

different courts one will be stayed. If both are brought in a County Court, they will be consolidated and tried together (a).

15. Joinder of causes of action under the statutes and at common law in the same suit.—In England it has been customary to join common law and statutory causes of action in the same suit, and in spite of one judicial intimation adverse to this rule of procedure, its propriety may perhaps be regarded as being now no longer open to controversy (a).

In Scotland also this joinder is permitted (b).

In Massachusetts the propriety of such a joinder has, so far as the writer knows, never been questioned, and a large number of cases might be cited in which the complaint has included counts setting forth claims both under the statute and at common law (c). A similar remark is applicable to the Alabama course of practice (d).

16. Joinder of causes of action under the Employers' Liability Acts and the Damage Acts.—It has been held by the English Court of Appeal that the causes of action for the death of several employes in favour of their respective relatives, under Lord Campbell's act and the Employers' Liability Act, are several, and cannot be joined in one action (a). But such a joinder is now permitted

(a) See Beven on Empl. L. (2nd Ed.) p. 198.

(a) In *Munday v. Thames Ironworks Co.* (1882) 10 Q. B. D. 59, Manisty, J., expressed a doubt whether a statutory action instituted in a County Court and removed to a Superior Court could be consolidated with one instituted prior to the removal in the Superior Court. But this dictum is inconsistent with the case of *Larbey v. Greenwood* (reported only in the Times newspaper, July 23, 1885), where the action in the County Court was removed in order that a common law claim might be added to it. Mr. Ruegg who refers to this decision (Empl. L. p. 14., note), states that the same course has been followed in other cases. See also *Marrow v. Flimby & Co.* (1898) 2 Q. B. 588, where there was both a common law and a statutory claim, and no objection to this joinder was raised. For the general rule as to the joinder of alternative causes of action under the Judicature Act, see *Bagot v. Eastin*, 7 Ch. D. 1.

(b) *Morrison v. Baird*, 10 Sc. Sess. Cas. (4th Ser.) 271; *Goudie v. Paul*, 22 Sc. Sess. Cas. (4th Ser.) 1; *Duthie v. Caledonia R. Co.*, 35 Sc. L. Rep. 726; *Murray v. Cunningham* (1890) 17 Sc. Sess. Cas. (4th Ser.) 815; *McColl v. Eadie* (1891) 18 Sc. Sess. Cas. (4th Ser.) 507.

(c) It will be sufficient to mention, as examples, the following: *Demers v. Marshall* (1899) 72 Mass. 548, 52 N.E. 1066; *Ford v. Mt. Tom Sulphite Pulp Co.* (1899) 172 Mass. 544, 52 N.E. 1065; *Hall v. Wakefield & C. R. Co.* (Mass. 1901) 59 N.E. 668; *Hughes v. Malden & C. Co.* (1897) 168 Mass. 395, 47 N.E. 125.

(d) For examples of the joinder of common law and statutory counts, see *Clements v. Alabama & C. R. Co.* (Ala. 1900) 28 So. 643; *Louisville & C. v. R. Co. v. York* (Ala. 1901) 30 So. 676.

(a) *Carter v. Rigby* (C.A.) [1896] 2 Q. B. 113, 65 L. J. Q. B. N. S. 537, 74 Law T. Rep. 744, a decision under the English County Court Rules, Order 44, Rule 18, in which the court followed *Smithwaite v. Hannay* (1894) A. C. 494, a decision with regard to Order 16, rule 1, of the Supreme Court Rules.