

evidence without which it will not act, is one of a totally different nature from that, which involves the verity or effect of a judicial proceeding, which had been originated and completed entirely in *another* State; and with the formation of which it could have no concern. The Constitution, and act of Congress of the United States, therefore, can have no bearing upon the subject now under consideration.

With regard to the affidavit to this answer, it is certainly not couched in phraseology as full and exact as it ought to have been. But it is conceived to be expressed in terms sufficiently clear and strong to sustain a prosecution for perjury, if it had been made in this State, and the answer had been found to be false in any material particular. And although, as it would seem, no such prosecution could be sustained *here* upon a false oath taken in *another* State however correct and positive the affidavit might have been; yet the parties may, should the answer turn out to be false or the affidavit be ascertained to be spurious, be punished for practising an imposition on the court. (*h*)

These preliminary objections being removed, it appears, on a careful consideration of the answer, that it is, in all respects, sufficient; and that it has completely sworn away all the equity of the complainant's bill.

I know of no such rule as that which was insisted on by the plaintiff's solicitor; that where the *facts* on which the complainant's equity rests are alike within the knowledge of both parties; and the allegation of them by each in an opposite bearing is equally positive, the injunction must be continued. The rule is, that on a motion to dissolve, the facts on which the plaintiff's equity rests must be admitted or not denied, or he cannot obtain a continuance of the injunction. But if they are positively denied by the answer the injunction must be dissolved. (*i*) There may be exceptions to this rule, but this case is not one of them.

Whereupon it is ordered, that the injunction heretofore granted is hereby dissolved.

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After which testimony was taken and the case brought before the court on a final hearing; when it appearing, that the plaintiff had failed to sustain his case by proof, by a decree passed on the 4th of November 1829, the bill was dismissed with costs.