HILL & SARGENT *vs.* CRAVY.

It is a fundamental rule that if a defendant, to a bill in equity, submits to answer, he is bound to give a full and sufficient disclosure to the questions asked by the plaintiff's bill, and he cannot by an answer refuse a discovery. An insufficient answer is no answer. It has been held that an answer clearly evasive on its face, and no reason assigned, should be considered as a contempt of court.

Appeal from the Chancery side of the Union Circuit Court.

Bill in chancery by Benj. Cravy against Hill & Sargent, determined in the Union circuit court, chancery side, Nov. term 1845, before Conway, judge.

The bill alleged, in substance, that on the 3d Jan'y 1841, complainant was indebted to Hill & Sargent, as partners, by note for $80, bearing date 11th Jan'y 1840, due at twelve months, with interest from date at ten per cent: by another note for $5, made by complainant to Howell, dated 29th May 1839, bearing the like interest, and assigned to defendants, and upon which he paid them, 31st August 1840, $5.25 leaving a balance due thereon of about thirty-seven and a half cents only: also by book account for about $11.87½ for goods, wares and merchandise bought of defendants. That on the said 3d Jan'y 1841, complainant paid and delivered to defendants 3,500 pounds of seed cotton, at $2 per 100 pounds, on which defendants advanced to him $50 in Alabama bank paper, leaving due complainant a balance of $20 for said cotton, to be carried to his credit on the notes and the book account aforesaid; making in all a balance due by complainant to defendants, on the day and date aforesaid, of about $80.25 principal and interest. That on said 3d Jan'y 1841, complainant and defendants came to a settlement of the above matters, and complainant being an unlettered man, except so far as to write his name, which he had learned to do mechanically, entrusted the calculation of the balance due by him to defendants, and they made it out about $82; and drew a note for complainant to sign, which they told him was for that amount only, and due the 15th March 1841, bearing interest at the legal rate of six per cent per annum from date until paid. But said note instead of being for the sum of $82, as represented by the defendants to complainant, was for the sum of $195.37½, though complainant signed said note upon the assurance, by defendants, that it was for $82, and that that was the true amount due by him to them as aforesaid. That at the time of the settlement aforesaid, complainant was indebted to defendants the balance above stated and no more, and defendants procured him to sign a note for a larger amount as aforesaid by falsehood, fraud and misrepresentation. That at the time complainant executed said note, defendants assured him that they would credit his said book account in full; and they then delivered to him the two notes first

mentioned above to be cancelled, and from which he accordingly cut his name. The notes were exhibited.

That in the summer of 1841, defendants sued complainant on said note for $195.37½ in the Union circuit court, and at the Oct. term 1841, obtained judgment by default against him for the amount of the note, interest &c., and execution had issued.

Complainant specially interrogated defendants as follows, in substance:

1st. If complainant was indebted to defendants on the 3d Jan'y 1841, in any other manner, or amount, than as alleged above; and if so what such indebtedness was for, what sum, when and how did it accrue? 2d. If complainant did not deliver to defendants the amount of cotton, at the price, time &c., as alleged above; if defendants advanced more than $50 on the same, and whether the balance due complainant on the cotton deducted from the two notes, principal and interest, and book account which complainant owed defendants as above alleged, was not the only real and true consideration for which the said note for $195.37½ was executed by complainant, and if there was any other consideration to state what it was? 3d. If defendant did not represent to complainant that said note was for $82, instead of the sum aforesaid, and whether he did not sign it with that understanding? &c. &c.

Complainant prayed an injunction of the judgment at law, except for the sum of $80.25, the amount admitted to be due defendants on settlement as alleged in the bill; and for general relief.

The court ordered a temporary injunction in accordance with the prayer of the bill, and the cause was continued.

At the next term, complainant filed an amendment to his bill, alleging, in substance, as follows:

"That the *remaining part of the consideration* [part not enjoined] of said note for $195.37½ mentioned in the original bill, and upon which the judgment therein specified was obtained, was one horse of the price of $80, sold to complainant by defendant, Hill, about the second January, 1841: and that besides the said horse,

at the price aforesaid, there was not *the least consideration* moving from defendants to complainant for the said note. That the horse was not the property of defendant, Hill, Sargent, or of the firm, but of one Jane Fuquay. That defendants well knowing the title to the said horse was not in either of them, but in said Fuquay, but seeking to cheat and defraud complainant, sold him the horse for $80, as aforesaid, and included said sum in said note for $195.37½, which said sum of $80 was the only *remaining* part of the consideration of said note which had *not been enjoined as aforesaid;* and that in fact and in truth there was no consideration whatever for said note except the price of said horse, $80, aforesaid, and that that was fraudulent and wholly failed as aforesaid. That defendants combined to defraud complainant in the premises, and that he was wholly ignorant of their want of title to the horse, at the time of the purchase and execution of said note. That at the time he gave the said note for $195.37½ to defendants, he was induced to believe that he was giving the same only for the sum of $80, or thereabouts, the price of the horse. That Fuquay brought replevin against complainant for the horse, shortly after he purchased him as aforesaid, in the Union circuit court, and recovered judgment against him for the horse, or his value, &c., which judgment was in full force &c., and exhibited," &c.

Complainant propounded special interrogatories to defendants embracing the allegations in the amendment to their original bill, prayed a perpetual injunction of the whole of the judgment at law, and for general relief.

