BLAND, C., 27th April, 1829.—The matter of the petition of Elizabeth Billingslea standing ready for hearing, and the solicitors of the parties having been fully heard, the proceedings were read and considered.

There can be no doubt, that the answer of a defendant may be received by consent without oath. It is every day's practice to do so: but the consent of the plaintiff must be expressly given in *writing by himself or his solicitor; or it must be shewn as **568** as a necessary inference from some act of his which clearly implies, that he knew a paper purporting to be an answer, not sworn to, had been filed. As in this case, if the plaintiff had appeared on the notice of motion to dissolve the injunction and opposed it, without objecting to the answer on account of its not having been sworn to, he would have been precluded from making such an objection at any time thereafter; because of the manifest waiver of his right to have an answer on oath. But this defendant did not appear in opposition to the motion to dissolve the injunction; and it has not been shewn that he ever, either expressly or impliedly, consented to receive the defendant's answer to his bill without its being verified by an oath.

At the time when the notice of the motion to dissolve the injunction was entered on the docket, and, from that time until it was made absolute, it appears, that the plaintiff was in a state of health, which rendered it at least doubtful, whether he could have bound himself by any consent in relation to this suit; or have attended to it with that judgment and discretion which men usually pay, and ought to be permitted to bestow upon their own affairs. *Kemp* v. *Squire*, 1 *Ves.* 206. Therefore upon consideration of all the circumstances, I am of opinion, that the dissolution of the injunction was irregularly and improperly obtained. The suit having abated after that time by the death of the plaintiff, the docket entry, that it was dismissed by order of the complainant's solicitor, is manifestly erroneous; because there was then, in fact, no such suit depending which could have been so dismissed. But, even if there had been a suit depending, a general dismissal, without saying any thing of the injunction, would not have amounted to a dissolution of it; nor would the death of either party, by which the suit became abated, operate as a dissolution of the injunction. *Griffith* v. *Bronaugh*, *ante*, 547.

Whereupon it is ordered, that the injunction heretofore granted be and the same is hereby revived and re-established in full force until further order. And the defendant, the petitioner, or the legal representatives of the late plaintiff upon whom his interest in the suit has devolved, are hereby permitted, without prejudice from this order or any proceedings heretofore had in this suit, either to revive the *same, or to have the injunction **569**