ADAMS ET AL. *vs.* STATE, USE STATE BANK.

Declaration in Pulaski circuit court, and writ to Johnson county. Plea in abatement, that the writ improperly issued to Johnson, and judgment on the plea for defendants. Held that such judgment was merely in abatement of the writ, and no bar to the issuance of a new writ properly directed.

Writ of Error to Pulaski Circuit Court.

The State brought an action of debt, for the use of the Bank of the State of Arkansas, to the April Term, 1843, of the Pulaski circuit court, upon the official bond of the sheriff of Johnson county, against Wm. Adams, James P. Patterson, Samuel Adams, John W. Patrick, and Joseph James, securities in the bond.

A writ of summons was issued to the sheriff of Johnson county, and served upon the defendants. At the return term the defendants filed a plea in abatement of the writ, "because said writ was executed upon them without the jurisdiction of the court, *to wit*: in the county of Johnson," praying judgment

of the writ and that it be quashed. The plaintiff demurred to the plea, upon the ground that the Bank, for whose use the suit was brought, had the privilege of running process into any county in the State. The court overruled the demurrer, and the plaintiff declining to answer over, rendered judgment that defendants go hence without day, and recover of the Bank all their costs in that behalf expended. The plaintiff brought error, and this court affirmed the judgment. See *State, use &c. vs. Adams et al.* 5 *Ark. R.* 677.

On the 25th October, 1844, and after the judgment of the circuit court on said demurrer, plaintiff sued out a summons to the sheriff of Pulaski county against Samuel Adams, which was returned duly served; and at the same time took a summons to Johnson county against the other defendants, which was served upon all of them but Patterson.

At the October term, 1846, on motion of plaintiff, the cause was re-placed upon the docket.

Defendant, Samuel Adams, pleaded the above judgment in abatement of the suit. Plaintiff replied that the said judgment only extended to the writ, that the declaration remained on file, and that a writ of summons was issued thereon to the sheriff of Pulaski county, and returned duly served upon said defendant, &c. Defendant rejoined that said judgment was final, and the court sustained a demurrer to the rejoinder.

Defendants, Patrick and James, filed a similar plea, plaintiff replied the issuance of the summons to Pulaski county against Samuel Adams, and the writ to Johnson county against them, to which they demurred, and the court overruled the demurrer. William Adams made default, and the other defendants declining to plead over, final judgment was rendered, on writ of inquiry.

WATKINS & CURRAN, for the plaintiffs. The only question in this case, is whether the first judgment rendered was final. We do not, nor is it necessary that we should, contend that it was a

final bar to the cause of action, but simply that it was a final disposition of, and bar to, this particular suit. It would be no bar to another action for the same cause, but is a bar to this suit. If the plaintiff wished to proceed further, a new suit should have been commenced, by filing another declaration. True, the original plea filed in this case was only in abatement of the writ, and the plaintiff might have submitted to the plea and taken alias process, in which event no final judgment would have been entered; the judgment would have been merely in abatement of the writ: but instead of that, the plaintiff, for the purpose of testing her right to issue process to another county, elected to stand on the demurrer to the plea and permitted final judgment, and then sued error to this court. The language of the judgment is, "that the defendants go hence hereof without day and recover against said Bank for whose use the suit was brought, all their costs in this behalf expended."

But independent of every other consideration, the fact that the judgment was affirmed on writ of error sued from this court, is conclusive of the question, and writ of error will not lie from this court to any other than a final judgment; and even if it could be shown that the judgment was not final, that decision is conclusive—the law of the case, and cannot now be questioned or inquired into on this writ of error. If the first judgment had been against the defendants and the judgment been reversed, the cause would have been remanded. Even in that event it is very doubtful whether the defendants would have been compelled to appear; because the effect of it would have been to enable the Bank to do the very thing which the court decided she was not entitled to do, and to defeat the defence, which, by the decision of the court, had been adjudged sufficient. But as this judgment was affirmed, of course it was not remanded to the circuit court, and no further proceedings could be taken therein without filing another declaration and commencing a new suit.

We insist that this judgment must be reversed and the cause

remanded to the circuit court with instruction to dismiss and strike the same from the docket.

LINCOLN, contra,

OLDHAM, J. The plea in abatement filed by the plaintiffs in error, who were defendants below, was to the writ originally issued against them to the sheriff of Johnson county. The judgment of the court upon the refusal of the plaintiff below to reply to the plea was substantially that the writ abate, and that the defendants go hence without day. The plaintiff upon the first writ having abated by the judgment of the court undoubtedly had a right to sue out a valid writ properly directed, as much so as if the writ had been abated or quashed for any other cause than that set forth in the plea. We perceive no error in the judgment. Affirmed.