

but as bearing on the question of whose obligation it was you are entitled to consider how much business he did with the bank, and how much or how little she did with the bank. You are to consider it on that basis only." Again an exception was allowed to the plaintiff, but it avails nothing. *Buttrick v. Association*, 87 N. H. 194. As limited by the instructions the argument, minus the statement as to what Mr. Malloy deposited, was proper. There is no reason to suppose, in view of the denial of the motion to set aside the verdict, that the limitation was misunderstood or the instructions disobeyed to the prejudice of the plaintiff. *Davidson v. Corporation*, 89 N. H. 535, 538. To the extent that the argument was improper, it was perfectly clear that it did not have the sanction of the Court. *Heilman v. Whalley*, 90 N. H. 215.

*Judgment on the verdict.*

All concurred.

Grafton, }  
June 6, 1944. } No. 3473.

RICHARD C. ALLBEE v. ALICE R. ELMS & a.

*Luigi J. Castello*, for the plaintiff, furnished no brief.

*Pike & Aldrich* and *H. K. Davison* (*Mr. Pike* orally), for the defendants.

JOHNSTON, J. Specific performance of an executory contract for personal services is not ordinarily decreed even when the party to render the services is the plaintiff. *Knox v. Allard*, 90 N. H. 157, 163; 49 Am. Jur., p. 160. The remedy at law is adequate. *McCrillis v. Company*, 85 N. H. 165, 167. The prayer for an injunction against interference with the harvest of the plaintiff's garden raises a question now moot. *Street Commissioners v. Dale, ante*, 92. Nor is the plaintiff entitled to injunctive relief because of the allegation of an assault upon him. "The legal remedy is ordinarily considered as adequate in cases of torts to the person . . . and equity does not interfere." 4 Pomeroy, Eq. Jur. (5th ed.), s. 1347.

The plaintiff does not stand any better in equity by reason of the amendment to the bill. Equity will take jurisdiction of various actions if they involve identical issues; that is, issues determined by the same questions of fact and of law. A good example is found in *Smith v. Bank*, 69 N. H. 254, brought by various owners of certificates of deposit, who alleged negligence in the management of a trust estate and asked for an accounting. The question of negligence so far as each plaintiff was concerned, depended upon the same facts and law, and the damages of each would be assessed upon the same principle. Avoidance of a multiplicity of actions in equity makes for economy in trial procedure and for greater consistency in discretionary findings. "Where numerous actions at law are brought, or are about to be brought, either by the same or by different parties, all involving and requiring the decision of the same questions of law or of fact, so that the determination of one would not legally affect the others, a court of equity may, in order to do full justice to the litigants and to avoid great expense, take cognizance and adjudicate upon all the rights and confer all the remedies in one suit, although both the primary rights and the final reliefs are legal." 1 Pomeroy, Eq. Jur. (5th ed.), s. 181. The allegations concerning the breach of contract, the damage to the garden and

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the assault do not show such identity of issues as to warrant equity taking jurisdiction. Whether it may be more convenient for the trial Court to consolidate the trials in the actions at law, if brought, is for that Court to decide.

*Bill dismissed.*

All concurred.

[REDACTED]

Rockingham, } No. 3480.  
June 6, 1944. }

BEATRICE M. STANDISH *v.* ELIZABETH MOLDAWAN.

[REDACTED]

[REDACTED]

*William H. Sleeper*, for the plaintiff.

*George R. Scammon*, for the defendant.

MARBLE, C. J. The defendant in her brief concedes that she has no statutory lien on the property in question but declares that, in seizing and holding the furniture, she was merely asserting her common-law right of distraint for rent in arrears. No such specific claim appears to have been made in the Superior Court, however. But inasmuch as the defendant could still be allowed to file a special plea setting forth this defense if justice so required, the contention now advanced has been considered.

Distress for rent is a proceeding *in rem* whereby the landlord seizes property found on the demised premises and holds it until the