

Counsel for Parties.

Columbia, expresses the same idea and the same purpose that section three of the act authorizing the Baltimore and Poto-  
mac company to enter the District does, namely, to retain in  
the hands of Congress the absolute control of the use of the  
streets of the city by any railroad company whatever.

We are of opinion that, when this company wishes to de-  
part in any direction from the line of its present track as pre-  
scribed for it by acts of Congress, it must obtain permission to  
do so from that body. And that Congress, and not the court  
nor the company, is the judge of the expediency or the neces-  
sity of such change, and of the manner in which the public  
good requires it to be made and the safeguards which should  
accompany it.

*The decree of the Supreme Court of the District of Columbia  
is reversed, and the case remanded, with directions to dis-  
miss the bill.*

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PACIFIC BANK v. MIXTER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE  
DISTRICT OF MASSACHUSETTS.

Submitted April 13, 1885.—Decided April 20, 1885.

§ 1001 Rev. Stat. exempts insolvent national banks or the receivers thereof,  
bringing causes to this court by writ of error or on appeal by direction of  
the Comptroller of the Currency, from the obligation to give security.

It is no cause for dismissal of a writ of error brought by a receiver of a na-  
tional bank that in one of the papers by clerical error he is given a wrong  
name.

This was a motion to dismiss a writ of error for reasons  
stated in the opinion of the court.

*Mr. Joshua D. Ball* for the motion.

*Mr. A. A. Ranney* opposing.

## Statement of Facts.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

Under § 1001 of the Revised Statutes no bond for the prosecution of the suit, or to answer in damages or costs, is required on writs of error or appeals issuing from or brought to this court by direction of the Comptroller of the Currency in suits by or against insolvent national banks, or the receivers thereof. This is such a case.

There is abundant evidence in the record that the direction from the comptroller to the receiver was to take out a writ of error in this case, although, by mistake in one of the papers, Henry Mixter was named as the plaintiff instead of George Mixter.

*Motion denied.*

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CAVENDER v. CAVENDER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR  
THE EASTERN DISTRICT OF MISSOURI.

Argued April 6, 1885.—Decided April 20, 1885.

An answer in Chancery, setting forth material facts which should have been stated in the bill, but were omitted, is a waiver of the right to object to the bill for cause of the omission.

Where the acts or omissions of a trustee show a want of reasonable fidelity to his trust, a court of equity will remove him.

A neglect by a trustee to invest moneys in his hands is a breach of trust, and is a ground for removal by a court of equity.

Robert S. Cavender, the appellee, was the plaintiff in the Circuit Court. He stated his case in the bill of complaint substantially as follows:

John Cavender, deceased, by his last will and testament, dated May 6, 1858, and proved in the Probate Court of the City—then County—of St. Louis and State of Missouri, February 4, 1862, made and constituted the defendant, John S. Cavender, executor of his estate, and, after payment of debts, as therein mentioned, bequeathed one-half of the remainder of