

No. 12755

Supreme Court of Illinois

Eastman

vs.

Huls

71641  7

~~to the~~
Cashman
as
Spencer Hills.

19.

12755
7859

United States of America
State of Illinois, Boone County, } Place before the Honorable Isaac
Mason, Judge of the Thirtieth
Judicial Circuit for the State of Illinois and pre-
siding Judge of the Ninth Circuit Court at a Term
of said Court begun & held at the Court House in
Lemont in said County on the Twelfth day
of May in the Year of our Lord one thousand
eight hundred and fifty six.

Present The Hon Isaac M. Mason Judge
" Lawrence P. Parker Sheriff
Attest Luther Decker Clerk

Be it remembered that whereas on the 26th day of January
A.D. 1853 there was filed in the office of the Clerk of the Cir-
cuit Court for Boone County a Bill for Discovery of which
the following is a copy to wit.

State of Illinois }
Boone County } Cause Circuit Court for Boone County 1853

To the Hon Isaac M. Mason Judge of said Court, sitting
in Chambers.

John Walter Spencer files. Adversely com-
plaining, shows unto your honor that on the sixth day of
August A.D. 1849, John Walter and one John B. Adams
purchased of one Dr. B. Smith (by his agent for the

purpose of selling the same to said Row a Trucking Machine, upon the Warranty and representations herein after mentioned made by said Smith by his said Agent B. F. Row at and upon the sale thereof.

That the said Row applied to your order of the said Lemons to sell them the said Trucking Machine at St Charles in the County of Meade, and then and there as agent for the said Smith warranted the said Machine to be a good one, and to work well - and further agreed that the said Smith would & should supply all the castings and of said Machine which should prove to be necessary upon using the said Machine - That in consideration of said Warranty and agreement, your order & the said Lemons did then & there purchase the same at the price of Two Hundred & Eighty two (\$282) Dollars and gave their note (which was also signed by Henry Child as security) for the said sum (\$282) payable to said Smith \$141 on the 30th of Oct thereafter, and the remainder in one year with interest at 7 per cent. And your Order further shows that the said Machine failed, and was not a good one, but failed to work well, and also that some of the castings of said Machine proved to be unsound upon using it, and that the said Smith neglected & refused to supply others in their place as by the agreement as aforesaid he should have done. That your Order and the said Lemons were damaged by reason of the failure of the said Machine to be as the same was warranted as

as aforesaid and by reason of the redundancy of the cast-
ings of the same, and the failure on the part of the said
Smith to supply others to the amount of \$231.00 Dollars

And your Orator further shows that the said Smith
& the said Dow are, as your Orator is informed and be-
lieves, non residents of this State, and were here when since
the taking of the Note as aforesaid

And your Orator further
shows unto your Orator Honor, that on the 8th day of May
A.D. 1854 a suit was commenced in this Honorable
Court on the Law side thereof, by joining the name of
David L. Eastman, an attorney at Law of this Court
against your Orator, and the said Simmons and Hen-
ry Burt, in that the said Eastman filed his declara-
tion in said suit of the August Term of said
Court 1854, Counting upon said Note as evidence
thereof upon the same was due, That process in said
suit was only served upon your Orator & the said
Henry Burt, the said Simmons having left this State
And your Orator is informed and believes and so
charges the fact to be, that the said Eastman is not
the owner of said Note, but that the same still belongs
to said Smith, or is the property of the said P. O. Dow
and that the same was sent to, or left with the said
Eastman, for collection by him, as an Attorney, and
that the same was endorsed by said Smith to him
if it was endorsed by said Smith in view to
pervert your Orator and the other parties thereof

from making a defence thereto as they could have done had it been ^{said} made in the name of the payee of the note - And your Orator is also further informed and believes that the said Eastman, never paid any thing for the said Note - and that it was received by him, after the same became due by its tenor and effects.

Your Orator further shews that he has no witness by whom he can prove how or in what manner or from whom, or when the said Eastman obtained the said Note unless he can have the testimony of the said Eastman.

Your Orator therefore prays that the process of subpoena against the said Eastman, return-
ing him to appear and answer the said premises and that his said answer may be used as evidence on the trial of said suit at Law.

And that the said Eastman

- 1 may truly answer and discover, what, if any thing, & when and how & how much he paid for the said Note?
- 2) When he received the said note and from whom?
- 3 How he became possessed of said note, whether by letter or by hand, it was delivered, and if by letter that he produced the letter enclosing it to him.
- 4 Whether he received the said note for collection, merely as an Attorney?
- 5 And that further proceedings in said suit be stayed until an answer here shall be made

I am your Obedient as in duty bound will ever
 pray &c.

