

I think, therefore, the plaintiffs must be put to their election, and shall so order.

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[In conformity with the preceding opinion, the Chancellor, on the 30th of June, 1849, passed an order to compel the plaintiffs to elect. The plaintiffs refused to make an election in obedience to the order. Thereupon, on the 16th of November, 1849, an order was passed dismissing the bill, with costs. Accompanying which order is the following opinion of the Chancellor.]

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THE CHANCELLOR :

This Court having decided that the plaintiffs are bound to elect, their right to prosecute their suits in both courts cannot be regarded here as an open question. They must proceed in the one court or the other, and the practice is firmly established, that if the election is to proceed at law, the bill is from thenceforth to stand dismissed out of this court, as against the defendant, with costs. 2 *Daniel's Ch. Pr.*, 963, 964. *Rogers vs Vosburgh*, 4 *Johns. Ch. Rep.*, 84.

But the plaintiffs in this case refuse to elect, and it becomes therefore necessary to decide whether the proper remedy is to restrain them by injunction from prosecuting their suit at law, or to dismiss their bill in this court. My impression is, that the proper course, under such circumstances, is to dismiss the bill here, and I shall accordingly do so.

In the case of *Livingston vs Kane*, 3 *Johns. Ch. Rep.* 224, which was a case in which the plaintiff declined making an election, it seems to have been the opinion of the Chancellor, that if it had been the ordinary case of an election, he would have had full power to dismiss the bill, and would have exercised it.

After explaining the rule upon the subject of compelling parties to elect, when they are proceeding at law and in equity, at the same time for the same demand, he says, "it is quite apparent from this explanation and history of the rules, that the present case is not within it, to the extent of requiring the bill to be dismissed, there is no 'double vexation' by the continuance of the suit here." The Chancellor, therefore, did