

the jury disbelieve his witnesses as to the situation on August 2 and believe one of them as a matter of law as to the situation on August 1. They could disbelieve the head farmer as to both days. One reason for their disbelief might be the very inconsistency of the positions taken: (1) that while the plaintiff was working on August 1 enough hay was put into the barn to change the level from a foot below the top of the chute to one rather more than four feet above it; (2) that the level was altered from "nearly even with the top" on August 1 to "within a foot of the top" on August 2, indicating a very slow "covering process." It might well have appeared to the jury that there was something wrong with the memory of the head farmer, in consequence of which they would discard his evidence entirely. Believing the plaintiff, they would then have no evidence to warrant a finding that the top of the chute was covered while the plaintiff was working for the defendant.

*Exceptions overruled.*

All concurred.

Rockingham, }  
June 1, 1943. } No. 3416.

MARY E. WEBSTER *v.* BESSIE J. HUBLEY.

*Murchie & Murchie*, by brief, for the plaintiff.

*William H. Sleeper*, by brief, for the defendant.

*Per Curiam.* The validity of the covenant not to sue may be litigated in the action at law. *Schofield v. Company*, 90 N. H. 31; *Dion v. Mills*, *ante*, 414. The construction of the declaratory judgment statute (R. L., c. 370, s. 20) barring its service when other remedy is available and adequate (*Gitsis v. Thornton*, 91 N. H. 192, and cases cited) therefore required the dismissal of the petition. The reasons assigned for a reversal of the construction or for an exception to it in the case are not sufficiently impressive to invite discussion.

*Exception overruled.*

Rockingham, }  
June 1, 1943. } No. 3409.

FRANK J. LANGDON, & a.

v.

MAINE-NEW HAMPSHIRE INTERSTATE BRIDGE AUTHORITY.