1796 ced beyond the juriſdiction of the Court, it would, perhaps, be proper to inſiſt upon a more rigid practice than has been purſued. But the diſſolution of the injunction would, probably, put the property out of the power of the Court; and incapacitate us from doing juſtice hereafter to the parties, according to the real merits of their reſpective pretenſions. It is proper, however, to obſerve, that I do not think an affidavit to the contents of a Bill, is the only foundation for iſſuing an injunction. *Harriſon*, on this point, is himſelf a reſpectable authority, though he cites no other book: but, independent of all written authorities, reaſon and the dictates of juſtice require, that other proof beſides the party's oath ſhould be allowed. Nor, under all the circumſtances, can I decide, that the delay which has occurred is without a reaſonable excuſe. It will be proper, however, in continuing the injunction, to appriſe the complainant, that, unleſs ſome good cauſe to the contrary is ſhewn, I ſhall be for diſſolving it, at the next term.

WILSON, *Juſtice*:—This motion is made on two grounds:—1ſt. That the injunction originally iſſued on an improper foundation; and 2d. That there has been an unreaſonable delay in bringing the ſuit to a deciſion under it. It does not appear to me, however, that either of theſe grounds is ſufficiently ſupported. The irregularity reſts ſolely on the want of an affidavit; but this, though it is frequently, and, perhaps, generally, the mode of proceeding, is not, in my opinion, the only one. In the very caſe now before the Court, the evidence of the Power of Attorney, operating effectually as a transfer of the property, is certainly ſtronger evidence, than an affidavit of the intereſted party. With reſpect to the delay, it is ſworn to have happened through inadvertance and miſtake; and no evidence of a wilful procraſtination has appeared in the courſe of the diſcuſſion. On the contrary, an overture has been made to bring the merits to a hearing, as expeditiouſly as can be deviſed. It is to be conſidered, likewiſe, that if the injunction is diſſolved, the Court put it out of their power to do effectual juſtice; but, if it is continued, juſtice can be done, eventually, to the injured party; whether the complainant, the defendant, or Meſſrs. *Pollocks*, ſhall eſtabliſh a title to the property.

The motion refuſed.

WHARTON'S Executors *verſus* LOWREY.

BILL in Equity. The Bill was filed in *October* 1793, to open an account, which had been ſettled and ſigned by the complainants, in April, 1781, touching the tranſactions between

between the teſtator and the defendant, while commiſſaries in the *American* army, during the revolutionary war. The Bill charged the defendant (among other fraudulent practices) with making eraſures in the complainant's books; and, alſo, ſet forth a number of ſpecific errors and over-charges in the account. The defendant filed an anſwer to the Bill, in which he denied all fraud, canvaſſed and refuted the ſpecification of errors and over-charges, and pleaded the ſtatute of limitations. 1796.

Rawle and *Lewis*, having obtained a rule to ſhew cauſe, why the Bill ſhould not be amended, by inſerting, that the frauds charged had come to the complainant's knowledge within *ſix* years before the commencement of the ſuit, now moved to make the rule abſolute; and cited 1 *Har. Ch.* 106. 3 *P. Wm.* 143.

Dallas, for the defendant, admitted that the allowance of amendments was diſcretionary with the Court; but, contended, that after a general anſwer to the allegations, and a denial of the frauds ſtated in the Bill, the complainant ought not to be indulged, without ſome other proof to ſupport the charge of fraud, than his bare aſſertion. In the caſes cited in 3 *P. Wm.* 143, there was no anſwer to the Bill, but merely a plea of the ſtatute of limitations; and in the principal caſe, the Chancellor only ordered the defendant to anſwer, which the preſent defendant has already done. *Twelve* years have elapſed ſince the account was ſettled; and the fraud being denied on oath, and unſupported by any ſpecies of evidence, the complainant ought not to be permitted to harraſs the defendant, and procraſtinate a deciſion.

BY THE COURT:—Conſiderations reſpecting the merits of the cauſe, ought not to weigh in the determination of the preſent queſtion. The complainant could not foreſee that the ſtatute of limitations would be pleaded; and it is in order to bring before the Court an eſſential fact ariſing from that plea, that the amendment is propoſed.

The rule made abſolute.

KETLAND, *qui tam. verſus* The CASSIUS.

AN information that had been exhibited againſt the *Caſſius*, as a veſſel illegally out-fitted within the juriſdiction of the *United States*,* came on to be argued upon a ſuggeſtion filed *ex-officio* by the Attorney of the Diſtrict, in purſuance of directions from the Preſident, ſtating, that the veſſel was the public

* See the *United States* v. *R. Peters. Eſq.* in the Supreme Court of the *United States*.