

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 subpoena 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. 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.

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. *Smith v. The Hibernian Mine Company*, 1 *Scho. & Lefr.* 238. 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 subpoena with which he has been served, the Court will order service on his solicitor to be deemed good service of a subpoena to answer

430 an amended bill; because in all such cases there * 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. *Gildenichi v. Charnock*, 6 *Ves.* 171.

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