

[REDACTED]

In regard to the question of damages, the court told the jury to take into account "what she paid for the original construction of the sewer and what she had to pay for the local sewer which she has since constructed for those premises only." The result of this instruction was not only to reimburse the plaintiff for the cost of her original installation, but to relieve her from the whole cost of providing for the sewage from her premises. It may be that the plaintiff's damages might be approximately measured either by the original cost of making the connection with the defendant's sewer or by the cost of constructing her private sewage disposal plant, but to allow a recovery upon both grounds would give her double damages. See *Barker v. Company*, 80 N. H. 118. The defendant's exception to this portion of the charge is therefore sustained.

The questions raised by the defendant's other exceptions are not likely to arise in the same form at another trial and have not, therefore, been considered.

*New trial.*

All concurred.

[REDACTED]

Rockingham, }  
April 4, 1939. } No. 3064.

NEWMARKET WATER WORKS *v.* STRAFFORD SAVINGS BANK &c.

[REDACTED]

[REDACTED]

*George R. Scammon*, by brief, for the plaintiff.

*Hughes & Burns* and *Charles F. Hartnett*, by brief, for the defendant bank.

*Per Curiam.* After the judgment against Carpenter was entered, the action was no longer pending, and the propriety of the subsequent motion that the bank be made a party defendant seems doubtful. But if the grant of the motion may be sustained, the bank did not become a party to the action until the motion was filed. *Lewis v. Hines*, 81 N. H. 24. The statute (Laws 1927, c. 71, s. 1) enacted that the lien for water charges should continue "for one year from the last item charged" for water and "may be enforced by suit . . . against the owner or owners of the real estate." It follows that so far as the lien extended to the bank's interest, it was lost by failure to secure it by suit against the bank within the time limit prescribed by the statute. The only method to enforce the lien being by suit and no suit to enforce it as to the bank's interest being instituted prior to the motion, the statutory limitation of time became operative to bar the plaintiff in respect to such interest. No personal liability of the bank can be invoked, and since its property is not held by the lien, the plaintiff's case fails, without consideration of other points of defence.

The bill in equity brought to supplement the action as an aid to perfect the lien is of no service to cure the bar. It was not brought until long after the action and no attachment was made in connection with it. It could have no retroactive effect upon the time when the bank was in any way sued. It should be dismissed and judgment ordered for the bank in the action.

*Ordered accordingly.*