

adequacy of price is not alone sufficient to set aside the sale, and the expression of opinion, however well founded, that the property on a resale would bring a much higher price, is not sufficient. *Mining Co. v. Mason*, 145 U. S. 349, 12 Sup. Ct. Rep. 887; *Graffam v. Burgess*, 117 U. S. 180, 6 Sup. Ct. Rep. 686.

Are there then any additional circumstances against the fairness of the sale? Have the purchasers taken any undue advantage? If so, of whom? Has any party interested in the property been misled or surprised? There are some statements in the affidavits submitted, based on information and belief, that some of the buyers, who were bondholders, deterred other proposed buyers from bidding by creating the impression that they were going to bid \$400,000 for the property, but these statements are too vague and indefinite for the court to act on them. The proposed purchasers are not named. What sum they were willing to pay for the property is not given. They do not testify in the matter. What was said by the buyers, or any of them, to create, or that tended to create, such impression, is not shown; and while I can well see that an impression might have prevailed that the bondholders might bid as much as \$400,000, inasmuch as they had authorized their committee to bid as much as that sum, and which seems to have been generally known, the circumstances show that the committee was clothed with a discretion to buy the property at any price, limited only by the sum named. This statement, or the substance of such a statement, of itself cannot be said to be an act of unfairness, or an act that would raise the presumption of fraud. However much I may regret that the property did not realize a larger sum, there is no evidence of such conduct on the part of the purchasers as would afford any ground to justify the court in setting aside the sale. The motion to make the order confirming the sale absolute is therefore granted.

UNITED STATES v. FERGUSON.¹

(Circuit Court, S. D. Alabama. December 23, 1892.)

1. EQUITY PLEADINGS—INFORMAL ANSWER.

A literal denial in the answer of a material allegation in the bill is not to be deemed an admission, although on exception it might have been held insufficient.

2. SAME—EFFECT OF ANSWER.

At a hearing on the pleadings, embracing bill, answer denying its material allegations, and replication reiterating the averments of the bill, the answer must be taken as true, and the bill will be dismissed.

In Equity. Submitted for decree on the pleadings. Bill dismissed.

M. D. Wickersham, U. S. Dist. Atty.
John R. & C. W. Tompkins, for defendant.

¹ Reported by Peter J. Hamilton, Esq., of the Mobile, Ala., bar.

TOULMIN, District Judge. A literal denial in the answer of a material allegation of the bill, although it might be held insufficient on exceptions, cannot be deemed an admission of the allegation. 1 Brick. Ala. Dig. 716. If a cause is heard on bill and answer alone, or upon bill, answer, and replication, the answer must be taken as true. 1 Brick. Ala. Dig. 739; Reynolds v. Bank, 112 U. S. 409, 5 Sup. Ct. Rep. 213; Story, Eq. Pl. 674; 1 Daniell, Ch. Pl. & Pr. 843, 845. This cause is heard on bill, answer, and replication, and is thereon, by consent of parties, submitted for a final decree.

The answer literally denies every material allegation of the bill, upon the truth of which allegations depends the complainants' right to the relief sought by them. The replication, in substance and effect, reiterates the allegations of the bill, and avers the power of complainants to prove and maintain the same. On the issue thus made, and the hearing had thereon, the court is of opinion that the complainants have failed to establish their right to relief. The bill will therefore be dismissed, at complainants' costs.

UNION PAC. RY. CO. v. HARMON et al.

(Circuit Court of Appeals, Eighth Circuit. January 27, 1893.)

No. 136.

EQUITY—PLEADING—DECREE—APPEAL.

The Union Pacific Railway Company, having sold land, reserving all coal underneath the surface, "also such right of way and other grounds as may be necessary for the proper working of any coal mines," and for the transportation of coal therefrom, subsequently filed a bill averring that there was a vein of coal on the land of sufficient thickness to pay for working; that the company had a right to enter on the land for the purpose of sinking shafts to extract the coal, but that the purchasers, by force and violence, prevented such entry. The bill prayed an injunction to restrain such interference. The answer denied that there was coal on the land, or that the reservation in the deed authorized the complainant to prospect upon the land, and averred that the complainant's railroad crossed the land over a strip 100 feet wide, of which complainant owned the fee, and whereon shafts could be sunk to remove coal from the land. The injunction was denied, and the bill dismissed, no evidence having been taken, as counsel intended that all material facts should be embraced in the pleadings. *Held* that, on the record, the appellate court could not say that the circuit court erred in refusing the injunction, but that the decree dismissing the bill upon its merits was erroneous, since it would probably prevent complainant from thereafter asserting the right to enter upon the land in any way for the purpose of mining coal.

Appeal from the Circuit Court of the United States for the District of Colorado.

In Equity. Bill by the Union Pacific Railway Company against W. M. Harmon, F. H. Harmon, and Guy D. Harmon to restrain defendants from preventing complainant from entering on certain land to mine coal thereon. The circuit court refused an injunction, and dismissed the bill. Complainant appeals. Modified and affirmed.