Whereupon it is ordered, that the injunction heretofore granted in this case be and the same is hereby continued until the coming

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to the payments alleged to have been made by the plaintiff, the answer is entirely silent.

Upon these circumstances the case was submitted on the notes of the solicitors of the parties.

HANSON, C., 7th January, 1800.—This cause is before the Chancellor on a motion to dissolve made on filing the answer. The bill, answers, exhibits, arguments of counsel in writing, and all other proceedings, have been by him read and considered.

By the written argument of the defendants' counsel, the Chancellor is informed, that they submit the cause for final decision on the bill and answer, but there is no submission on the complainant's part; and it is only the motion to dissolve, which was made as aforesaid by the defendants' counsel on putting in their answer, that the Chancellor can decide on at present without the complainant's consent.

In fact the principles and practice of this Court seem, on this occasion, not to have been recollected. It is therefore proper to say something relative to the said principles and practice.

When a bill is filed stating, on oath, just grounds to be relieved from a judgment at law, the complainant, on filing likewise a bond with sureties approved by the Chancellor, for securing to the defendants the money recovered *nisi*, &c. obtains an order for an injunction, which is to continue until further order. If the defendant, by his answer on oath, denies those matters, on which the injunction was obtained, on motion to the Chancellor he generally obtains an order dissolving the injunction. The complainant, however, if he thinks proper, may proceed, after the dissolution, to establish, by proof, the allegations of his bill; and if he succeeds, either the injunction is renewed, or other relief is granted by the final decree, as is proper for the circumstances of the case.

Every complainant, on the filing of the answer by the defendant, is entitled to have the cause set down for final hearing on the bill and answer. And for this plain reason: by so doing he admits every thing contained in the answer to be true, and that nothing contained in his bill is true except what is admitted by the answer. So that it is impossible for the defendant to be injured by a submission on bill and answer. But, if a defendant were entitled to have the cause set down on bill and answer, it is plain, that he could thereby preclude the complainant from the opportunity of establishing his bill by indifferent testimony, and would in short have the cause only in his own power. For, it cannot be unknown, that on final hearing, nothing alleged in the bill is to be considered as established unless admitted by the answer, or proved by indifferent testimony. If indeed the defendant were entitled to have the cause set down for final hearing, on bill and answer, it must be on terms similar to those of the complainant's setting down; viz. that everything contained in the bill is true, that is to say, the rule must be reversed. But there is no such practice, nor does it by any means, in the present case, appear to be the meaning of the defendants to admit the complainant's allegations. On the contrary, they have denied, so far as they can deny, the said allegations.

There never has been a case in this Court, where the defendant had less reason than the present defendants have, to expect success on a motion to dissolve, made on filing the answer, without any submission on the part of