

CONWAY B. ET AL. vs. ROANE ET AL.

This court will not review its former decisions on a case not involving the questions decided in such former decisions.

After the death of part of the original trustees of the Real Estate Bank, a suit was properly brought in the names of the surviving trustees, on a note made to the Bank, and by it assigned to the original trustees.

Writ of Error to Hempstead Circuit Court.

DEBT, determined in the Hempstead Circuit Court, before HIGHTOWER, special Judge, in May, 1846.

The action was brought (27th Oct., 1845) by Roane, Conway, Biscoe, Moore, Preston, Davies, Faulkner, Craig, Hill, Smith, Witter, and Drennen, as surviving original trustees of the Real Estate Bank—Harris, Clarke, and Gibson, three of said original trustees being dead—against Conway B. and others, upon a note executed to the Bank, and assigned by her to said trustees. Judgment against defendants by default.

Defendants brought error, and assigned for errors that they were not served with process, and that the suit was not brought in the names of the proper plaintiffs.

CUMMINS, for the plaintiffs.

PIKE, contra.

SCOTT, J. We have considered the learned argument of the counsel for the defendants filed in this case, the object of which seems to have been to procure a review of the cases of *The R. E. Bank vs. Brodie et al.*, 2 Eng. 264, and *The same vs. Pickett*, *ib.* 510. And although we would cheerfully review these cases, and affirm, modify, or reverse their doctrine, as we might conclude, after such review, if a proper case was before us, we are unable

to perceive that any of the questions legitimately discussed or settled in those cases are involved in this. In this case the record shows a suit by the plaintiffs below as survivors of three others then deceased. They derive their title to sue as such survivors from an assignment in writing endorsed upon the bond which is the foundation of the action, and make profert of this bond and of the endorsed assignment. The writ of summons was regularly issued and executed upon each of the parties defendant, and a judgment by default regularly taken against them in the court below.

Finding, therefore, no error in the record, the judgment below must be affirmed with costs.
