LECTURE X.

FORM OF THE ANSWER.

The answer must be entitled in the cause and agree with the bill as to the parties named therein. If a mistake as to the name of a defendant has been made in the bill, such mistake cannot be corrected in the title, but if the defendant has been misnamed in the bill, he may make the correction in the body of his answer; thus for instance: "The answer of Robert Sharp (in the bill by mistake called Roland Sharp)," etc.

Attorney General v. Worcester, 1 Coop. T. Cott. 181.

If there is such a defect in the heading of the answer, that it does not appear distinctly whose answer it is, or in what case it is filed, it will be taken off the file for irregularity.

Pritus v. Thompson, G. Coop. 249; Griffiths v. Wood, 11 Ves. 62; Fry v. Mantell, 4 Beav. 485; Upton v. Sowton, 12 Sim. 40.

If, however, it is evident, what bill is answered, it will not be stricken from the files although certain prescribed words have been omitted.

Bowes v. Farrar, L. R. 14 Eq. 71.

Two or more persons may join in the same answer, and when they appear by the same solicitor, and have the same defence, they ought to join, and the court will not, in case they should succeed in the suit, allow them any more costs in case they file separate answers

than would have been allowed, if they had filed a joint answer.

Story Eq. Pl. § 869; Woods v. Woods, 5 Hare 229, 230.

The answer should be divided into paragraphs numbered consecutively and each paragraph should contain a full and distinct statement of some allegation. Documents not on file in the case cannot be referred to and made a part of the answer, but may when so filed.

Wells v. Stratton, 1 Tenn. Ch. 328; Attorney-General v. Edmunds, 15 W. R. 138; U. S. C. C. Rule 4.

When two defendants answer jointly and one speaks positively for himself, the other may say that he has perused the answer, believes it to be true and that he makes it a part of his answer. This he may not do, however, if they answer separately.

Binney's Case, 2 Bland. 99; Warfield v. Banks, 11 Gill & J. 98; Carr v. Weld, 3 C. E. Green (N. J.) 41.

The answer must be signed by the defendant or defendants putting it in, unless leave has been obtained to file an answer not signed, because originally the answer was always under oath and was testimony in the cause.

Dennison v. Bassford, 7 Paige 370; Cook v. Dews, 2 Tenn. Ch. 496; Kimball v. Ward, Walk. Ch. 439; Supervisors &c. v. Miss. &c. R. R. 21 Ill. 337.

The answer must also be signed by counsel. When such counsel are a firm, the firm signature may be used.

Bishop v. Willis, 5 Beav. 83 n; Hampton v. Coddington, 1 Stew. Eq. 557; Henry v. Gregory, 29 Mich. 68; Eveland v. Stephenson, 45 Mich. 394; Dwight v. Humphreys, 3 McLean 104; U. S. Ch. Rule 24.

The copy of the answer served on the defendant is presumed to be a correct copy of the answer filed, and if the signature of counsel is omitted from the copy served, the complainant may move to take the answer off the files for irregularity.

Littlejohn v. Munn, 3 Paige 280.

The signing of the answer by the defendant may be waived by the complainant, and if an unsigned answer is put in and the complainant files a replication, that step on his part will be held to be such a waiver.

Fulton Bank v. Beach, 2 Paige 307; Collard v. Smith, 2 Beasley, (N. J.) 43, 45.

The court, under special circumstances will permit the defendant to file an answer not signed by him as when he resides at a distance, or has gone abroad before an answer could be prepared or the like.

Dumond v. Magee, 2 Johns. Ch. 240; Harding v. Harding, 12 Ves. 159.

Unless answer under oath is expressly waived in the bill the answer must be sworn to before the proper officer. Who is such proper officer depends upon the provisions of the local statute and the rules of the court.

Sitlington v. Brown, 7 Leigh (Va.) 271.

The answer of a corporation is put in under the corporate seal and not under oath. If it is put in not under seal it will be taken from the files as irregular.

Ransom v Stonington, Sav. Bk. 2 Beasley, (13 N. J. Eq.) 212; Mill Dam Foundry v. Hovey, 21 Pick. 417; Brumly v. Westchester Mnfg Co., 1 Johns. Ch. 365; Beecher v. Anderson, 45 Mich. 543.

But unless the answer of the corporation is sworn to

it cannot be made the basis of a motion to dissolve a temporary injunction; since an injunction will not be dissolved upon the filing of an answer not on oath denying the equities of the bill.