The court accordingly granted a temporary injunction, and the cause was continued. At a subsequent term defendants answered as follows, in substance:

"Defendants admit they were purchasers as alleged in the bill. They also admit that it is true that they held the notes of complainant for $80, and for $5, and that complainant paid them $5.25 as alleged in the bill. It is true that complainant was indebted to the respondents in the sum of $10.26 and not in the sum of $11.87½ as charged. It is true that respondents received from complainant 3,500 pounds of seed cotton at $2 per hundred pounds as alleged,

but it is not true that respondents advanced to complainants $50 upon the cotton, but it is true, and so respondents allege, that the value of the cotton was applied by the respondents to the payment of debts then due and owing from complainant, of all which respondents advised and informed complainant, and the full amount of said cotton was carried to the credit of complainant upon the several debts then due and owing by him to respondents, all of which complainant was well knowing. It is true that respondents did let complainants have $50 at the time alleged in the bill, but it is not true the same was advanced on the cotton as alleged, but it is true, and so respondents expressly allege the truth to be, that the same was a loan, and so complainant accepted, received, and understood the same to be when received by him. It is true that respondents came to a settlement with complainant at the time alleged in the bill, and that there was a balance found due respondents from complainant. And it is true, and so respondents expressly charge, that respondents drew, or caused to be drawn, a note for $195.37½, which complainant then and there signed and delivered to respondents, but it is false that respondents or either of them, or any person for them, at the time said note was executed, represented to complainant that the said note was for $82, or any other sum whatever different from the tenor and effect of said note appearing upon the face thereof. And respondents further say and charge the truth to be that said note for $195.37½ was read to them by complainant literally and truly verbatim as the same read upon the face thereof, at the time the same was executed and delivered to respondents by complainant, and that he was fully advised of, and acquainted with, the contents thereof, without this that the same was ever falsely and fraudulently read to complainant by respondents or any person for them. Respondents admit that they sued complainant upon said note, obtained judgment, and that execution had issued as alleged in the bill.

Respondents, further answering, say that it is true that respondent Hill did sell a horse to complainant for $80, and that a portion of the price of said horse was included in said note for $195.37½ as complainant has alleged. And respondent protesting that the

title to said horse was in Jane Fuquay, or that the said Jane has recovered the said horse from complainant in manner and form as alleged in the bill, say that the said horse (gelding) was sold to complainant under the belief that the true title of said horse was with the possession, and that a valid title was conveyed to complainant; and that the sale of said horse to complainant was without undue means or any fraudulent intention, and in good faith; and respondents pray the judgment of this honorable court, if the title of said horse was in said Jane Fuquay, and that she recovered the said horse from complainants as alleged in their amended bill; if these respondents ought to answer so much and such parts of complainant's bill as charge that the title of said horse was in said Jane, and that said horse had been recovered from complainant by said Jane in manner and form alleged by complainants; and if respondents can be sued in this honorable court, when the remedy of complainant, if any he has, is at law on the law side of this honorable court.

Defendants deny all fraud and combination charged in the bill, and having fully answered and denied the allegations in the bill, pray a dissolution of the injunction," &c.

Complainants filed a number of exceptions to the answer, alleging, in substance, that the material allegations of the bill were not answered at all, or answered evasively. The court sustained part of the exceptions, and ordered defendants to answer more fully, but defendants, waiving time to answer, peremptorily refused to amend their answer, whereupon the court rendered an interlocutory decree against them, which was made final at a subsequent term, and they appealed.

RINGO & TRAPNALL, for the appellants.

PIKE & BALDWIN, contra. As to the correctness of the proceedings see *R. S. Ark.* 163, *Secs.* 39, 40, 41, 42, &c. And as to sufficiency of answer in chancery, see *Mitford's Pleading* 246, '7-'8. Also 250,-'1-'2-'3-'4. As to the object of a full and direct answer see 2 *Story's Equity,* 743,-'4-'5. 1 *Harrison's Chancery*

302, *par.* 2 *mar. page.* Exceptions to answer, *Bartin's Equity* 132, '3-'4, *note* 1, *to page* 133. *Same book* 37.

OLDHAM, J. The answer filed by the appellants to the bill of the appellee, is wholly insufficient: it fails to answer several material allegations, and evades others. It is a fundamental rule that if a defendant submits to answer, he is bound to give a full and sufficient disclosure to the questions asked by the plaintiff's bill, and he cannot by answer refuse a discovery. *Summerville vs. McKay,* 16 *Ves.* 382. An insufficient answer is no answer. *Gryor vs. Lord Arundel,* 8 *Ves.* 87. *Story's Eq. Plead.* 465, 469, 646,-'7-'8-'9.

In *Thomas vs. Letherage,* 9 *Ves.* 463, the court declared that an answer clearly evasive on the face of it and no reason assigned should be considered in future a contempt. In *Smith vs. Serle* 14 *Ves.* 415, the court seemed inclined to take an evasive answer off the files.

By our *Rev. Stat. ch.* 23 *sec.* 40, it is enacted that "when an answer shall be adjudged insufficient the defendant shall file a further answer within such time as the court shall direct, and in default thereof the bill shall be taken as confessed."

The decree of the circuit court in chancery is correct and proper, and in all things affirmed.