

Case No. 9,276. MATHEWS V. DOUGLASS.

{1 Brunner, Col. Cas. 196;¹ Cooke, 136.}

Circuit Court, Tennessee.²

1812.

PRACTICE IN EQUITY—INJUNCTION—WHEN GRANTED.

An injunction will not be granted during the pendency of an action unless the parties asking relief in equity will confess judgment at law.

Douglass brought an action at law against Mathews, and filed his declaration, to which Mathews demurred. During the pendency of the action at law, and indeed before the demurrer had been determined, Whiteside, on behalf of Mathews, and upon a bill filed for that purpose, moved the court for an injunction.

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Dickinson, on behalf of the plaintiff at law, objected to an injunction being granted unless the complainant would confess a judgment.

BY THE COURT. An injunction generally operates as a release of errors; but if it be granted as this case now stands it will not so operate here. Suppose the injunction is granted to stay the proceedings at law, and ultimately there would be a decree against the complainant. He may still go on, and if the declaration is defective prevent the recovery of the claim, or at least delay it, without any pretence founded in justice. And besides, should the demurrer be decided against him, he might prosecute a writ of error. We, therefore, will not grant the injunction unless the complainant will confess a judgment at law.

And it was done accordingly.

¹ [Reported by Albert Brunner, Esq., and here reprinted by permission.]

² [District not given].