

posited in their bank by the defendant Anderson, in his own name and as his own property; but they averred, that they were entirely ignorant of all the other circumstances set forth in the bill.

The plaintiffs by their petition stated, that the defendant Odom had gone beyond sea, where they did not know, nor when he was likely to return; that the new matter charged in their amended bill was not within the knowledge of Odom, who had appeared by solicitor, and had answered the original bill. Whereupon they prayed, that a service of the subpoena upon Odom's solicitor might be construed and deemed as a sufficient service upon Odom himself, so as to compel him to answer, or if he failed to do so, that they might proceed regularly as if he had been summoned.

BLAND, C., 6th July, 1829.—The petition of the plaintiffs having been submitted, the proceedings were read and considered.

It appears, that the defendant Odom, who is a mariner and master of a vessel, in the merchant service, had made answer to the original bill; after which the plaintiffs filed an amended bill; but before Odom had been served with a subpoena to answer, he sailed on a voyage to a foreign port; that he is a citizen and resident of Maryland, and is as much at home as those usually are who, as mariners, are engaged in such pursuits as he is, and has been for some time past; and that he may now be expected to return soon to the United States, when he may be found at his usual residence in this State.

By the order of the 15th of September last, the plaintiffs attempted to treat Odom as a non-resident, and to proceed by publication as against an absent defendant to have their amended bill, as to him, thus taken *pro confesso*. But, conceiving the circumstances would not warrant it, I refused to pronounce the judgment consequent upon such a course of proceeding. All the Acts of Assembly, which authorize a plaintiff to proceed against a defendant by publication, relate to absconding or non-resident defendants; but it was shewn and admitted, that the defendant Odom stood in neither of those predicaments. He is a citizen and resident of Maryland, now abroad in his proper and lawful calling, with an intention of returning when the voyage or trade in pursuit of which he left home, shall have been accomplished. A person * who goes abroad, not to reside, but for the purpose of adjusting his affairs; or a sailor, who is in the habit of coming backwards and forwards, in his vocation, cannot be deemed an absconding or a non-resident defendant. *White v. Greathead*, 15 Ves. 2; *Nelson v. Ogle*, 2 Taunt. 253. **429**

It is therefore perfectly manifest, that none of the Acts of Assembly relative to absconding and non-resident defendants, apply to the case of this defendant Odom. The Legislature intended, by those Acts, to introduce a remedy in certain cases for which it