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# West Virginia Law Quarterly and THE BAR

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## STUDENT NOTES

**ACTIONS — ELECTION OF REMEDIES.** — Because the interests of a second wife had intervened, the first wife failed in her equity suit to set aside a fraudulently obtained decree annulling her marriage. She then sued her former husband for damages. The first ground of demurrer set up was that by electing to sue in equity for a restoration of the marriage relation the plaintiff was estopped to bring an action for damages. The court said “. . . a party is not estopped to maintain a second suit unless the two suits have substantially the same aim and scope and the remedy sought is substantially the same in each.” *Cameron v. Cameron*.<sup>1</sup>

The defendant was evidently relying on the doctrine of election of remedies. The court, however, simply cited *RULING CASE LAW*<sup>2</sup> and laid down a rule which is really the test for *res judicata* and has practically nothing to do with election of remedies. This does not mean, of course, that the ultimate result was wrong. The

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<sup>1</sup>162 S. E. 173 (W. Va. 1932). For a complete statement of the facts in this case, see case comment, *infra* p. 371.

<sup>2</sup>9 R. C. L. 964.