

is a person before the court charged with the care of the whole matter in controversy; and one who the court can, with propriety, regard as an agent having had committed to him the defence of the whole subject in behalf of the non-resident defendant. (n)

But, in this instance, a resident citizen defendant has evidently done no more than to commit his interests, in a specified case, to the management of his solicitor according to the defence expressed in his answer to the original bill. In these respects his situation is materially different from that of a contumacious non-resident defendant. The agency constituted by such a defendant is, evidently, that of a general charge; but the confidence reposed in the solicitor, in this case, is special and particular. He has been furnished with an answer or defence exactly fitted to a given case; and therefore, now, that it has been varied by an amendment of the bill, he cannot be presumed to be charged with a defence of the modified or newly formed case; which his client, being a resident citizen, has as clear a right to be notified of, and to answer unto for himself, as he had to consider and answer the original bill.

It has been suggested, that *Odom's* answer to the amended bill must be merely formal, as he knows nothing of the new matters therein stated. But it is impossible to anticipate how far its aspect may be changed by the answer which *Odom* has a right to make, and may give to this amended bill. (o) I am aware, that the case may be delayed very much by *Odom's* remaining abroad; but he is a resident citizen; and, as such, has an undoubted right to be notified of this amended bill by the service of process upon him in the usual mode, to the end, that he may, if he thinks proper, answer it for himself. And this, his unquestionable right, I have no power to impair in any way whatever. (p)

Whereupon it is *Ordered*, that the said petition be and the same is hereby dismissed with costs.

(n) *Gildenichi v. Charnock*, 6 Ves. 171.—(o) *Angerstein v. Clarke*, 1 Ves., jun., 250; *Jopling v. Stuart*, 4 Ves. 619.

(p) It has been since declared, that where a defendant, of full age, in any case, shall, upon two successive *subpœnas*, be returned *non est*, it shall be lawful to order publication of the substance of the bill or petition against such defendant as if a non-resident of this state, and to proceed in the same manner and to every effect, as if he were not a resident of this state, and as if the case made in the bill or petition were within any of the acts of Assembly made in respect of absent or non-resident defendants; Provided, that each of said *subpœnas* be delivered to the sheriff for service at least twenty days before the first day of the term to which it shall be returnable, 1832, ch. 302, s. 2.—*Buckingham v. Peddicord*, 2 Bland, 447.