

ing the amendment. *Bliss v. Boscawin*, 2 *Ves. & B.* 102; *Eden Inj.* 87; *Pratt v. Archer*, 1 *Cond. Chan. Rep.* 221; *Davis v. Davis*, 2 *Cond. Chan. Rep.* 526; *Powell v. Lassalette*, 4 *Cond. Chan. Rep.* 260.

This bill has, however, not only omitted to bring before the Court those who, it appears from its statements, have an interest in the claims and pretensions set forth; and also that body who is charged to be the cause of all the alleged injury; but it has brought before the Court certain persons, who, in the capacities in which they stand here, have not the least interest in the matter in controversy; for, where the legal capacities of parties are different, such capacities must be considered as if they were several persons. *Coppin v. Coppin*, *Select Ca. Chan.* 30; *S. C. 2 P. Will.* 295; *Salmon v. The Hamborough Company*, 1 *Ca. Chan.* 204; *Meliorucchi v. Royal Exch. Assu. Comp.* 1 *Eq. Ca. Abr.* 8, p. 8; *Johnson v. Mills*, 1 *Ves.* 283; *Ward v. Northumberland*, *Anstr.* 477; *Rann v. Hughes*, 7 *T. R.* 350, *n*; *Lyle v. Rodgers*, 5 *Wheat.* 407.

It is stated that "Charles F. Mercer is the president of the said company, and Joseph Kent, Andrew Stewart, Peter Lenox, Frederick May, Walter Smith, and Phineas Janney are the directors of the said company;" and a writ of subpœna is prayed against the said president and directors; so that, by this description of person, those individuals have been called here, in their natural capacities, to answer this bill. But, in those capacities, they have no interest in the matter, as is manifest, from the very sum and substance of the charges; and therefore they ought not, as such, to have been made parties; and if they had on that account demurred to the bill, their demurrer must have been sustained. *Salmon v. The Hamborough Company*, 1 *Ca. Chan.* 204. It appears that Isaac McCord has no other concern with this matter than as a contractor with, or agent of The Chesapeake and Ohio Canal Company; and yet a subpœna has been expressly asked for against him by name, and he has been brought here as a defendant. Agents and servants of the principal may be served with the injunction and made to obey it, but they should not be made parties to the suit. Persons who stand thus uninterested in the matter in controversy cannot be made parties to the suit. Where a person who has no interest in the matter has been improperly associated with others as a defendant, the bill may be dismissed as to him, with costs,

109 *without prejudice to the case as regards all others. But it happens, unfortunately, in this case, that if the bill were to be dismissed as against these defendants, who have no interest in the case, there would be no defendant in Court, and the whole suit would be totally broken up.

Where there are a plurality of defendants, they may join in making answer to the bill, or they may answer separately, or they may make a joint and several answer as best suits their conveni-