

MILLER *v.* NUCKOLLS.

Opinion delivered September 30, 1905.

1. SLANDER—REVIVAL OF JUDGMENT.—While an action of slander abates with the death of either the plaintiff or the defendant, yet, if final judgment has been entered in plaintiff's favor, and defendant appeals, and thereafter dies, the action does not abate, as the action has become merged in the judgment. (Page 486.)
2. APPEAL—EFFECT OF SUPERSEDEAS.—An appeal with supersedeas does not have the effect of vacating a judgment, but only of staying proceedings thereunder. (Page 486.)

Appeal from Independence Circuit Court.

FREDERICK D. FULKERSON, Judge.

Motion to abate cause overruled.

*Gustave Jones*, for appellant.

*W. A. Oldfield and Wright & Matheny*, for appellee.

MCCULLOCH, J. This is an action for slander. The plaintiff (appellee) recovered judgment below, and the defendant (appellant) took an appeal to this court. Since the appeal was perfected, the appellant died, and his attorney, as *amicus curiae*, presents this motion to abate the cause. The appellee responds to the motion, and asks that the cause be revived against the administrator or executor of the deceased.

At common law actions of this kind abated with the death of either party, the wrongdoer or the party injured. "*Actio personalis moritur cum persona*" was a maxim of the common law. The statute of this State providing for revival of causes of action for wrongs done to the person expressly excepts from its operation actions for slander or libel, thus leaving the common-law rule in force as to those actions. Kirby's Digest, § 6286. It does not follow, however, that after a verdict and judgment in favor of the plaintiff an action for slander or libel abates. On the contrary, we hold that the cause of action becomes merged in the judgment, and, unless the same be set aside or reversed, there can be no abatement. This view is sustained by authority. *Newell on Slander and Libel*, p. 375; 21 Enc. of Pl. & Pr. p. 351; *Dial v. Holter*, 6 Ohio St. 228; *Ackers v. Ackers*, 16 Lea (Tenn.), 7.

An appeal and supersedeas do not have the effect of vacating a judgment, but only stay proceedings thereunder. *Fowler v. Scott*, 11 Ark. 675; 2 Cyc. p. 971; 20 Enc. Pl. & Pr. p. 1240; *Runyon v. Bennett*, 4 Dana, 599; *Low v. Adams*, 6 Cal. 277; *Martin v. South Salem Land Co.*, 94 Va. 28; *Fawcett v. Superior Court*, 15 Wash. 345.

The motion to abate is therefore overruled.