be tried 14 years after it arose. From this complexity there is no logical escape.

Would it be a wise and just exercise of discretion on the part of this court to permit this amendment and rearrangement of the line of battle on a ground entirely different from that which the plaintiff has contested for nine years past? I am satisfied, on due consideration, that it would be a gross abuse of the exercise of discretion to permit this to be done. The practice act of this state is liberal in the matter of permitting amendments to pleadings, in the furtherance of justice, provided "the amendment does not change substantially the claim or defense." But the supreme court of the state has uniformly held, in construing such provisions of the practice act, that the allowing of such amendments rests largely in the discretion of the trial court. In Henderson v. Henderson, 55 Mo. 534, the court say:

"It is a matter resting in the discretion of the circuit court, under the circumstances of the case, to allow or forbid the filing of a supplemental answer after the evidence is closed,—where, for example, the facts proposed to be set up might have been discovered by the use of ordinary diligence."

In Stewart v. Glenn, 58 Mo. 486, the court say:

"Our statute is very liberal on the subject of permitting amendments, and we think that whenever an amendment is asked by either party during the progress of the cause, and the facts are made to appear showing that the interest of the party asking for the amendment requires that the amendment should be made, the court should always permit the amendment, under such terms as would be just to the adverse party, unless the party asking for the amendment has been guilty of laches on his part; but in all such cases a large discretion must be given to the court to which the application is made, whose duty it is to see that no injustice is done to either party if it can be prevented."

In Sewing-Mach. Co. v. Philbrick, 70 Mo. 648, the court again declared that:

"The last section of the chapter on amended pleadings requires the court to so construe the law in relation to pleadings, and amending the same, as to discourage negligence and deceit, to prevent delay, and to secure the parties from being misled."

Judge Napton, in Lottman v. Barnett, 62 Mo. 159, while recognizing the customary right of the party to indulgence in amending a pleading so as to avoid the effect of the statute of limitations, yet held that this indulgence would not be extended to an amendment that changed the cause of action.

While the liberality of amendment should be accorded to the litigant, to enable him to so recast his pleading as to prevent a failure of justice, yet it should never be lost sight of that the sharp edge of the sword of justice should not be turned alone upon one of the parties to the contest. When the plaintiff, over nine years ago, abandoned his complaint that his injuries resulted from the neglect of a positive duty devolved upon the defendant to exercise due care in selecting a competent servant to work with the plaintiff, he thereby, in effect, notified the defendant that he no longer made claim of liability on the part of defendant by reason of such neglect. Therefore, after he had held the defendant in court for nearly 10 years upon another

and different ground of liability, on which he concedes defeat, it would be gross injustice to defendant to revive, by way of amendment, the abandoned original ground of recovery, and attempt thereby to reinstate a cause of action otherwise dead under the statute of limitations. As applied to actions of this character, in the estimation of the legislatures of both the states of Kansas and Missouri, these statutes of limitation are pre-eminently statutes of repose.

If this amendment should be allowed by the court, and its effect should be held to strip the defendant of the protection of the statute of limitations, the grossest injustice would probably be done. After the lapse of 14 years since the occurrence to be investigated, important and necessary witnesses to the defense would likely be dead or gone beyond discovery. As already suggested, by the abandonment for nearly 10 years of the cause of action embraced in the proposed amended petition, the plaintiff has invited the defendant to not preserve, de bene esse, its evidence, nor keep track of its witnesses to the conduct of the defendant in selecting the servant Kline, and its knowledge of his competency. This issue, as to the competency of the man Kline, if revived, would be especially unequal to the defendant, as Kline long since died, as shown on the former trials of this case. As the cause of action now propounded under this amended petition is different from that heretofore tried in this court, the evidence given on said trials would, on the essential question of defendant's negligence in selecting an incompetent servant, be wholly inapplicable and unavailing. Scovill v. Glasner, 79 Mo. 449. No citizen should be continually harassed by a suitor thus experimenting on the chances of recovery. It is to the public interest that there should be an end to a given litigation. To this end it inheres in the very genius of our institutions of government that no man shall be thus twice vexed with a claim for damages growing out of the same injury. The plaintiff should be held to abide by the issue fought on his own chosen field of battle.

The motion filed by plaintiff with the clerk of this court on the 18th day of December, 1897, is overruled, and his application for leave to file the amended petition offered herein is denied.

STATE OF NEBRASKA v. HAYDEN.

(Circuit Court, D. Nebraska. August 10, 1898.)

1. PARTIES—SUBSTITUTION OF PLAINTIFFS—REAL PARTY IN INTEREST.
   In an action commenced by a state treasurer to recover money deposited in a bank under a statute authorizing such deposits, the state, which is the real party in interest, may properly be substituted as plaintiff by amendment, as such substitution makes no change in the cause of action.

2. PLEADING—AMENDMENT OF PETITION—CHANGE IN CAUSE OF ACTION.
   Where the original petition in an action against a bank to recover deposits alleged that plaintiff, as state treasurer, deposited certain certificates of deposit issued to his predecessor by defendant bank, and received credit in his account therefor, an amendment alleging that he received payment of the certificates and deposited the proceeds makes no change in the cause of action stated.