

*6th Cross Interr.* From your knowledge of the land when Mr. *Henderson* moved on it, could there be any reasonable prospect of ever paying for it from its products?

*Answer.* That he cannot say from his knowledge of the land whether there was or was not a reasonable prospect, when Mr. *Henderson* moved on it, of paying for it from its products; he thought the land was good land for that part of the country; it required improvement before it could be cultivated to advantage.

After the examination of the witness was thus closed, the solicitor of the defendants filed with the commissioners the following objection: "On the part of the defendants so much of Mr. *Waring's* deposition as goes to prove, by the parol declarations of *John Henderson* deceased, any promise or acknowledgment concerning the purchase money of the land in question; especially in so far as it goes to contradict or explain the receipt of *J. M. Lingan* on the deed for the purchase money; or the complainant's exhibit A, referred to in said deposition, (purporting to be said *John Henderson's* receipt for the deed, dated June 10th, 1807,) is objected to as inadmissible, as well under the particular provisions of the statute of frauds, as the general rules of evidence, by which evidence to contradict or vary a written instrument is excluded."

The commission, with this testimony and these objections, were returned and filed on the 12th of July, 1824. Some time after which the plaintiffs by their petition stated, that they had by mistake alleged in their bill, that all the defendants were non-residents, when in truth the defendant *Richard Henderson* always has been, and is now a resident of Montgomery county in this State. Whereupon they asked leave so to amend their bill as to pray process of *subpœna* against him.

16th January, 1826.—BLAND, Chancellor.—An order of publication, such as that prayed for by the bill of these plaintiffs, is allowed by the acts of assembly only as a substitute for a *subpœna* in certain specified cases, which are thus made exceptions to the general rule, which requires, that the regular process of the court should be prayed for and issued against all who are to be called in as parties and defendants to the suit. Hence it must appear upon the face of the bill, that the case is of such a nature as to authorize an order of publication warning a *resident* defendant to appear, or it must be expressly stated in the bill, that the parties therein named *do not reside* within the State, so as thereby to lay a proper foundation for praying for an order of publication warning them to