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## STATEMENTS OF DEFENCE.

A question which is agitating the minds of some practitioners, is whether, under the new Rules, an affidavit filed by the defendant with his appearance to a specially indorsed writ must, in default of his filing a formal statement of defence, be regarded as "a statement of defence." We should have thought that there could be hardly any question that it must, but it is said that some great authorities have expressed a different opinion. In the old days of equity pleading, the older practitioners will remember the statement of defence, or, as it was then called, "the answer" of a defendant, was, as a rule, required to be sworn; and was really in substance an affidavit. Our present system of pleading is based on the old Chancery system, the statement of claim is the old bill in Chancery under a new name, the statement of defence is the old "answer" under a new name, but with a difference that it is not as a rule required to be verified by oath. The new Rules, however, have in the case of specially indorsed writs, practically restored the old Chancery practice and required the defence of a defendant to be verified by oath. This it is true is done by what is called an "affidavit," but what is in substance and in fact, to all intents and purposes, is the old Chancery "answer."

By Rule 56 (2) the plaintiff is expressly authorised to treat this affidavit as constituting the defendant's pleading—just as he is authorised to treat the indorsement on the writ as "the statement of claim," Rules 56 (2), 111, but if he does not elect to proceed to trial as provided by Rule 56, the defendant "may deliver a defence or counterclaim." Now what is troubling some officers and practitioners is this. Suppose he does not avail himself of this right, can he be treated as in default of a defence?