

the bill, he cannot be presumed to be charged with a defence of the modified or newly formed case; which his client, being a resident citizen, has as clear a right to be notified of, and to answer unto for himself, as he had to consider and answer the original bill.

It has been suggested, that Odom's answer to the amended bill must be merely formal, as he knows nothing of the new matters therein stated. But it is impossible to anticipate how far its aspect may be changed by the answer which Odom has a right to make, and may give to this amended bill. *Angerstein v. Clarke*, 1 *Ves. Jun.* 250; *Jopling v. Stuart*, 4 *Ves.* 619. I am aware, that the case may be delayed very much by Odom's remaining abroad; but he is a resident citizen; and, as such, has an undoubted right to be notified of this amended bill by the service of process upon him in the usual mode, to the end, that he may, if he thinks proper, answer it for himself. And this, his unquestionable right, I have no power to impair in any way whatever. (g)

Whereupon it is ordered, that the said petition be and the same is hereby dismissed with costs.

*The plaintiffs by their petition prayed leave so to amend their bill as to allege, that the defendant Odom was then a **431** non-resident; and to pray for an order of publication against him. The leave was granted as prayed; and the bill amended accordingly. And then on motion of the plaintiffs, on the 31st of October, 1829, an order of publication was passed, in the usual form, warning the defendant Odom to appear and answer on or before the 8th day of March then next.

On the 13th of November, 1829, the commissioners made return of their proceedings under the interlocutory decree of the 14th of April, 1828, and in the testimony, so taken and returned, there is evidence which goes to sustain some of the claims of the defendant Law for disbursements as alleged in his answer.

After the 8th of March, 1830, the plaintiffs produced a certificate of the order of the 31st of October, having been published as required. And the parties submitted to the Chancellor sundry affidavits as to the residence of the defendant Odom.

(g) It has been since declared, that where a defendant, of full age, in any case, shall, upon two successive subpoenas, be returned *non est*, it shall be lawful to order publication of the substance of the bill or petition against such defendant as if a non-resident of this State, and to proceed in the same manner and to every effect, as if he were not a resident of this State, and as if the case made in the bill or petition were within any of the Acts of Assembly made in respect of absent or non-resident defendants; Provided, that each of said subpoenas be delivered to the sheriff for service at least twenty days before the first day of the term to which it shall be returnable, 1832, ch. 302, s. 2.—*Buckingham v. Peddicord*, 2 Bland, 447.