

UNITED STATES v. McLAUGHLIN and others.

(Circuit Court, D. California. August 18, 1885.)

1. PRACTICE—ANSWER—EXCEPTION TO INSUFFICIENCY OF.
Exceptions to insufficiency of parts or portions of an answer to particular allegations of bills in equity are confined to matters of discovery where the complainant is compelled to rely on the defendant to prove his case.
2. SAME—CORPORATIONS, INFANTS, ETC.
Such exceptions do not lie to the answers of corporations, infants, the attorney general, or when oath to the answer is waived.
3. SAME—FOUNDATION FOR.
The foundation for an exception for insufficiency consists of a sufficient allegation in the bill, and a sufficient interrogatory based upon it.
4. SAME—BILLS OF DISCOVERY.
Bills of discovery are not sanctioned by prevalent practice, and where discovery is asked for in a bill for relief, exceptions to sufficiency of answer will not be considered.
5. SAME—IMPERTINENCE.
The court will only order that matters clearly impertinent be stricken out. Where there are here and there useless or impertinent words, the court will remedy it in the adjustment of costs.

In Equity.

S. G. Hilborn, U. S. Atty., and Mich. Mullany, for complainant.

A. L. Rhodes, for defendants.

SAWYER, C. J., (*orally.*) In the numerous exceptions filed by complainant to the answer in this case two grounds are specified,—insufficiency and impertinence.

Two classes of insufficiency are recognized in equity practice. The first is where the whole answer is alleged to be insufficient to constitute a defense. In such a case the complainant usually has the case set down for argument upon the bill and answer, and the question is disposed of in that method. In other cases, exceptions for insufficiency are taken as to some particular portion or portions of the answer, upon the ground that certain allegations of the bill have not been admitted, or fully and specifically denied, or that the denial is evasive. In such cases the object of the party excepting is to get in the answer a full, specific, and clear admission or denial of the allegations. Exceptions for insufficiency, in respect to such matters, are only applicable to matters of discovery where the complainant is compelled to rely on the defendant for evidence to prove his case. Such an exception will not lie to the answer of a corporation, because the answer of a corporation is not evidence; it is not put in under oath, but under the seal of the corporation. And for similar reasons an exception for insufficiency, as to the answer to any particular allegation of the bill, does not lie where the oath to the answer is waived. The same rule applies to the answer of the attorney general, and answers of infants. 2 Daniell, Ch. Pr. (Ed. 1841,) 879, and note.

Exceptions for insufficiency, of the class last referred to, can relate

only to the subject-matter of a bill of discovery, where a party seeks to obtain in the answer evidence from his opponent; and they are especially adapted to a system of practice where parties are incompetent witnesses in their own cases. With relation to such exceptions, Hoffman, in his "Master in Chancery," says:

"The foundation for an exception for insufficiency consists of a sufficient allegation in the bill, and a sufficient interrogatory based upon it."

And it has been held, under the old practice, that the general interrogatory at the end of the bill, requiring the defendant to answer as to all matters alleged in the bill as fully and particularly as though specifically interrogated thereupon, is a sufficient interrogatory upon which to base an exception. But there must always have been, as a foundation for such an exception, either that general demand in the answer, or a specific interrogatory directed to the particular allegation of the bill specified in the exception. In the case of *Methodist Episcopal Church v. Jacques*, 1 Johns. Ch. 75, it was held that the general interrogatory in the bill is sufficient to base an exception of this kind upon. "The mere objection to a further discovery is that the bill contains no special interrogatories. The bill contains the general interrogatory 'that the defendants may full answer make to all and singular the premises, fully and particularly, as though the same were repeated, and they specially interrogated, paragraph by paragraph, with sums, dates, and all attending circumstances and incidental transactions.' The question, then, is whether this be not sufficient to call for a full and frank disclaimer of the whole subject-matter of the bill. And I apprehend the rule on this subject to be that it is sufficient to make this general requisition on the defendant to answer the contents of the bill, and that the interrogating part of the bill, by a repetition of the several matters, is not necessary."

It has also been held that no exception would lie, except where an interrogatory, either special or general, like that just quoted, called for an answer to the allegations of the bill. The decision cited was rendered before the adoption of the equity rules of the supreme court. In our present practice, under the provisions of equity rules 41-43, which permit a complainant, if he desires, to file interrogatories and prescribe the form to be followed, I apprehend that a general interrogatory would be insufficient. But however that may be, the bill in this case is in no sense a bill of discovery, excepting so far as all bills in which an answer under oath has not been waived may in a certain sense be regarded as bills of discovery. It contains no general interrogatory, and no specific interrogatory pointing to the matter set forth in the exception, and manifestly was not intended as a bill of discovery, but as purely a bill for relief. Though an answer upon oath is not waived, yet no demand in the nature of those which distinguish a bill of discovery is made anywhere in the bill. It is manifestly intended simply as a bill for relief, the complainants not seeking evi-

dence, but intending to rely upon the testimony of witnesses to prove their case.

It is very doubtful whether a pure bill of discovery in an equity suit would lie at the present day. It may be that a discovery might be asked for in a bill for relief; but it is probable that no prudent counsel, understanding what must be the effect, would at this day file a pure bill of discovery, or call for a discovery in a bill for relief, and thus unnecessarily give the defendant an advantage which he would not otherwise have under our present practice, which enables a complainant to place the defendant upon the stand and examine him as a witness, and thereby obtain his testimony much more judiciously,—testimony of a character less prejudicial to his client's interests than it would be were the testimony to come in the form of a sworn answer, strained through the legal cullender of his counsel, and by him shaped and shaded in his office at his leisure. Very wisely, I think, the bill in the present case has been made a bill for relief, not a bill of discovery. See *Slessinger v. Buckingham*, 8 Sawy. 469; S. C. 17 Fed. Rep. 454.

In *Ex parte Boyd*, 105 U. S. 657, the supreme court intimates that at this day bills of discovery are not only useless, but obsolete, and very strongly intimates a conformation of the idea which this court has endeavored to impress upon the bar here; that is to say, that the spending of time upon exceptions to answers is useless, and such exceptions are usually very much to the disadvantage of the party resorting to them. A defendant is often pressed to a direct denial which constitutes proof of his case in his own favor, which must be overthrown by the testimony of two witnesses, or equivalent proof on the part of the complainant. As I have intimated, this bill contains no allegation looking to a discovery. It merely undertakes to allege the grounds of suit and to develop the issues, and manifestly was not intended to obtain evidence to prove the issues.

The first exception is in general language that an allegation of complainant's bill of complaint indicated "is not sufficiently or at all answered, denied, or admitted in or by said answer." There is in the bill no demand for an answer, general or specific, upon which that exception can rest. The bill is not framed for the purpose of procuring evidence, but is evidently for relief merely. I shall therefore overrule that exception, and leave the complainant to make his proof in relation to the facts referred to by calling the parties as witnesses, if he so desires, or by other documentary evidence, and to obtain evidence by proceeding in the ordinary course. One of the defendants is a corporation, to an answer of which, exceptions for insufficiency, as we have seen, do not lie

The other exceptions, although some of them refer to matters in the answer which are alleged to be impertinent, or refer to particulars in which the answer is alleged to be ambiguous or insufficient, are all really exceptions for insufficiency. There is no such term as "am-