

is successful, of objecting to the union of these parties, as plaintiffs, in the mode in which, perhaps, alone, it can be resisted, that is by demurrer. That was the mode in which the objection was presented in *Cholmondely vs. Clinton*, and it appears to be settled, that if the parties having interests several and distinct, sue together, as co-plaintiffs, the objection must be taken by demurrer. *Story's Equity Pl., sec. 544; Watertown vs. Cowen, 4 Paige, 510.* But, if the court, upon granting the application of the bank, should allow the defendants to withdraw their answers and demur, then the delay and expense already incurred, might have been avoided, if the bank had made its motion at an earlier period of the cause. If the application now made, is successful, parties situated as the bank is with regard to this case, may not choose to assume the relation towards it of a plaintiff, nor the responsibility for costs, which that relation may involve, until the proof has all been taken, and the probable fate of the controversy can be anticipated.

If in this case the bank is allowed to become a co-plaintiff, nothing can be fairer, and indeed it is understood to be conceded, that the defendants may answer anew, and thus new issues will be presented, and it may be, new evidence will become necessary. All this independently of the objections resting upon the high and controlling authority of *Lord Redesdale*, is very objectionable, and, therefore, I am of opinion, the motion must be refused, and shall so order.]

The following opinion upon the merits was delivered on the 11th of July, 1850, during the July term of the court.

THE CHANCELLOR:

The evidence in regard to the mental condition of Charles T. Ellicott, at the period of the execution of the will of July, 1831, and of the deed of February, 1832, is contradictory and inconclusive, and, therefore, if it was absolutely necessary to decide upon the validity of those papers, upon the ground of his incapacity to dispose of his property, it is quite probable,