but, at the suggestion of the Court, the parties consented that all the notes sued on in ninety-eight counts, should be given in evidence under the count on an account stated. There is no case where a plaintiff has sued on two different causes of action, in two distinct suits, which might have been joined, and which the Court would have ordered to be consolidated if a rule had been moved, that he has been held to be barred in the one, after a recovery in the other. It is, at most, a matter of discretion with the Court to consolidate. It will always do it to prevent injustice and oppression. But the question here, is not one of consolidation, but whether the subject matter of the two suits constituted but one cause of action in favor of the plaintiff. We are of opinion that the plaintiff had a right to sue the defendants as soon as it was discovered that their intestate had collected the money on one execution. If it had been known that both had been collected, suit might have been brought on each, but the Court in the exercise of its power, would have compelled the plaintiff to consolidate. We can not recognize the principle, that an agent may collect the money of his principal, and by a consolidation in one receipt to the debtor, of the amount collected on several distinct debts, deprive him of his property, if he abuses his legal right of suing in several actions, when he might have recovered all in one suit.

The case of *Smith vs. Jones*, 15 *Johns. Rep.* 229, is the case of a suit on an indivisible contract. There was but one contract. The plaintiff sold the defendant three barrels of potash. Instead of suing for the three, he sued for one only in one action, and brought suit for the other two in a different action. The Court held that the contract being one and entire did not admit of division. The principle of this case may, I think, be traced back to an ancient English statute. But that does not matter. It has no application to the case before us.

Every general agent acts, we may say, under a special contract of agency to attend with diligence and fidelity to

every matter coming within his agency. Here is a contract which will cover his entire undertaking. But, so to speak, there are sub-liabilities, and if such an agent collects money that he does not account for, he may be sued after a reasonable time, without an express promise to pay; for the law implies a promise to pay as soon as he receives the money; under one contract of agency there may be any number of suits against him for moneys collected by him, and at the close of all, he may be called to a general account; and in that case, that there have been other suits will not avail him, except so far as there have been recoveries against him. If the defendants' intestate had been called to account in Chancery for his entire agency for this Bank, he certainly could not have defended himself by proof that, although he had collected the entire principal and interest on the executions, he had been sued in a Court of law for the amount collected on one which had been recovered and paid. There was error in the refusal of the Court to give this request in charge.

Judgment reversed.

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No. 63.—HENRY D. DARDEN, plaintiff in error, *vs.* JOHN BANKS and JAMES M. CHAMBERS, defendants in error.

The Planters' and Mechanics' Bank of Columbus issued certificates of deposit, of one of which, the following is in substance, a copy:

"John Peabody has deposited to the credit of D. McDougald, $6,325, which will be paid to his order on return of this certificate, in current bank notes."

Held, that this certificate was issued in violation of the second section of the act of 1837, to make penal the issuing, etc., of bank bills, etc., payable in anything but gold and silver coin, and was, therefore, void.

Debt, in Muscogee Superior Court. Decision on demurrer

by his Honor EDMUND H. WORRILL, presiding Judge. November Term, 1856.

This was an action brought by the plaintiff in error, Henry D. Darden, against the defendants in error, Banks and Chambers, as the surviving directors of the Planters & Mechanics Bank of Columbus, on two certificates of deposit, of one of which, the following is a copy, the other differing only in date and amount:

($6,325.00.) "PLANTERS & MECHANICS BANK,
Columbus, Georgia, Sept. 15th, 1841.

John Peabody has deposited to the credit of D. McDougald, six thousand three hundred and twenty-five dollars, which will be paid to his order on return of this certificate in *current notes*.

(Signed) M. ROBERTSON, *Cashier*."

And endorsed by McDougald to Darden without recourse.

There were several counts in the declaration, each alleging in substance the making and delivery of the certificates above referred to by the bank; their endorsement to Darden; the presentation of them to the bank for payment; its refusal to pay them, and their protest for non-payment. The declaration also alleged that defendants in error were the surviving members of the Board of Directors at the dates of said certificates; that at those dates the capital stock of said bank actually paid in, in specie, over and above the amount of specie actually deposited in the vaults for safe-keeping, was fifty thousand dollars and no more; and that the total amount of debts which the said corporation then and there owed, by bond, bill, note or other security, amounted to the sum of five hundred thousand dollars, being an excess of three hundred and fifty thousand dollars due by bond, bill, note or other security, over three times the amount of capital stock actually paid in; and that by reason of the violation of the fourth section of the charter of said bank, said surviving directors, under whose administration this excess occurred, were liable to, and owed the plaintiff in error said sums of money in said certificates specified.

To this declaration the defendants in error demurred. The Court sustained the demurrer and dismissed the case, and this decision of the Court is assigned as error.

R. J. MOSES; and J. JOHNSON, for plaintiff in error.

H. HOLT; and S. JONES, for defendants in error.

By the Court.—BENNING, J., delivering the opinion.

Were the certificates of deposit within the second section of the Act of 1837, to make penal the issuing, &c., of bank bills, &c., payable at more than three days after date, or payable in any other manner, or with any other thing than gold or silver coin? If they were, there can be little doubt that the demurrer was properly sustained. *Cobb Dig.* 102.

The second section of the Act is as follows: the parts that, in the opinion of this Court, are to be implied, being put in brackets.

"From and after the passage of this Act, it shall not be lawful for any bank or other corporation in this State, or any President, Cashier, Teller, Clerk or any other officer or agent of any bank or other corporation in this State or elsewhere, or for any person or persons acting as an officer or officers, agent or agents, of any bank or other corporation in this State or elsewhere, to pay away or tender in payment, emit, issue, pass or circulate any bank bill, note, ticket, check, draft, receipt, instrument under seal, or chose in action, intended, fitted, or designed for circulation, instead or in character of either." [That is, or chose in action, intended, fitted, or designed for circulation instead or in character of a bank bill, note, ticket, check, draft, receipt, or instrument under seal] "or" [to pay away &c.] "any promise, to pay or to do anything whatever, in writing, to be used, or intended to be used, as paper