

BYERS AD. VS. SEXTON.

Where no replication to the answer in a case in chancery is filed, the complainant has no right to read depositions to prove the allegations of the bill, or overturn the statements of the answer. (*Sneed et al. vs. Town*, 4 Eng. 537.)

Appeal from Desha Circuit Court in Chancery.

Hon. JOHN C. MURRAY, Circuit Judge.

STILLWELL & WOODRUFF, for the appellant.

Mr. Chief Justice ENGLISH delivered the opinion of the court.

Mary B. Sexton, widow and executrix of Wm. Sexton, complainant in the bill, alleges, in substance, that after the death

of her husband, Thomas N. Byers represented to her that her husband was indebted to him, at the time of his death, in the sum of \$709.78, for professional services as an attorney, etc. That knowing that Byers had been the attorney of her husband, having full confidence in his integrity, and confiding in the truth of his statements, complainant executed to him her note for the amount so represented by him to be due, etc. That she afterwards was informed that his statements were untrue, that her husband had settled with him before his death, and nothing remained due, and that the note was obtained from her without consideration, by misrepresentation and fraud. That Byers had sued her on the note, obtained judgment by default, etc., etc.

The bill prays for discovery, and that the judgment be enjoined.

Thomas N. Byers, the defendant, after filing a very defective answer to the bill, departed this life; and it seems that Wm. Byers, his administrator, was represented by attorney, at the hearing, and appealed from the decree, though it does not appear that any formal steps were taken to make him a party.

The cause was heard upon the bill and exhibits, the answer of Byers, and two depositions taken and read upon the part of Mrs. Sexton; and the court decreed as prayed by the bill.

There was neither exception nor replication to the answer.

There being no replication to the answer, the complainant had no right to read depositions to prove the allegations of the bill or overturn the statements of the answer. *Sneed et al. vs. Town*, 4, *Eng.* 537. The material allegations of the bill were not admitted by the answer, and without the depositions, the complainant's case was not made out (if it was by them) and she was not entitled to a decree.

The decree must be reversed, and the cause remanded, with leave to the parties to amend their pleadings if they shall desire so to do.