

new frame and direction to be given to the writ of injunction itself; there the very prayer for such an amendment carries with it a tacit admission, that the basis of the injunction, which had been previously granted, is substantially wrong; and therefore, upon granting the amendment the injunction is gone of course, unless expressly saved by the terms of the order granting the amendment. (p)

This bill has, however, not only omitted to bring before the court, those who, it appears from its statements, have an interest in the claims and pretensions set forth; and also that body who is charged to be the cause of all the alleged injury; but it has brought before the court certain persons, who in the capacities in which they stand here, have not the least interest in the matter in controversy; for, where the legal capacities of parties are different, such capacities must be considered as if they were several persons. (q)

It is stated, that '*Charles F. Mercer*, is the president of the said company, and *Joseph Kent*, *Andrew Stewart*, *Peter Lenox*, *Fredrick May*, *Walter Smith*, and *Phineas Janney* are the directors of the said company;' and a writ of *subpœna* is prayed against the said president and directors; so that, by this description of person, those individuals have been called here, in their natural capacities, to answer this bill. But, in those capacities, they have no interest in the matter, as is manifest, from the very sum and substance of the charges; and therefore, they ought not, as such, to have been made parties; and if they had, on that account, demurred to the bill, their demurrer must have been sustained. (r) It appears that *Isaac McCord* has no other concern with this matter than as a contractor with, or agent of *The Chesapeake and Ohio Canal Company*; and yet a *subpœna* has been expressly asked for against him by name; and he has been brought here as a defendant. Agents and servants of the principal may be served with the injunction and made to obey it; but they should not be made parties to the suit. Persons who stand thus uninterested in the matter in controversy cannot be made parties to the suit. Where a person who has no interest in the matter has been improperly associated with others as a defendant, the bill may be dismissed as to him, with costs;

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(p) *Bliss v. Boscawin*, 2 Ves. & B. 102; *Eden Inj.* 87; *Pratt v. Archer*, 1 Cond. Chan. Rep. 221; *Davis v. Davis*, 2 Cond. Chan. Rep. 526; *Powell v. Lassalette*, 4 Cond. Chan. Rep. 260.—(q) *Coppin v. Coppin*, Select Ca. Chan. 30; S. C. 2 P. Will. 295; *Salmon v. The Hamborough Company*, 1 Ca. Chan. 204; *Meliorucchi v. Royal Exch. Assu. Comp.* 1 Eq. Ca. Abr. 8, p. 8; *Johnson v. Mills*, 1 Ves. 283; *Ward v. Northumberland Anstr.* 477; *Rann v. Hughes* 7 T. R. 350, n.; *Lyle v. Rodgers*, 5 Wheat. 407.—(r) *Salmon v. The Hamborough Company*, 1 Ca. Chan. 204.