

This bill was filed on the 2d of September, 1826, by Fayette Gibson against James Tilton, in which it is alleged, that owing to various circumstances, the defendant Tilton had recovered a judgment at law against the plaintiff Gibson, for a large sum of money which he had discovered was really and in equity not due to him. Whereupon it was prayed that an injunction might be granted to stay execution, and for general relief, &c. An injunction was ordered as prayed;—after which the defendant put in his answer, and gave notice of a motion to dissolve the injunction.

BLAND, C., 23d July, 1827.—This motion for a dissolution of the injunction standing ready for hearing, and the solicitors of the parties having been fully heard, the proceedings were read and considered.

It appears, that the defendant is a resident of the State of Delaware, where, after subscribing his name to his answer, he swore to its truth, which acts are certified by the Judge in these words: “Sworn and subscribed this twenty-sixth day of April, A. D. 1827, before Kensey Johns, Chief Justice of the Supreme Court of the State of Delaware.” To which is subjoined a certificate, in the usual form, by the clerk of New-Castle County, in the State of Delaware, that Kensey Johns was then Chief Justice.

It was objected, that the answer was insufficient; was not properly sworn to; and that the certificate was not in the form prescribed by the Act of Congress of the 26th of May, 1790, ch. 11, \*prescribing the mode of authenticating records and judicial proceedings from the other States of the Union. In answer to which it was urged that the answer was entirely sufficient, and that the latter objections could not now be made. **353**

On the hearing of a motion to dissolve an injunction, objections of every kind to the answer may be made, and are then in order. Because the motion of itself, in its very nature, is founded upon the correctness and sufficiency of the answer in every particular. Hence the plaintiff may, on the very day of hearing the motion, file exceptions to the answer, and have them heard and decided upon. The defendant can have no cause to complain of surprise; because, by his motion he calls upon the plaintiff to show cause why, after having well and sufficiently answered the bill, the injunction should not be dissolved. And, having thus planted himself upon the sufficiency of his answer, at that time, and for that purpose, he stands pledged to sustain it in all respects; or he must fail in his motion. *Eden Inj.* 78: *Alexander v. Alexander*, MS., 13th December, 1817. All the objections that have been made are, therefore, now in season and must be decided upon.

The Act, relied upon to show the insufficiency of the certificate, is one of those laws passed by Congress in pursuance of the power delegated to them, by the first section of the fourth Article of the