

the motion may be heard without answer, or immediately at the same term, or during the sittings of the next term after the filing of the answer, without notice; or at any time, on giving so many days notice, after filing the answer; or on the answer of one or more of the defendants before the others have answered. (f) And

(f) JENIFER v. STONE.—This bill was filed on the 29th of June, 1809, by Daniel of Saint Thomas Jenifer, administrator of Daniel Jenifer, deceased, against Travers Daniel, John M. Daniel, and Michael J. Stone, surviving executor of Thomas Stone.

The bill states, that the defendant Michael, the surviving executor, had, on the 23d of October, 1806, obtained a decree in this Court against the intestate of this plaintiff, for the sum of £1,119 3s. 7d.: that the defendant Michael's testator left two daughters, his only children and heirs; one of whom, Mildred, married the defendant Travers Daniel, and the other, Margaret, married the defendant John M. Daniel; that these defendants, Travers and John, after their marriages, on the 13th of January, 1798, entered into a covenant with the executors of the late Thomas Stone, of whom the defendant Michael is the survivor, by which they, as executors, were to be saved harmless from the demands of the creditors, and discharged from all liability to the representatives of their testator; and they, Travers and John, were to use the names of the executors, for the purpose of collecting and recovering all sums due to their testator, that this plaintiff's intestate was warned not to pay the amount of the decree against him to this defendant Michael; in consequence of which, and being assured, and believing, that the whole amount was properly payable to these defendants, Travers and John, he paid in part satisfaction of the decree, the sum of three hundred pounds to the defendant Travers; that this plaintiff has discovered, from the books of account of his intestate, that there is a large sum due from the defendant Michael to him; that the defendant Michael had caused a *fieri facias* to be levied on the estate of this plaintiff's intestate, without giving credit for the amount of the book account; and had only agreed, that the payment of three hundred pounds should be suspended until he should know the result of a suit instituted, in this Court, against him by Alexander Scott, for the recovery of a debt alleged to be due from his testator; and if that debt was recovered, that then he, Michael, would cause the whole amount, including the three hundred pounds, to be levied under the *fieri facias*; and it was in conclusion stated, that the defendants, Travers and John, then resided in the State of Virginia. Whereupon the plaintiff prayed for an injunction to stay the proceedings upon the execution, and for general relief. The bill was sworn to by the plaintiff.

KULTY, C., 29th June, 1809.—The Chancellor, after some hesitation and doubt on the subject, has determined to order the injunction as prayed. There would have been less room for doubt, if the former complainant, M. J. Stone, had insisted on levying, at this time, the whole sum, without allowing for the £300 paid to T. Daniel; but, inasmuch as the bill alleges, that although that sum is, for the present, suspended, the said M. J. Stone declares, that he will hereafter levy it, if necessary; and it is a rule of this Court not to suffer a creditor to proceed to the recovery even of what is due, when he demands also what is not due; the injunction is ordered on that part of the bill.

The Chancellor does not consider the debt stated to be due from M. J. Stone to Daniel Jenifer, to be sufficiently established from the appearance of