

1796.

GRAYSON *versus* VIRGINIA.

BILL in Equity. The service of the *subpœna* in this case, being proved, *Lewis* moved, at the last Term, that a *Distringas* might be awarded, in order to compel the State to enter an appearance; arguing, from the analogy between a State and other bodies corporate, that this was the proper mode of proceeding: THE COURT, however, postponed a decision on the motion, in consequence of a doubt,—whether the remedy to compel the appearance of a State, should be furnished by the Court itself, or by the Legislature? And, in the present Term, *Lewis* argued, that the Court was competent to furnish all the necessary means for effectuating its own jurisdiction.

On the 12th of *August*, the CHIEF JUSTICE delivered the following opinion.

By THE COURT :—After a particular examination of the powers vested in this Court, in causes of Equity, as well as in causes of Admiralty and Maritime jurisdiction, we collect a general rule for the government of our proceedings; with a discretionary authority, however, to deviate from that rule, where its application would be injurious or impracticable. The general rule prescribes to us an adoption of that practice, which is founded on the custom and usage of Courts of Admiralty and Equity, constituted on similar principles; but still, it is thought, that we are also authorised to make such deviations as are necessary to adapt the process and rules of the Court to the peculiar circumstances of this country, subject to the interposition, alteration, and controul, of the Legislature*.

We have, therefore, agreed to make the following general Orders; and the Counsel, in the present case, will take his measures accordingly.

I. ORDERED, That when process at Common Law, or in Equity, shall issue against a State, the same shall be served upon the Governor, or Chief Executive Magistrate, and the Attorney-General, of such State: 2nd.

* See the Judicial Act, §. 14. The Act to regulate Processes in the Federal Courts, §. 2.

2. ORDERED, That process of *subpæna* issuing out of this Court, in any suit in Equity, shall be served on the Defendant sixty days before the return day of the said process : and, further, that if the Defendant, on such service of the *subpæna*, shall not appear at the return day contained therein, the complainant shall be at liberty to proceed *ex parte*. 1796.

Lewis then observed, that the *subpæna* in this case, had been issued on the same principles ; but as the orders could only operate *in futuro*, he thought it best to withdraw his motion for a *distringas*, and to pray that an *alias subpæna* might be awarded ; which was, accordingly, done.

WISCART, *et al.* Plaintiffs in Error, *versus* DAUCHY, Defendant in Error.

ERROR to the Circuit for the Virginia District. The original proceeding was on the Equity side of the Court below, where the Defendant in Error had filed a bill, charging *Adrian Wiscart* and *Augustine De Neuville*, Co-partners, with having fraudulently conveyed all their estate, real and personal, by three separate deeds, to *Peter Robert De Neuville* (who was also made a Defendant to the bill) with a view to prevent the Complainant's recovering the amount of a decree, which he had formerly obtained in another suit against them. The answers averred the conveyances to be made *bona fide*, and for a valuable consideration ; but after a full hearing of the case, the Circuit Court (consisting of Judges IREDELL and GRIFFIN) delivered the following opinion: " That the deeds filed as exhibits in this cause, one dated on the 20th of May, 1793, conveying the goods and chattels in the schedule thereunto annexed, to the Defendant *P. R. De Neuville* ;---another dated on the 17th of the same month, conveying the slaves therein mentioned, to the said *P. R. De Neuville* ;---and another, dated on the 20th day of the same month, conveying to him the land therein mentioned, are fraudulent, and were intended to defraud the complainant, and to prevent his obtaining satisfaction for a just demand ; that the said *P. R. De Neuville* was a party and privy to the fraud aforesaid ; and that the said Deeds were void as to the Complainant: Whereupon it is decreed and ordered,

VOL. III.

T t

that