

Looking then to the bill and answer alone, upon the responsive character of which the fate of the injunction must depend ; and seeing that the material allegations of the former are denied by the answer, it would seem to follow, that the motion to dissolve must prevail, unless the bill could be supported by testimony taken according to the 8th section of the act of 1835, ch. 380. And this appears to have been the view taken at one time by the complainants themselves, who subsequently to the filing of the answer, applied for and obtained an order agreeably to the provisions of the act ; and perhaps it may not be unworthy of consideration, that their neglect or failure to take evidence, after obtaining authority to do so, leads to the inference that the denials of the answer were not capable of contradiction. Prior to the passage of this act of assembly, affidavits as a general rule could not be read in opposition to the answer, though a different practice obtained in one or two excepted cases. *Eden on Injunctions*, 326.

The attention of the court, upon this motion, is confined exclusively to the injunction ; which depends, in the absence of testimony under the act of assembly in reference to the allegations of the bill, upon the question, whether its averments, constituting the ground of the injunction, have been denied by the answer.

It is deemed of course premature at this time, to form or express any opinion upon the relative rights of the parties, as founded upon the deed of trust, and the judgment under which the defendant purchased. The proper time for that will come at a future period, when it will receive due consideration.

The Chancellor upon full reflection, thinks the equity upon which this injunction rests has been sworn away by the answer, and consequently that it is his duty to pass an order dissolving it, which will accordingly be done.

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[After the dissolution of the injunction, a petition was filed by the defendant Green, the matter of which, and the grounds upon which it was resisted by the complainants, will appear from the following opinion delivered by the Chancellor :]