

distinct subject, unless some other objection exists, than its association in the same bill with the matter, in regard to which, the complainant has delayed his application too long.

It appears, therefore, to me, that the complainants should not be precluded from the right to compel the defendants to interplead, so far as concerns the promissory notes and bills of exchange, the subject of the action of trover and conversion now depending in Baltimore County Court, because they have, in the same bill, asked the same relief with reference to another matter, in regard to which, they come too late.

This is not like the case of *Bradford and Williams vs. Williams et al.* decided in November last, and which was referred to in the argument. In that case, there was a *single* suit at law, and a bill in equity, comprehending the same matter, as was shown by one of the breaches assigned in the replication, and it was thought, that the court could not discriminate, and permit the action at law, and the bill in equity, to proceed at the same time, because it was possible, that some things might be litigated in the one, which were not embraced in the other. It was plain, as I thought, that the same thing, the alleged violation by the trustee of his duty, was proposed to be litigated in both courts, and as there was but one action at law, and one bill in equity, in which this double vexation was carried on, there appeared to me no way of affording relief, but by putting the plaintiff to his election.

But this is an entirely different case. The petitioner, Kerr, himself, brought the two actions at law. In one, he has recovered a judgment, and so far, it is conceded, the bill of interpleader cannot be maintained. The action of trover, is still depending, and it is no reason why the complainants may not, in a proper case, compel the defendants to interplead with reference to the subject matter of the trover suit, because they have taken an appeal from the judgment of the county court, in a suit already decided, and which is wholly independent of, and distinct from the action which is undecided. The assumpsit, and the trover, are distinct actions, brought separately by the petitioner, himself, and must be regarded and treated as involving different matters of controversy.