

ant against the plaintiff, who, by his bill, called upon that defendant to respond upon oath to such questions as he thought fit to propound to him. It seems to be conceded, that there is no decision of our Court of Appeals which denies to a defendant this privilege, of reading the answer of his co-defendant against the plaintiff, the case of *Gardiner & Bowling vs. Hardey & Simms*, 12 G. & J., 380, expressly avoiding a decision of the question; and it is thought, that the reasoning of the court in *Jones vs. Hardesty*, against the admissibility of the answer of one defendant as evidence against another, so far from leading to the conclusion, that it may not be read against the plaintiff, tends rather to establish the reverse. In the case of *Crawford & Sellman vs. Taylor*, 6 G. & J., 323, the answer of the insolvent, who was a defendant, was read, and constitutes a part of the proof relied upon by the court, as showing that the transfer in that case was not made in contemplation of taking the benefit of the insolvent laws.

The case of *Mill vs. Gore*, 20 *Pick. Rep.*, 28, is express, that though the answer of one defendant is not evidence against the other, it is evidence against the plaintiff. And in the case of *Field et al. vs. Holland et al.*, 6 *Cranch* 8, chief justice Marshall, in speaking for the court, decided, that the answer of a defendant when responsive to the bill, is evidence against the plaintiff in favor of the other defendants; and though the Court of Appeals of this state expressed their dissent from this decision, in so far as it affirmed that the answer of one defendant might be read against others claiming through him, no dissent was expressed from the proposition, that the answer would be evidence for a co-defendant against the plaintiff. The case of *Morris vs. Nixon*, 1 *Howard*, 119, 126, does not seem to me to decide the question one way or the other. In the case of *Dunham vs. Gates et al.*, 1 *Hoffman*, 185, the assistant vice chancellor does say, that the answer of one of the defendants could not be used on behalf of the others; but as the bill was dismissed, notwithstanding this remark, there was no necessity for a careful consideration of the question, and from the manner in which the observation was made, and the absence