

avoid multiplicity of suits and multiplicity of costs in a single controversy that should be settled in one suit, or in as few suits as possible. The joinder of the plaintiffs is not error; the demurrer should have been overruled; and the exception on this point is sustained.

But while the declaration, stating a cause of action at law on a promise to pay money, is not bad for misjoinder of parties, the facts found at the trial show that their rights require a different mode of procedure, and other remedy than an execution for damages in assumpsit. The defendant was to pay the plaintiffs their shares of the \$300, not in money, but by allowing that sum on the Vose note. Three of the plaintiffs are insolvent; and the other six and the defendant are entitled to an application of the whole sum of \$300 as a payment. There is a balance of contribution to be paid the defendant by the six solvent plaintiffs; for the collection of that balance, he should not be put to more litigation; and a complete adjustment cannot be made in assumpsit. There should be a computation of the balance due him; that amount should be deposited with the clerk for him; and when the deposit is made, there should be a decree that the note be deposited with the clerk to be cancelled. *Strafford v. Welch*, 59 N. H. 46. Here is work for the bill in equity which was tried with the assumpsit, and which may be allowed as an amendment of the declaration in that action. *Metcalf v. Gilmore*, 59 N. H. 417.

The defendant's motion, that the plaintiffs be required to elect whether they would try the matters in controversy on the declaration at law, or on the bill in equity, was rightly denied. They were properly allowed to avail themselves of both forms of action, subject to the modes of trial to which either party was entitled. A plaintiff may need an action of contract and an action in tort, or counts in both forms, to meet the meritorious contingencies of his case. *Rutherford v. Whitcher*, 60 N. H. 110. A final adjustment and decree will be made at the trial term.

*Case discharged.*

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

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### SISKIN'S PETITION.

Chapter 96, Laws 1883, requiring certain persons committed to jail to be discharged by the jailer at the expiration of a certain time, does not restrict the power of discharging them upon Gen. Laws, c. 268, s. 9.

PETITION, presented to a justice of the court in vacation, and adjourned into the law term, for the discharge of the petitioner

from jail for inability to pay a fine and costs imposed by the police court of Nashua. The petitioner is not entitled to a discharge upon *c.* 96, Laws 1883.

DOE, C. J. Chapter 96, Laws 1883, limits certain terms of imprisonment, and does not restrict the power of discharge given by Gen. Laws, *c.* 268, *s.* 9.

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HAZEN *v.* CONCORD RAILROAD.

A hypothetical case may be discharged without a decision.

CASE, for injuries to the plaintiff's wife. The plaintiff claims to recover for a loss of service and society, caused by injuries received by her through the negligence of the defendants. In an action brought by her against them, she has recovered damages for her injuries. The parties desired the opinion of the court on the question whether the plaintiff can recover for loss of her service, or for loss of her society.

*Wadleigh & Wallace*, for the plaintiff.

*J. W. Fellows* and *C. H. Burns*, for the defendants.

DOE, C. J. It is not deemed advisable to investigate the questions of law mooted in this hypothetical case. The plaintiff and his wife may have so exercised their equal rights as to give neither any ground of fact for a claim of loss of either service or society.

*Case discharged.*

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STEVENS *v.* MANCHESTER & *a.*

Under Gen. Laws, *c.* 49, *s.* 2, a public cemetery cannot be laid out within twenty rods of a dwelling-house without consent of the owner, although the land to be so used had been procured by voluntary purchase.

BILL IN EQUITY, for an injunction to restrain the city of Manchester, and the other defendants, who are trustees of the Amoskeag cemetery under a city ordinance, from using land for the burial of the dead, within twenty rods from the plaintiff's dwelling-house. The bill showed that the land in question was bought of one Hanscom by the city in 1883, and run out into burial lots, and that it