BETTISON *vs.* JENNINGS.

When the answer denies all the material allegations of a bill for injunction, the court should dissolve the injunction and decree damages on the amount of the judgment enjoined; but the bill should not be dismissed, if there be sufficient equity on its face to give the court jurisdiction.

The allegations, that the defendant is indebted to the complainant: that he is insolvent, and that the demand sought to be enforced at law is satisfied, are sufficient to give a court of chancery jurisdiction.

Appeal from the Circuit Court of Pulaski county, sitting in Chancery.

This was a bill filed by Bettison, against Jennings, for an injunction to stay the execution of a judgment at law, and determined in the Circuit Court of Pulaski county, at the October term, 1845, before the Hon. JOHN J. CLENDENIN, Judge.

The bill states, that the defendant is indebted to the complainant in the sum of $1700, for which suit has been instituted, which is still pending; that after suit brought, the defendant instituted an action against the plaintiff on a note, which the complainant avers had been paid and adjusted, but by neglect left in the defendant's hands; that the complainant failing to obtain evidence of the payment of the note, judgment was rendered against him for the sum of $203.67 debt, and $27.40 damages, of which not a single cent is justly due; that execution has been sued out on the judgment, and levied upon the goods and chattels of the complainant; that Jennings is utterly insolvent, and if the judgment shall be paid, the amount will be entirely lost to the complainant, as repayment thereof cannot be enforced: prayer for injunction. The defendant, in his answer, denies an indebtedness to the complainant in the sum of $1700; but admits an indebtedness of $40, which he offers to credit on the judgment, if the complainant will dismiss the suit against him; denies that the judgment has been paid, and avers the amount to be still due: he also denies that he is so insolvent as to be unable to pay back the amount of the judgment, and prays a dissolution of the injunction.

On hearing the motion to dissolve, the Circuit Court made a final decree, dissolving the injunction, and dismissing the bill for want of equity, and also gave the defendant damages and costs.

Upon consideration of a transcript of the record, this court granted the complainant an appeal from the decree of the Circuit Court.

FOWLER, for the appellant. As the answer denied every thing, Bettison does not question the propriety of the mere dissolution of the injunction.

But, if the bill contained equity on its face, Bettison had a clear right, after the dissolution of the injunction, to progress to final hearing; and to dismiss the bill on dissolution, is error. *Blow, &c.* v. *Taylor, &c.*, 4 *Hen. & Munf. Rep.* 159. *Johnston et al.* v. *Alexander et al.*, 6 *Ark. Rep.* 308.

And it is insisted that the bill did disclose facts which entitled him to relief in equity, according to its well established principles; and even if it did not, Bettison had a right by leave of the court to amend his bill.

And for the court below, on dismissing the bill for want of equity, then to proceed and render a decree against the complainant for the amount of the judgment which he had enjoined, when there was no case in court proper for the Chancellor to act upon, was not only clearly erroneous, but a palpable absurdity.

Besides, even had it been proper to decree that Bettison should pay the amount of the judgment enjoined, the decree is for too much. The judgment at law, debt and damages, amounted only to $231.07 cents; when the decree is for $251.07 cents, and interest and damages corresponding thereto. And for this alone, it should be reversed.

After the injunction is dissolved, the suit remains in court, of course, without any motion to retain it, until dismissed by the plaintiff, &c. *Cole* v. *Sands*, 1 *Tenn. Rep.* 183.

RINGO & TRAPNALL, S. H. HEMPSTEAD, contra. The facts in the bill, conceding them to be true, constitute a matter purely legal and cognizable at law. If the note had been paid, Bettison was bound to show it in the trial at law, and could not resort to a court of equity and be heard there, unless the judgment was obtained by

fraud, accident or mistake, unmixed with any negligence or fault on his part. Nor can a defendant come into a court of chancery for a new trial or relief, with a purely legal defence, where there is no special ground of surprise or ignorance of important facts suggested, or where no equitable circumstances have arisen since the trial, and when he has neglected to defend himself with due diligence in the proper place. The cases of *Andrews* v. *Fenter,* 1 *Ark.* 186. *Dugan* v. *Cureton, ib.* 31. *Bentley* v. *Dillard,* 1 *English* 83. *Hempstead & Conway* v. *Watkins, ib.* 352, show conclusively that there is not even the shadow of equity in the bill, and that a court of chancery has no jurisdiction to grant the relief therein prayed, even if all the facts had been as unequivocally admitted as they are expressly denied.

It was proper to dismiss the bill for want of equity, and to decree the amount of the judgment enjoined, with interest and damages, and costs. This kind of a decree is contemplated by the very condition of the injunction bond, and is warranted by the statute. *Rev. Stat. ch.* 77, *sec.* 16, 20, title "Injunctions."

CONWAY B, J. This was a suit by injunction bill, to stay execution of a judgment at law. On the coming in of the answer, the Circuit Court dissolved the injunction, dismissed the bill, and decreed damages and the amount of the judgment enjoined. As the answer denied all the material allegations in the bill, it was correct to dissolve the injunction, and decree damages; but the dismission of the case was not a necessary consequence of the injunction's dissolution. If the facts charged in the bill were sufficient to give a court of chancery jurisdiction, it was not ousted by their denial in the answer, and the cause should have been allowed to remain on the docket, and progress as other cases to issue, proof and final hearing on the merits. The allegation of defendant's large indebtedness to complainant, of his utter insolvency, and of his efforts unconscionably to enforce against complainant the collection of a satisfied demand, were surely ample to bring the case to the legitimate cognizance of a court of equity. The writ of injunction is peculiar to such courts, and it is grantable in all cases where it is against good

conscience, that the party prayed to be inhibited should proceed, and where the object is to prevent an unfair use of the process of a court of law to deprive another of his rights, or subject him to unjust vexation or irreparable injury. 2 *Story's Eq.* 156, 166, 7, 8, 9.

The Circuit Court erred in dismissing appellant's bill, and in decreeing the amount of appellee's judgment at law. The decree is, therefore, reversed.