tion within the sense and meaning of the statutory remedy. That remedy we can not carry beyond the fair meaning of the terms used by the Legislature. If the complainant, indeed, had taken up the bill, he would have been entitled to his attachment bill, not by virtue of the 8th section, but as creditor by virtue of the previous sections.

We are of opinion that the decree must be affirmed.

UNION BANK v. NEWMAN.

NASHVILLE, DECEMBER, 1843.

ATTACHMENT ANCILLARY TO SUIT AT LAW. Pending a suit at law, commenced by service of process, a court of chancery possesses no power to impound the property of the defendant for the purpose of satisfying the judgment of the plaintiff when it shall be obtained. (Changed by statute, 1843, 29; Code, sec. 3455. See Fisher v. Cummings, 7 Humph. 233, citing this case. See, also, Isaacks v. Edwards, 7 Humph. 465.)

Washington, for complainant.

Garland, for defendant.

Reese, J., delivered the opinion of the court.

This, too, is an attachment bill against the same defendant mentioned in the preceding case of Turner v. Newman and others, and founded on the same facts or allegations. But the attitude of the parties differs widely. The complainants, the holders of the bill of exchange, had commenced a suit at law, by personal service, against Henry Newman and other parties to the bill of exchange, and, during the pendency of that suit, Henry Newman was attempting to convey his property beyond the limits of the State. The complainants, it is admitted, do [331] not come within the 8th section of the act of 1836, ch. 43. But they pray to be substituted to one Bourne, the last endorser upon the bill of exchange, who, the bill alleges, does come within that section. And the complainants pray to be substituted to his rights in that behalf, if entitled to any such substitution, as to which it is not material to enquire. We have determined that Turner, in the preceding case, stand-

ing in the attitude of Bourne, had no right, under the provisions of the act of 1836, ch. 43, to file a bill against his co-accommodation endorsers. The substitution, then, would avail nothing.

But it is said this is an attachment in the nature of a *ne exeat*, and the bill could be maintained on general principles, and as auxiliary to the legal remedy. Where the subject matter of a controversy at law is about to be removed so as to defeat the legal remedy, a court of chancery will interfere. But a suit being commenced at law, by the service of process and being pending, we are not aware that a court of chancery possesses the power to impound the property of the defendant for the purpose of satisfying the judgment of the plaintiff when it shall be obtained. Indeed, since the abolishment of the *capias ad respondendum*, which kept the person of the defendant within the jurisdiction of the court to satisfy the plaintiff's claim, or, if he left the State, subjected his bail, there is a great chance that fraudulent removals may take place, and a failure of justice ensue. It is for the Legislature to supply the remedy, and it can hardly be insisted that upon that ground a new and hitherto unknown auxiliary jurisdiction should, as a matter of course, in every case, spring up in the courts of chancery.

Let the judgment be affirmed.

OLDHAM & BAILEY v. HUNT.

NASHVILLE, DECEMBER, 1843.

JOINT LIABILITY—NOTE ONE OF THE MAKERS OF WHICH ADDS A SEAL. A joint action of debt will lie against two makers of an instrument in the form of a note, one of whom annexes a seal to his name, while the other does not. (See Hollis v. Pond, 7 Humph. 223, citing this case. And see Code, sec. 1804, abolishing private seals.)

[332] Kimble, for plaintiffs in error.

Boyd, for defendant in error.

Reese, J., delivered the opinion of the court.

This is an action of debt brought upon an instrument which, as to Oldham, is a promissory note, and, as to