

cause, as it is expressly provided in the statute of February 15, 1791; and that the relation of attorney and client, for the purpose of receiving notice, is created by the statute, and cannot be dissolved by any act of the attorney or client, nor by the death of the client. If, after judgment, the client takes his execution and discharges the attorney, still, for this purpose, he remains attorney. As the capacity of the attorney to receive legal notice does not depend upon the will of the client, there seems to be no reason, why we should hold, that the capacity ceases by the death of the client.

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vs.  
Tarlton et al.

*Judgment for the defendant.*

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JOSEPH ELA vs HAMLIN RAND.

When a defendant pleads in abatement the omission of other persons, who ought to have been made defendants, it is not necessary to allege in the plea the places of abode, and the additions of the persons omitted.

ASSUMPSIT, against the defendant, as surviving partner of *Charles K. White*, deceased.

The defendant pleaded in abatement, as follows:—

“And the said *H. R.* comes and defends the wrong and injury when, &c., and prays judgment of the said writ, because he says, that the said several promises and undertakings in said declaration mentioned, if any such were made, were made jointly with *Daniel Rand*, who is still living, and with one *Robert Rand*, who is still living, and not by said *Hamlin* and said *Charles K. White*, alone; and this said *H. R.* is ready to verify. Wherefore, inasmuch as said *Daniel Rand*, and said *Robert Rand*, are not named in said writ, he, the said *H. R.* prays judgment of “said writ,” &c.

To this plea the plaintiff demurred, and the defendant joined in demurrer.

*R. Ela*, for the plaintiff, contended, that the plea was defective, in not stating the places of abode, and additions of the joint contractors, not named in the writ.

*Haven*, for the defendant, contended, that pleas in abate-

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ment, being matter of technical learning, are to be settled by precedents. Their form is as fixed as that of writs; and the party pleading in abatement is not required to shew, that on principle the form adopted is the best, but that the settled form has been pursued. Good reasons may be given for not requiring the addition of a joint contractor; but the principle is not now to be settled. The plea, in this case, is supported by all the precedents. 2 *Chit. Pl.* 415.—*Lilly's Entries* 2, 7.—*Story's Pleadings* 33–36.—2 *B. & P.* 420, *Powell vs. Fullerton*.—*Willes' Rep.* 40, *Alexander vs. Mau-man*.—2 *New R.* 364, *Powell vs. Layton*.—6 *Taunton* 587, *Godson vs. Good*.—4 *B. & A.* 93, *Taylor vs. Harris*.

*By the court.*—We are not aware of any rule of law, which makes it necessary, in a plea of this kind, to state the place of abode, and addition of the party omitted. This plea is in the usual form, and must be adjudged sufficient.

*Writ abated.*



#### J. KIMBALL AND WIFE *et al.* vs. RUFUS WILSON.

In an action on the case, in the nature of waste, brought by several plaintiffs, the release of the action, by one of the plaintiffs, is a good bar.

A general release, given after the commencement of an action, need not be pleaded *puis darrein continuance*, unless a plea has been before filed in the action. And a release, thus given, need not be pleaded in bar of the further maintenance of the action, but may be pleaded in bar generally.

Where a general release of the cause of an action pending has been given, the presumption is, that the costs have been adjusted by the parties.

THIS was an action on the case, in the nature of waste. The declaration alleged, that the plaintiffs and the defendant were seized of a tract of land in *Chester*, in this county, as tenants in common; and that, being so seized, the defendant, on the 1st November, 1820, &c., “wrongfully, and unjustly, and without the consent or license, and against the will of the plaintiffs, cut down, felled, and prostrated, &c., seventy trees, owned by the plaintiffs and defendant in common, as aforesaid, &c.; each of said trees being of the value of eight dollars, which same trees were standing and growing upon said land. and which same trees the defendant, at the several times aforesaid, took and carried away,