

the register is directed to endorse, or send a copy of the order to be served along with the writ of injunction. (*h*)

The defendant, by his answer, admitted the payment of the £300, as alleged, and that the decree had been to that amount satisfied; he also admitted, that the covenant had been entered into with the defendants, Travers and John, as stated; but averred, that he had not been saved harmless, as stipulated; that he had been compelled to pay large sums of money, and was still liable for other claims as executor; to meet all which he had a right to collect and retain the balance due on the decree. In regard to the allegations of the petition to amend, this defendant, by a separate answer thereto, and agreement, admitted the payment as alleged. After which, the usual order *nisi* was passed, requiring notice to be given to the plaintiff to shew cause why the injunction should not be dissolved.

On the 22d of July, 1810, an answer was put in for the defendants, Travers and John, apparently in the handwriting of the plaintiff's solicitor; who, by a note in writing, agreed to receive it as such without oath. By this answer these defendants admitted most of the statements in the bill; they averred, that they had offered and were ready to indemnify the defendant Michael, according to their covenant, the copy of which, as exhibited by the plaintiff, they admitted to be correct; they stated, that they had filed their bill in this court against the defendant Michael, to compel him to account; that he is in very great pecuniary difficulties; and if he is permitted to collect the balance due on the decree, they will be wholly unable to recover it from him.

27th July, 1810.—KILTY, Chancellor.—The motion to dissolve the injunction in this case was argued at the present term. The equity, or cause of complaint, was removed by the answer of M. J. Stone, releasing the £300 paid to T. Daniel. The petition to amend, which was since filed, respecting the sums paid to counsel, amounting to \$120, is also answered by the agreement of M. J. Stone, to relinquish his claim to that amount. So that there would be no grounds for continuing the injunction, as between these parties only. But the question is, as to the effect of dissolving the injunction between M. J. Stone, the executor of T. Stone, and T. and J. M. Daniel, as his representatives. And on the circumstances of this case, the Chancellor is of opinion, that the interests of the latter ought to be attended to so far as to prevent the receipt by M. J. Stone of the money due from Jenifer at present. It may be objected to the bill of T. and J. M. Daniel, filed the 2d of July, 1810, that it is not on oath; but it is accompanied by a very important paper, viz: the covenant or agreement between them and the executors of T. Stone, which would probably have been sufficient to have had the suit against Jenifer entered for the use of the former.

Considering M. J. Stone as an executor; and, therefore, acting as a trustee, he cannot be injured by the money due from Jenifer being retained until a final settlement can be made; and as to his claims, for payments made, they are not set forth with sufficient certainty in his answer. An order may hereafter be made for having the money levied, and brought into court; but, at present, it is *Ordered*, that the injunction be continued till further order; with liberty, however, for the complainant, Jenifer, to bring into this court the sum due, after deducting the discounts claimed, and allowed, as appears by the proceedings. The answer of T. and J. M. Daniel to the bill of D. of St. Thomas Jenifer, has not been considered in making the above decision; and the manner in which it is put in is liable to some exceptions.

After some other unimportant proceedings, the case seems to have abated by the death of the parties.

(*h*) *DIFFENDERFFER v. HILLEN*.—This suit was instituted on the 10th of December, 1808, by John Diffenderffer, Charles Tinges, and George Smith, against John