Breese J. This case seems from the allegations of the bill to be this. The appellee being a creditor of the Lexington Fire Life and Marine Insurance Co. sued out an attachment which was levied by the Sheriff Church on a vessel called "Buena Vista" as the property of the company, that the sheriff put her in the possession of Norton Rogers & Nixon to be run either for his and their joint benefit or for their benefit alone, that Norton & Co during all the seasons since the vessel came into their possession ran and used her for the carriage of merchandize lumber and other cargoes & freight for ~~hire~~ & that in such business she was worth had earned or ought to have earned over and above expenses of navigating her $2500 in each of the years they had the possession, that is, during the seasons of 1852-3-4, 5 and 1856 and up to the time of filing the bill and were still doing so — that in those years she had earned or should have earned $13000 which ought to be applied to the payment of complainants (appellee's) judgment; that the complainant has no means of ascertaining these facts without a discovery from Church Norton & Co. and each of them, that they neglect and refuse to account for the earnings or to bring them into court ~~or~~ to produce the vessel to answer the judgment claiming that the earnings and property are subject to the payment of the judgment and costs; that Norton & Co claim to have sold the vessel but to whom or for how much he is ignorant.

These are the principal allegations in the charging part of the bill and they are followed by the prayer that the defendants may each of them answer under oath "whether the Buena Vista her anchors chains rigging and sails were not attached by said Church as sheriff upon the writ of attachment in favor of complainant & and taken into his possession and whether he did not let or put the same & when into the hands or possession of said Norton & Co. and whether she has not been run by them or by their agent or direction and whether they have sold her and to whom and on what terms and conditions and for how much and in what trade and for what freight she has been run and for what amount of freight she has earned since said letting &c with the prayer for process "and that your orator may have such other & further or different relief in the premises as to equity and good conscience may seem meet." It will be observed no relief of any kind is prayed by the bill to which the prayer for other and further and different relief could apply and it was therefore demurrable for want of form had the point been made; there is no specific prayer that the proceeds of this vessel be applied to the payment of this judgment yet that is manifestly the scope and purpose of the bill and we can carry out that purpose if the prayer of the bill does not forbid. That it does not is evident. The Court could decree according to the case made by the bill they corresponding. We do not understand by these allegations of the bill, as the appellants seem to understand, that the appellee claims the legal title to the vessel attached, but rather, as the general ownership was in the defendant in attachment, he had an equitable interest by means of his levy to the extent of his judgment and the sheriff had a special property in the vessel subject to the rights of all contending parties; and if the vessel was not produced to satisfy his judgment but was let out or hired to others by the Sheriff he was entitled to an account for her net earnings and to have his judgment paid out of them, or, if sold, out of the proceeds of the sale. This seems to us to present a plain case for the interposition of a court of Equity one of whose familiar subjects of jurisdiction & cognizance is the execution of trusts and altho a court of law might in

a circuitous and expensive mode afford a rem-
-edy by garnishment yet it would not be so
searching and effectual as Chancery could
apply. It cannot be denied that the appellee
acquired a lien on the vessel by his writ of at-
-tachment - that when the sheriff took it into
his possession he became a trustee as well for
the ~~appellee~~ as for others who might have an
interest in her. The sheriff was bound to
account for the property and, if he put it
out of his power to produce it to be sold under
the execution, and, in violation of law and
his duty, placed it in the hands of these part-
-ies, who have made earnings by the use of
her and have sold her and cannot pro-
-duce her to satisfy the execution, we think
a case has arisen to call into exercise the
powers of a Court of Chancery which by a
searching examination of the consciences of
the parties implicated in the transaction can
procure a full discovery of all the facts neces-
-sary to be known. The appellants admit that
they are the receiptors of the sheriff, his servants,
responsible to him only, and between whom &
the appellee there is no privity either of contract
or estate. The sheriff being the trustee for all
concerned in the goods attached, if they pass into
the hands of his servants for safe keeping or otherwise shall it be said
a Court of Chancery has no power to compel them

to account to the parties interested. It re-quires neither privity of contract or of estate for such purpose. The power of the Court attaches on the trust property and it or its avails can be pursued into the hands of any and all persons who may have possessed themselves of it. When the vessel was hired or let to Nixon & Co. it was property in trust and any party interested in it may compel a discovery as to the disposition of it. The cases cited by the appellants counsel and their argument to the effect that there is no privity of contract between them and the appellee shows that a suit at law could not be maintained against them by the appellee. The act of the Sheriff in thus disposing of this vessel was a wrong act, and these appellants participating in it are in the condition of all other persons who enter into an unlawful transaction with one who is interested by law with a fund for the benefit of others. All such parties may be properly joined as defendants to a bill in Chancery to discover the proceeds of the trust and to compel an account. All persons implicated in a breach of trust fraud or other illegal act may be made parties altho they may have no interest in the subject.

We do not regard this as a creditors bill either

in form or substance and therefore the objec-
-tion that no mutuality of dealings is shown can have no influence. It is a bill to get at the proceeds of property on which the appellee had an equitable lien whilst in the hands of the sheriff and which he by his own wrongful act put into the possession of his co-defendant who made large profits by the use of it and then sold it for a large sum of money. In 2 Story, Eq. Juris., 695, the principle is stated on which the bill can be sustained. When a trustee or other person standing in a fiduciary relation, makes a profit out of any transaction within the scope of his agency or authority, that profit will belong to his cestui que trust; for it is a constructive fraud upon the latter to employ that property contrary to the trust and to retain the profit of such misapplication; & by operation of equity the profit is immediately converted into a constructive trust in favor of the party entitled to the benefit. Nor is the doctrine confined to trustees strictly so called. It extends to all other persons standing in a fiduciary relation to the party whatever that relation may be." But upon the grounds of fraud as well as trust the jurisdiction of Chancery in this case cannot be questioned. In regard to frauds actual or constructive Courts of Equity have adopted

broad and comprehensive principles in exer-
-cising their remedial justice in favor of in-
-nocent persons who are suffering by it without any fault on their own part. For this purpose they will convert the offending party into a trustee and making the property itself subserv-
-ient to the proper purposes of recompense by way of equitable trust or lien, and a fraudulent purchaser will be held a mere trustee for the honest but deluded and cheated vendor. Ib. 698. We do not well see how the parties could be reached except by a proceeding in chancery where this vessel its earnings and avails can be subjected to the appellee's equity. The appellee has no legal title to the vessel, nor is there any any privity of contract or of estate between him and the appellants which he can assert in a court of law and his remedy must of necessity be in equity. These views sustain the ruling of the court in allowing the exceptions to the appellants answer. On their being al-
-lowed and the answer adjudged insufficient the appellants were allowed time within which to file a further answer which they did not choose to do and on their failure the bill was taken for confessed and the matters re-
-ferred to a master who on proof being heard reported to the court on which the decree passed.

This was all regular and in strict conformity with the statute. The amount found is sustained by the proof. The refusal of the Court to set aside the default was a matter of discretion in the Superior Court, but if it was not it is one of the essential requisites when a default of this character is sought to be set aside that the motion shall not only be founded on an affidavit but a full and perfect answer shall accompany it.

We have looked into this answer and find it obnoxious to several of the exceptions taken to the first answer. It does not show an account of the dealings with the vessel from the time she came into their hands – nor of the sale to Boyce & Fiske – or of the $5500 they paid for her – nor do they show what her earnings were after Boyce & Fiske sold her – On a rule for further answer a party files a defective or insufficient answer at his peril. The decree of the court below is affirmed

Opinion of Judge Breese