

them, unless the plaintiff shews, that he is using all due diligence to have all the others brought before the court. (q)

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 endeavouring 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. (r)

23d May, 1810.—KILTY, *Chancellor*.—The commission, which was ordered, at the present term, has been returned, and the case is submitted for final hearing; an abstract being made on the part of the defendants.

Although the real state of the transaction is not discovered very clearly from the proceedings; yet, as it appears in proof, that the complainant refused 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.

(q) Gow. Part. 179.

(r) 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.