

appear and answer. Where a husband and wife, who neither of them reside within the State, are proposed to be made defendants, it is necessary that she should be warned by the order as well as her husband, otherwise her interests cannot be bound. (a) In all cases the granting of such an order of publication is almost as much a matter of course as the issuing of a *subpœna*; because it is conceived that the plaintiff proceeds upon it at his peril, for if the case be such, or the defendant be not in fact a non-resident, so as to authorize such an order, any decree which the plaintiff may thus obtain must be considered as utterly void in point of fact. (b) These plaintiffs having discovered their mistake, do well therefore to have their bill amended in this respect. Let the amendment be made as prayed.

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After which, on the 17th of November, 1826, the defendant *Richard Henderson* alone filed the following plea:

“This defendant by protestation to all the discoveries and relief, in and by the said bill sought from or prayed against this defendant and others, doth plead in bar, and for plea saith, that by an act of assembly made and passed at April session in the year one thousand seven hundred and fifteen, entitled, “An act for limitation of certain actions, for avoiding suits at law,” it was amongst other things enacted, that all actions of trespass *quare clausum fregit*; all actions of trespass, detinue, *sur trover*, or replevin for taking away goods or chattels; all actions of account, contract, debt, book, or upon the case, other than such accounts as concern the trade or merchandize between merchant and merchant, their factors and servants which are not residents within this province; all actions of debt for lending, or contracts without specialty; all actions of debt for arrearages of rent; all actions of assault, menance, battery, wounding and imprisonment, or any of them, shall be sued or brought by any person or persons within this province, at any time after the end of this present session of assembly, shall be commenced or sued within the time and limitation hereafter expressed and not after; that is to say, the said actions of account, and the said actions upon the case, upon simple contract, book debt, or account, and the said actions for debt, detinue, and replevin for goods and chattels, and the said actions for tres-

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(a) *Martin v. Russell*, MS., 22d December, 1797.—(b) *Carew v. Johnston*, 2 Scho. & Lefr. 280.