

elects to proceed in Chancery, then his proceedings at law are to be stayed by injunction ; but if he elect to proceed at law, then his bill in this court will be dismissed with costs. *Daniel's Chan. Pr.*, 963, 964. *Rogers vs Vosburgh*, 4 *Johns. Chan. Rep.*, 84.

There can be no doubt at all of the power and duty of the court, to compel the plaintiff to elect in a proper case, and it is a power which this court has repeatedly exerted. But in this case it is said, the suit at law and the bill in equity do not involve the same matter, and therefore, there is no such "double vexation" as is prohibited by the rule. It seems to me, however, from a comparison of the case made by the bill, and that portion of the pleadings in the suit at law which has been introduced here, and which it is admitted is an accurate copy of one of the breaches assigned in the replication, that the case at law, so far as this breach is concerned, is in substance, identical with the case made by this bill, and therefore, if both suits are permitted to go on, the defendant is exposed to the "double vexation" of defending two suits ; and there is danger from the different conclusions to which the two courts may come—of that "clashing of jurisdiction," which as declared by Lord Manners, in 1 *Ball & Beat*. can never be endured.

It is true, in the action at law, other causes are combined with that embraced in the bill filed in this court ; and this, it has been urged, is a reason, why the rule in question should not be applied to the present case. I cannot see, however, in this circumstance, any sufficient reason for exempting this case from the operation of the rule. The mingling other grounds of complaint with that which is comprehended in the action at law and the bill in equity, does not relieve the defendant from the "double vexation" of defending himself in two courts, against the same complaint. Nor will it avoid the risk, that different results with regard to this particular demand may be arrived at, and conflict and clashing thereby produced. And it is moreover, quite manifest, that if the rule as to electing can be evaded in this way, it will become of little or no practical utility ; as in every case various causes of action may be combined, though the real, substantial ground of complaint in the two courts may be the same.