

not be read on this motion. Among the great multitude of the records of past injunction cases in this court, which I have availed myself of every opportunity to look into, I have met with but one instance in which *ex parte* affidavits had ever been offered or heard; with this single exception, the long and copious stream of practice, in relation to such matters, shews, that no such affidavits should ever be admitted on a motion of this kind; and therefore, as well from reason as upon authority, I have uniformly declared, that no such affidavits should be heard on a motion to dissolve. (a) But this case having been brought here from Baltimore County Court; and these not being mere *ex parte* affidavits, but depositions taken under the order of the 25th of August, of that court; and as in cases of this description I have not felt myself authorized to revise or reverse any order of the court from which the case comes, (b) these depositions must now be received and read, as having been sanctioned by that order.

It is a well established rule of this court, that, on a motion of this kind, the defendant can only ask for a dissolution of the injunction upon so much of his answer as is properly responsive to the bill; no new matter in avoidance, making its appearance for the first time in the answer, can, in this stage of the case, be allowed to form any part of the foundation of the defendant's motion for a dissolution. It is a direct and responsive denial of the facts composing that case on which the plaintiff's equity rests which alone can entitle the defendant to a dissolution of the injunction. (c) Hence, all that has been said by the defendants as to the plaintiffs having, in fact, no corporate capacity, must be considered as new matter in avoidance of the plaintiffs' claim; and therefore cannot be now properly heard and determined upon.

But the suggestions which arise out of this portion of the defence, it is obvious, may be worthy of the gravest consideration

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(a) It has been since declared, that the court, on application of any of the parties, may order testimony, in reference to the allegations of the bill, to be taken on behalf of all the parties, in such form as it may direct, and on such terms, and under such regulations, as to notice and otherwise, as may be deemed equitable; and so, however, that such testimony be returned by the day when the motion for dissolving such injunction shall be heard; and the order providing also, that notice of the granting such order be given as shall be prescribed by the court, on part of the party applying for the order, to the other parties named in the bill or their solicitor; and such testimony, at the hearing of such motion, shall be considered in connection with the bill, or petition and answers in the cause; 1835, ch. 380, s. 8.

(b) *Strike's case*, 1 Bland, 67.—(c) *Salmon v. Clagett*, ante 159.