruled.*

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

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[Merrimack, June, 1882.]

WALLACE v. MOULTON.

ASSUMPSIT. The defendant was in the employ of Webster, and was taken sick. Wallace was called to attend her as a physician, and charged the defendant six dollars, which Webster paid without Moulton's request, understanding that it would be allowed in settlement with Moulton for her labor. Subsequently, Moulton sued Webster on account for the labor, and Webster filed a set-off, which included the item of six dollars paid Wallace. After the set-

off was filed, Moulton offered to pay Wallace the six dollars, but Wallace refused to take it, saying Webster had paid her, and gave Moulton a receipted bill. The police court disallowed the set-off, on the ground that the item was not one of mutual account, nor in the same right with Moulton's claim. Then Webster, with Wallace's consent, and in the name of Wallace, brought this action in the police court for the six dollars. The police court found for the plaintiff, and ordered judgment, from which the defendant appealed. No question was made but that the services of Wallace were reasonably worth six dollars, and that the defendant was owing her that sum, when Webster, in good faith, paid it, reasonably supposing that it would be allowed in settlement for the defendant's labor. The defendant has never paid the six dollars to any one. Judgment was rendered for the plaintiff, and the defendant filed exceptions.

*Leach & Stevens*, for the plaintiff.

*Osgood & Prescott*, for the defendant.

CLARK, J. The defendant does not attempt to sustain her exceptions, and we see no error of law in this case.

*Exceptions overruled.*

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

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[Hillsborough, June, 1882.]

CLARK, *Adm'r*, v. CLOUGH & a.

62	693
170	622

BLODGETT, J. The plaintiff excepted to an order continuing the case at the trial term. The question of continuance was a question of fact, and no question of law is raised by the bill of exceptions. The order of continuance was rightly made upon facts which show that justice requires this case should await the trial and conclusion of another suit brought by the plaintiff against the defendants.

*Exceptions overruled.*

STANLEY, SMITH, and CLARK, JJ., did not sit: the others concurred.

*C. R. Morrison* and *B. P. Cilley*, for the plaintiff,

*Clough & Clark*, for the defendants,