one of *them, unless the plaintiff shews, that he is using all due diligence to have all the others brought before the Court. *Gow. Part.* 179. **200**

These defendants, who now ask for a dissolution of this injunction, have not yet, by a rule further proceedings, required the plaintiff to prosecute her suit without delay; and consequently, they cannot justly complain of the injunction being continued until the filing of the answer of the defendant Gittings; which it is evident, may bring into the case an acknowledgment of facts, that may go far to sustain, if not entirely to support the equity upon which the plaintiff's injunction rests. Hence, as there is now no ground to impute to the plaintiff any unreasonable neglect in the prosecution of her suit; and the answer of a defendant, under whom this creditor, Magill, claims, who, it is admitted, can speak from his own knowledge of some of the material facts charged in the bill, has not yet been put in; the hearing of the motion to dissolve cannot be taken up until his answer has been brought in; or, until it may be inferred, from the laches of the plaintiff, in not endeavoring to have it brought in, that it would contain nothing likely to sustain her case, or until such implied notice of the bill has been given to the non-responding defendant, if he be not resident within the State, as will enable the Court to proceed without his answer. (*l*)

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to produce the agreement, thereby adding weight to the testimony of Peter Snyder respecting it, it is not considered necessary to continue the injunction in force. Whereupon it is decreed, that the injunction be dissolved, and the bill dismissed, but without costs.

(*l*) PAUL v. NIXON.—This bill was filed on the 25th of August, 1796, by John Paul against John Nixon, Benjamin Fuller, John Donaldson and David H. Cunningham, surviving executors of William West. The bill states, that the plaintiff had, on the 23d of December, 1777, given his bond to the defendants' testator, with a condition for the payment of the sum of four hundred pounds, which he signed without reflection as to the interest reserved; that to correct the mistake in this respect, the defendants' testator, soon afterwards, signed and delivered to the plaintiff a written agreement, whereby he, the obligee, agreed that he would demand no more than three per cent. per annum until the debt was paid; that this agreement the plaintiff had lost; that the defendants had brought suit and obtained judgment for the whole amount, with legal interest, without giving him credit for certain payments, which he had made; and without having the sum really due adjusted, according to the terms upon which the judgment was given, which were, that the amount of interest accruing on the bond should be ascertained by William McLaughlin.

Whereupon, the plaintiff prayed for an injunction to stay the proceedings at law, &c., which was granted as prayed.

The defendants put in their answer, in which they admit, that they had obtained a judgment as stated; and as to the agreement, they aver that they have no knowledge of it; but they say, that they verily believe, that there never was any such instrument of writing made by their testator. In regard