

to be called in. Therefore, the proofs and exhibits that have been taken and brought in under the order of the 10th of May last, must, upon the present occasion, be laid aside as altogether inadmissible.

Having thus disposed of the proffered auxiliaries of the plaintiffs, let us now take a review of those tendered by the defendant *Thompson*. He insists, that a certain paper he has presented as a supplemental answer, ought to be considered as an amended answer, or that he ought now to be permitted to file a supplemental answer as prayed by his petition.

It is with great difficulty permitted to a defendant to make any alteration in his answer, even upon a mistake. And there is no instance of its having been allowed for the purpose of retracting a clear and well understood admission.(p) It should appear due to general justice to permit the issue to be altered. The rule upon this subject is, that the defendant must move to put in a supplemental answer, and accompany the motion with an affidavit, in which he must swear, that when he put in the answer, he did not know the circumstances upon which he applies, or any other circumstances upon which he ought to have stated the fact otherwise, or that when he swore to his original answer, he meant to swear in the sense in which he now desires to be at liberty to swear.(q)

The paper tendered as an amended answer, comes within no part of this rule. It is silent as to the causes which occasioned him to omit mentioning the new matter, therein contained, in his original answer; nor does it say any thing of his not knowing of the new circumstances therein disclosed. It, in fact, purports to be a mere additional or amended answer, proposed to be put on file with the leave of the court, without any previous affidavit, attempting to account for the mistakes or omissions proposed to be corrected or supplied. It must, therefore, be altogether rejected.

But this defendant has now filed his petition, on oath, in a formal manner, praying for leave to file a supplemental answer. This petition points out, with sufficient certainty, that which the petitioner alleges was a mistake as to the time of receiving the money first spoken of in his answer. But that part of the answer, which is thus designated as erroneous, is too indefinite and obscure to lay the foundation of such an order as is asked for by the present motion. It speaks of "considerable payments," without specifying whether they were made in bills, or cash, or what was the amount

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(p) *Pearce v. Grove*, 3 Atk. 522.—(q) *Livsey v. Wilson*, 1 Ves. & Bea. 149.