

Case No. 4,590.

EWING v. BLIGHT.

{3 Wall. Jr., 139.}¹

Circuit Court, E. D. Pennsylvania.

Oct. Term, 1855.

EQUITY PRACTICE—INJUNCTION DURING PLEA TO JURISDICTION.

Chancery will not grant an injunction, nor appoint a receiver pending a plea to its jurisdiction; but to guard against the abuse of dilatory pleas, or any irreparable mischief, the court will order an immediate hearing or trial of the plea.

In this case a plea to the jurisdiction had been filed, denying that the plaintiff was a citizen of New Jersey, which he claimed to be in his bill; and before this plea was disposed of, or any further step taken, a motion was made by C. Ingersoll for an injunction and receiver. The point of the case was whether, in these circumstances, the court would entertain such a motion.

GRIER, Circuit Justice. The pendency of a plea to the jurisdiction of the court, necessarily precludes all further action of the court, till it is decided. [See Case No. 4,589.] "This rule of practice is founded on reason, as well as fortified by authority. 13 Ves. 164.

While the jurisdiction of the court or the equity of the bill is in doubt by the pendency of a plea or demurrer, it would be highly improper for the court to interfere by the exercise of such high powers over men's property. The court have it always in their power to guard against the abuse of dilatory pleas. If any irremediable mischief should impend, which it is absolutely necessary to meet with promptness, or if there be any just suspicion that the plea or demurrer is merely intended for delay, the court will order an immediate hearing or trial of the plea.

If an issue be desired to try the plea of jurisdiction in this case, it will be ordered; or any other rule which complainant may desire, for the purpose of expediting the final hearing, in case the jurisdiction should be found to exist.

¹ [Reported by John William Wallace, Esq., and here reprinted by permission.]