POMEROY'S LESSEE *v.* THE STATE BANK OF INDIANA.

Where the charter of a bank provided that the bank should itself continue till January 1, 1859; with a proviso that all *banking powers* should cease after January 1, 1857, "*except* those *incidental and necessary* to collect and *close up business;*" a motion, in 1862, to dismiss a writ of error in which the bank was defendant was refused.

A STATUTE of Indiana passed in 1834, enacted as follows: "That there shall be and is hereby created and established a State Bank, to be known and styled the 'State Bank of Indiana,' *and shall continue as such until the first day of January, eighteen hundred and fifty-nine.*" The charter further provided, that all *banking powers* should cease *after the first day of January*, 1857, "*except* those *incidental and necessary to collect* and *close up its business.*"

In 1849, the bank being in possession of certain real estate, was sued in ejectment, and the suit, in December, 1862, being still pending on writ of error, in this court, which writ had been allowed in December, 1861, *H. W. Chase, Esquire*, signing himself *Attorney for the State Bank of Indiana, in the Circuit Court for the District of Indiana*, asked for the abatement of the writ upon the following suggestion, to wit: "That since the trial of the above entitled cause in the Circuit Court for the District of Indiana, and before the prosecution of the writ of error in this behalf—to wit, on the first day of January, A.D. 1859,—the said State Bank of Indiana, named as defendant in error in said cause, being a corporation created and organized in the State of Indiana by the authority of an Act of the Legislature thereof, was dissolved and ceased to exist as such corporation, by reason of the expiration of the charter granted to said State Bank of Indiana."

In support of this motion, he argued: The dissolution of the bank by expiration of its charter leaves no defendant; and the writ *must* abate. Angell and Ames* state it as text law that "upon the dissolution of a corporation *in any mode*," "all suits pending for or against it, abate." They cite, in

* On Corporations, § 779.

support of this statement, various cases* which sustain the position. *Lindell* v. *Benton*,† referred to in the note by them, as announcing a contrary doctrine, merely decides that the dissolution of a corporation after an attachment against it has been sued out, *and its debtor garnished*, will not operate to deprive the attachment plaintiff of a vested right in the money in the hands of the garnishee to satisfy his debt. In this case the bank itself expires in 1859. *Banking powers* may exist indefinitely for the purpose of closing up business. But the capacity to defend a suit is not a *banking* power. The expression has reference to the renewal of notes, &c., the payment of outstanding bank bills and the like.

The writ of error here is an *original* writ, issuing, in effect, out of this court, to bring up the record of a cause that alleged errors may be examined, and the judgment affirmed or reversed as the law may require.‡ The parties in the inferior court, or their heirs or representatives, must be parties here,—and to that end must be duly cited. It is true, that an attorney cannot withdraw his name from a cause, after final judgment, so as to avoid the service of the citation. But the death of his client revokes his authority to appear, and the service of a citation upon him thereafter is a nullity.

A rule of this court§ provides against the abatement of causes in error or on appeal between natural persons, by authorizing the heirs or legal representatives, as the character of the subject-matter of the litigation may require, to be made parties. But here is a corporation, civilly dead, leaving no heirs or representatives—no party upon whom process can be served, or to whom notice can be given, or on whom the judgment can operate. This is not the first instance where parties have failed to obtain the aid of this court to correct alleged errors, because there was no provision of law whereby the cause could be brought properly before the court.‖

* Merrill *v.* Suffolk Bank, 31 Maine, 57; Saltmarsh *v.* Planters' &c. Bank, 17 Alabama, 761; and Greeley *v.* Smith, 3 Story, 657.

† 6 Missouri, 361. ‡ 2 Tidd's Practice, 1134; Conkling's Treatise, 686.

§ Rule 15. ‖ Hunt *v.* Palao, 4 Howard, 589.

Messrs. Traphagen, *Brady*, and *Carlisle*, *contra.*

Mr. Justice WAYNE delivered the opinion of the court:

I am instructed by the court to announce it to be its opinion that there can be no abatement of the case upon the counsel's suggestion, as it is declared in the charter of the bank, that though its charter should continue as such until the first day of January, 1859, and that all its banking powers should cease after the first day of January, 1857; that it should have all the "necessary and incidental powers to collect and close up its business," within which we deem the rights of the plaintiff in this court to be comprehended.

MOTION REFUSED.

CLEARWATER *v.* MEREDITH ET AL.

1. The statute of Indiana, passed February 23, 1853, which authorizes connecting railroad corporations to merge and consolidate their stock, and make one joint company of the roads thus connected, causes, when the consolidation is effected—as is declared by the Supreme Court of the State, in *McMahon* v. *Morrison* (16 Indiana, 172)—a dissolution of the previous companies, and creates a new corporation with new liabilities derived from those which have passed out of existence. Hence, where the declaration avers that the defendant had agreed that stock of a particular railroad in Indiana should be worth a certain price at a certain time and in a certain place, and the plea sets up that under the above mentioned statute of February 23, 1853, the stock of the railway named was merged and consolidated *by the consent of the party suing*, with a second railway named; so forming "one joint stock company of the said two corporations," under a corporate name stated, such plea is good, though it does not aver that the consolidation was done without the consent of the defendants. And a replication which tenders issue upon the destruction of the first company and upon the fact that its stock is destroyed, rendered worthless, and of no value, traverses a conclusion of law, and is bad.
2. Such a plea as that just mentioned contains two points, and two points only, which the plaintiff can traverse,—the fact of consolidation and the fact of consent; and these must be denied separately. If denied together, the replication is double, and bad.
3. When a plaintiff replies to a plea, and his replication being demurred to, is held to be insufficient, and he withdraws that replication and substitutes a new one—the substituted one being complete in itself, not referring to or making part of the one which preceded—he waives the right