

a ferry, a turnpike road, a canal, a street, a furnace, a joint stock cotton factory, &c.; *Crowder v. Tinkler*, 19 Ves. 622; *Winstanley*

against Yates, upon which those suits were brought on the bond, was for goods sold by Yates as auctioneer, for Story, the price of which he had not paid over; which, not being a claim covered by the terms of the bond, according to a fair construction of the city ordinance, in conformity with which it was given, this plaintiff cannot be held liable for it; because that ordinance requires a bond from auctioneers to secure the payment of the auction duties made payable to the city, and nothing more. The bill having been filed and submitted:

KILTY, C., 23d December, 1806.—It is ordered, that *subpcena* and injunction be issued as prayed. But the Chancellor considers it a doubtful case; and therefore will, during the first four days of February Term next, or of any term thereafter, hear a motion for its dissolution. And the register is directed to endorse a copy of this order on the injunction.

On the 27th January, 1807, the plaintiff, by his petition on oath, stated that as he had been advised his bill did not contain all the necessary parties; that he could not have the relief he was entitled to, under the general prayer of the bill, without some additional special interrogatories; that William McMechen, the attorney who appeared for the defendants in the suits on the bond, was a necessary party; and that the defendant Story was a citizen, resident of the State of New York, against whom, as such, he wished to obtain an order of publication. Wherefore he prayed leave to amend his bill.

KILTY, C., 28th January, 1807.—The Chancellor will determine on this petition during the first week of the ensuing February Term, which he considers will be in time to do justice to the parties.

The plaintiff, by his petition filed on the 4th of February, 1807, renewed his application for leave to amend his bill.

KILTY, C., 5th February, 1807.—The Chancellor is still of opinion, that a determination on the petition for amending the bill need not be made before the ensuing term. But as it is pressed by the complainant, leave is given to amend the bill as prayed; with the express proviso, that this leave shall not alter, or do away the order of the 23d December last, that the Chancellor would, during the first four days of February Term next, or of any term thereafter, hear a motion for its dissolution.

On the 16th of February, 1807, the plaintiff filed his amended bill, in which he states the fact of the non-residence of the defendant Story; makes William McMechen a party; and propounds to the defendants a number of interrogatories, which he conceived to be important and necessary to help out the case he had set forth in his original bill.

After which, on the 23d of February, 1807, the defendants Yates and the Mayor and City Council put in their answers separately. Yates admits, that the judgments were rendered against him and the plaintiff as stated. But he denies all fraud and misrepresentation as charged in the bill; and introduces sundry matters in avoidance of the equity on which the plaintiff founded his claim to relief. On the 24th of the same month the defendant