Fulton Bk. v. New York, etc., 1 Paige, 311; Griffin v. State Bk., 17 Ala. 258.

When the complainant desires to obtain from a corporation the answer of some officer of the corporation under oath, such officer must be named and made one of the defendants in the bill.

Buford v. Rucker, 4 J. J. Marsh. 551; Vermilyca v. Fulton Bk., 1 Paige 37; Beecher v. Anderson, 45 Mich. 543.

When the complainant waives an answer on oath, the answer is treated as a mere pleading and is not evidence for the defendant, but the plaintiff may take advantage of any admissions made in it.

Bartlett v. Gale, 4 Paige, 504; Wilson v. Towle, 36 N. H. 129; Durfee v. McClurg, 6 Mich. 223; Union Bk., etc. v. Geary, 5 Pet. 99, 110, 112.

When the bill waives an answer under oath the defendant cannot make his answer evidence by putting it in under oath. Under such circumstances the sworn answer will be considered as one not under oath.

Hyer v. Little, 5 C. E. Green 443; Symes v. Strong, 1 Stew. Eq. 131.

As we have stated, an unsworn answer cannot be made the foundation of a motion to dissolve an injunction; therefore, if an injunction bill waives an answer under oath, the defendant may still put in an answer under oath and so treat it, for the purpose of moving to dissolve the injunction granted on the bill.

Dougrey v. Topping, 4 Paige 94; Mahony v. Lazier, 16 Md. 69; Rainey v. Rainey, 35 Ala. 282.

When the answer is signed, drawn, and if necessary sworn to, it must be filed and a copy served upon the complainant within the time prescribed by the rules.

U. S. Rule 18; Mich. Rule 11.

If an answer on oath has been waived in the bill the complainant cannot except to the bill filed as not having fully answered the allegations contained in the bill. In such a case the answer is a mere pleading, but he may still except to the answer for impertinence or scandal, if it is padded with irrelative matter, or tainted with unnecessary comments affecting the moral character of any one. If an answer on oath has not been waived and it does not contain a full disclosure of all the matters in regard to which the defendant has been interrogated, it may be excepted to for insufficiency. The steps necessary for the complainant to take in excepting to the answer either for insufficiency, impertinence or scandal, are prescribed by the rules.

U. S. Rules 26, 27; Mich. Rules 27, 28; Brooks v. Byam, 1 Story 296; Stafford v. Brown, 4 Paige 88.

The exceptions are entitled in the cause and they must point out positively and distinctly the matters in the answer which are objected to as impertinent or scandalous, or those parts of the bill which have not been fully answered. They pray that the scandalous and impertinent matter may be expunged, or that the defendant may put in a full answer. They are signed by counsel, filed, and a copy served upon the opposing solicitor. The defendant may submit to make a further answer or to have the matter, objected to as impertinent or scandalous, expunged, if he does not,

the answer is referred to the proper officer to examine and report whether the exceptions are well taken.

Brooks v. Byam, 1 Story 296; Stafford v. Brown, 4 Paige 88; Evans v. Owen, 2 M. & K. 382; Craven v. Wright, 2 Peere Wms. 182.

AMENDING ANSWERS.

When an answer has been put in upon oath, the court will not permit it to be amended in matters of substance, except under very exceptional and special circumstances. Where the proposed amendment is to the form of the answer merely, or to correct some mistake of date, or a verbal inaccuracy, the court will not hesitate to grant leave to amend.

Campion v. Kille, 1 McCarter (N. J.) 229, 232; McKim. v. Thompson, 1 Bland 162; Bowen v. Cross, 4 Johns. Ch. 375: Dearth v. Hide and Leather Natl. Bk., 100 Mass. 540; Webster Loom Co. v. Higgins, 13 Blatchf. 349; Gainsborough v. Gifford, 2 P. Wms. 424.

The court will also allow the defendant to amend his answer, where new matter has been discovered since the answer was put in.

Tillinghast v. Champlin, 4 R. I. 128.

Or to correct a mistake, when owing to such mistake, an admission has been made to the prejudice of the defendant.

Hughes v. Bloomer, 9 Paige 269.

The court will not, however, permit amendments of this nature to be made merely on the ground that the defendant, when he made the admissions, was laboring under a mistake of law, and when no mistake of fact has been made.

Rowlins v. Powell, 1 P. Wms. 298; Pearce v. Grove, Amb. 65; Pearce v. Grove, 3 Atk. 522.