

an appeal therein, in the name of the bank, to the Court of Appeals.

The bill prays, that the defendants, Kerr and Glenn, may be required to interplead and settle their rights to the said sum of \$645 95, and to said notes, so that the bank may know to whom to pay and deliver over the same, and that said John D. Kerr, may be restrained by injunction from further proceedings in his said action of trover, and that said Glenn may also be restrained from commencing any action against the bank on account of the notes in question, and for further relief. The bill then concludes with a prayer for an order of publication against said John D. Kerr, who is averred to be a non-resident of the state, and for process of subpoena against said Glenn.

To this bill, the defendant, John D. Kerr, filed his answer on the 27th of September, 1849, in which, after admitting facts stated in the bill, as to their assignment to respondent, and notice thereof to the bank, and demand of said notes from the bank by respondent, and the institution of the actions of trover and assumpsit, he avers, that the said assignment was made to him by said Edward M. Kerr, for a *bona fide* and valuable consideration, that its validity was questioned in the said action of assumpsit, and after full argument was sustained by the verdict and judgment in that case which still remains unreversed. The answer also insists that the said Gill, neither as attorney of Potter, nor as receiver, as stated in the bill, had any rightful power or authority to interpose between the bank and respondent, as well because the subject of the assignment was not in any way partnership property, as also, because it was a foregone and past transaction, and had become the right of the respondent, even if in any sense it would have become considered as partnership property, in case the same had been still the right of said Edward M. Kerr. That if at any time the bank could properly and successfully call upon the respondent to interplead with any person claiming adversely, such time was past and gone by, prior to the filing of this bill. That the supposed title of said Gill was utterly gone, by reason of a decision of the Court of Appeals, reversing the order of the Chan-