

The allegations in the body of an answer or plea should be positive, otherwise the issue would be joined on a mere statement of the *belief* of the parties, not upon their allegations of *fact*. But it is the law arising out of the *facts*, not merely from the *belief* of the parties, which is to be determined. (a) Yet where an injunction has been granted against an executor or administrator, it is sufficient for him, in order to obtain a dissolution of it, to state, as to any facts, in regard to which the bill calls for an answer, and which must, from the nature of things, have rested in the knowledge of his testator or intestate, that they are as he "is informed and verily believes," so and so. (b) But the answer of this defendant, in the body of it, has spoken so distinctly and positively as to the facts; and thus, so entirely sworn away the equity of the bill, that I could have no hesitation in dissolving the injunction, at once, were it not for an objection to the *form* of the affidavit thereunto annexed by which it has been verified. In that affidavit the defendant swears, "that the several matters and facts set forth and stated in the within and foregoing answer are just and true as they are therein stated, according to the best of her knowledge, belief, and recollection." This the plaintiffs allege is too vague, indefinite, and general.

Regularly the affidavit, in all such cases, should assert, "that the facts within the defendant's own knowledge are true, and that those facts not within his own knowledge he believes to be true." But here, there has been, as far back as has fallen within my observation, a very great neglect of all regularity in the forms of such affidavits; and therefore, I should not feel myself authorized, at once, to depart from even so improper a practice as to require, in such affidavits, more than a substantial sufficiency. As to which I know of no better test than, that they must be so absolute and positive, when taken in connexion with the body of the answer, as to subject the party to a prosecution for perjury, if the matters stated in the answer should be false. It is now well settled, that if a man swears he *believes* that to be true which he knows to be false, he swears as absolutely, and is as criminal, and may be prosecuted and punished for perjury in like manner, as if he had made a positive assertion. (c) The affidavit to this answer is not as correctly expressed as it ought to have been; but when taken in con-

(a) Beams' Pl. Eq. 26.—(b) Carnan v. Vansant, adm'r. MS. 1307.—(c) 2 Chitt. Crim. Law, 305; 1 Hawk. P. C. c. 69, s. 7; Miller's case, 3 Wilson, 427.