

who goes abroad, not to reside, but for the purpose of adjusting his affairs; or a sailor, who is in the habit of coming backwards and forwards, in his vocation, cannot be deemed an absconding or a non-resident defendant. (*k*)

It is therefore perfectly manifest, that none of the acts of Assembly relative to absconding and non-resident defendants, apply to the case of this defendant *Odom*. The legislature intended, by those acts, to introduce a remedy in certain cases for which it had been held to be, in all respects, beyond the power of the court to provide. The object was to substitute a public warning, through the newspapers, for a personal summons, in cases where a summons could not be served at all, or without great difficulty. For, although the service of a *subpœna* abroad is deemed sufficient; yet it cannot, in all cases, be effected; and, where it can, the proof of such service is always attended with much delay and expense. Those legislative enactments, in relation to non-residents, clearly indicate, that the court, in the opinion of the Legislature, has no power to dispense with the service of process on the defendant, in the usual mode, whereby he is to be notified of, and called on to answer any matters of fact which the plaintiff has set forth as the foundation of a claim for relief against him. And this is recognized as a well established general rule by all the authorities. (*l*)

This, however, like almost all other general rules, has some exceptions or modifications. The court has substituted service, in several cases, where the defendant may have notice of the proceedings, and where, in case he goes out of the way, there is a person who he has named in court as his agent, and who the court can look upon as such. But a person named agent for a different purpose cannot be looked on in that light. (*m*) As in case of an injunction to stay proceedings at law, the attorney at law is such an agent, who the court can regard as one charged with the whole defence of the matter in equity; and so too, where a defendant, who lives abroad, refuses to answer, after having appeared as required by the *subpœna* with which he has been served, the court will order service on his solicitor to be deemed good service of a *subpœna* to answer an amended bill; because in all such cases there

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(*k*) *White v. Greathead*, 15 Ves. 2; *Nelson v. Ogle*, 2 Taunt. 253.—(*l*) 2 Mad. Pr. Chan. 198; 1 Harr. Pra. Chan. 206; *Buckingham v. Peddicord*, 2 Bland, 447; *Nolan v. Nolan*, 12 Cond. Chan. Rep. 47, 121.—(*m*) *Smith v. The Hibernian Mine Company*, 1 Scho. & Lefr. 238.