

denied the whole equity of the bill. (*m*) These phrases are sufficiently explicit in reference to the English practice, according to which, as to points of fact, an answer like a plea has then credit throughout for all it avers; and no distinction is then made between matters responsive and in avoidance. But in reference to a practice which recognizes the distinctions that have just been drawn between the case stated in the bill upon which the injunction rests; the case made by the bill as a ground for the relief prayed; and the case presented by the answer including both matter responsive and in avoidance, they are exceedingly ambiguous.

One of the articles of impeachment against Cardinal Woolsey was, that he, as Chancellor, had granted injunctions without any bill being put in. (*n*) And Lord Bacon, in reply to the king's instructions, pledged himself not to grant injunctions on the mere statement of the bill, but only on matter confessed by the defendant's answer; unless called for by pressing circumstances. (*o*) After which, it was declared, by a statute which is in force here, that no *subpœna* or any other process, except injunctions to stay waste or proceedings at law, should be granted before a bill was filed. (*p*) But, during the provincial government, it appears to have been the practice to grant an injunction to stay proceeding at law, before the filing of the bill; upon a petition briefly stating the circumstances; and that too, as it would seem, without any affidavit, or other evidence of the truth of the matters so stated. In which case the petition prayed an injunction until the matter could be heard on a bill to be filed, setting forth the facts more at large; and the bill, afterwards filed, prayed a continuance of the injunction as granted. (*q*) This course of proceeding was, no doubt, adopted on the ground of analogy to the English mode of granting an injunction in some cases for a similar purpose on an affidavit stating the facts of the case before the filing of the bill. (*r*) But I have met with no instance of this kind since the establishment of the republic.

According to the present course of proceeding, in this court, there is but one mode of obtaining an original injunction; and that is by a bill. To lay a proper foundation for an injunction, the

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(*m*) Forum Rom. 196; 2 Harri. Prac. Cha. 263.—(*n*) 4 Inst. 92.—(*o*) Park His. Co. Cha. 82.—(*p*) 4 Ann, ch. 16, s. 22.—(*q*) Powell v. Speake, 1760, per SHARPE, Chancellor.—*Chancery Proceedings, lib. D. D. No. J, 83.*—(*r*) Eden Inj. 36, 231.