

For these reasons, I am of opinion, that the case of *Cockrell vs. Cholmely*, 4 *Eng. Cond. Ch. Rep.*, 494, cannot be relied on in support of the application to compel the bank to elect, even if it could be regarded as holding an adversary relation to the petitioner, which, however, may well be doubted. The bank, cannot in any view be considered as a plaintiff, with respect to the action of trover, because, in that action, there has been no judgment and no appeal. But as it is admitted that the bill of interpleader cannot be maintained with respect to the action of assumpsit, an order will be passed, requiring the bank to elect whether it will prosecute the appeal from the judgment of the County Court in that action, or pursue its remedy upon this bill.

With regard to the injunction to restrain the defendant, Kerr, from proceeding in his action of trover and conversion, and the defendant, Glenn, from commencing any action against the complainants in respect to the subject spoken of in the proceedings, it may be sufficient now to say, that though the bill prays *for relief* by way of injunction, it does not pray *for the process* of injunction, without which prayer the process cannot be granted. *Story's Eq. Pl. section 41, note 2.*

The Chancellor thereupon passed the following order :

*The President and Directors of
The Union Bank of Maryland,
vs.
John D. Kerr and John Glenn.*

*In Chancery,
15th February, 1850.*

Upon the petition of the defendant, John D. Kerr, and for the reasons stated, and after hearing and considering the argument of counsel, it is ordered, that the plaintiffs, within eight days after notice of this order, elect whether they will proceed at law with their appeal from the judgment of Baltimore County Court, in the action of assumpsit, in the proceedings mentioned, or in this court, in this suit, with respect to the sum of money for which said judgment was rendered, and, that if the said complainants elect to proceed with their said appeal, the bill, with respect to the sum so recovered, and to that extent, will be dismissed with costs, and if they elect to proceed in this court,