State of Illinois
 Kane County

Spencer Mills
 Fairbairn & Burgess Sol's

Affirmation being duly sworn on oath says
 that he is acquainted with the foregoing Bill, and con-
 tents, and that the same is true of his own knowledge, ex-
 cept such parts as are charged upon information
 & belief, and as to such matters he truly believes them to be
 true.

Subscribed before me this
 16th day of January A.D. 1853. J. D. Eastman Clerk

Spencer B. Mills

And after reading to me
 on the 16th day of January A.D. 1853. the foregoing De-
 claration was filed, being in the words and figures as follows
 to wit:

Be it remembered that

David L. Eastman

at.

Spencer B. Mills

January Special Term A.D. 1853

The Defendant of David L. Eastman - De-
 fendant to the Bill of Complaint of Spencer B. Mills
 complainant.

This Defendant by protestation not
 confessing or acknowledging all or any of the matters
 and things in the said Complainant's Bill to be true
 in such manner and form as the same are therein
 set forth, and alleges both under oath and for cause
 of answer sheweth. That the said Complainant has

not shown in said bill such a case
 as call for the intervention of this Honorable Court, in
 asmuch as a discovery of the several matters in said bill
 contained, would if necessary have been obtained in the
 Court in the said Bill mentioned in aid whereof the
 discovery prayed by said Bill is sought to be enforced
 by this Honorable Court from this Defendant.

Wherefore he prays great &c.

D. L. Crasman

It appears from complainant's Bill that there
 are sufficient witnesses by whom the same facts can
 be proved as are sought by this Discovery.

Crasman

~~State of New York~~

~~Daniel L. Crasman~~

vs.

~~Spencer Phelps~~

~~New York County Circuit Court~~

~~Term~~

And afterwards to wit on the 11th day
 of February the following, was filed to wit

~~State of New York~~

~~Daniel L. Crasman~~

vs.

~~Spencer Phelps~~

~~New York County Circuit Court~~

~~February Term 1856~~

And now the said Daniel L. Crasman, Respondent
 named in said petition, having and reserving to him
 self all and all manner of excepting to the many imper-
 fections and informacies in the Petitioner's Bill as to the
 insufficiency of the same as to so much of it as he is
 advised is material for him to answer and to answer

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which is the first interrogatory, propounded by the petitioners.
That he paid for the note supposed to be signed to my said
Bill, a good valuable consideration, to wit a sum due
him from the holder of the supposed note in question in
part and for the balance an obligation, the precise terms
of each the Respondent does not now recollect, nor does he
sum it material for him, to answer, that the sum was
arranged at the time said supposed Note came into Re-
spondent's hands or about the same time, the precise
time Respondent does not now recollect, as he can
find no memorandum of the date or amounts
above stated although he made one thereof, and has
made search for the same in his office and places
where he supposed the same to be and cannot find
the same, hence is obliged to rely on recollection of the
same is not distinct as he relied on the said mem-
orandum of the transaction, made as is aforesaid
and did not charge his mind therewith.

To the second interrogatory.

Respondent says he cannot state
the day, month or year, when he first received the sup-
posed note but believes it to be in the fall of 1847 or the
winter of 1847 & 1848 the memorandum thereof being
lost as stated in his answer above, that his best re-
collection is, that it was in the fall of 1847 that the
same was probably given ^{him} by hand but he cannot
state positively whether by the hand of one P. B. Deane or that
from P. B. Deane if given him by hand, as both

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of the last named persons done business with this Respondent, in relation to said supposed note and in relation to other claims held by them in which they appeared to be mutually interested both as a personal matter and in claims for other persons both named seemed interested in this supposed note and had different communications with Respondent in relation thereto

To the Third Interrogatory

Respondent says he can only answer as he has done ^{above} in his second answer so far as the same is applicable

To the fourth Interrogatory

Respondent says that he did not receive the said note for collection, merely as an attorney inasmuch as he was instructed therein, as stated in his answer to the first Interrogatory and that said supposed note has ever since as first named remained under the control of Respondent excepting a short space of time he delivered the same to one Deow and named him to present the same to Spencer B. Hiss complainant for payment as this Respondent had learned from H. P. H. Hubson of the makers of said note that said complainant claimed some small deduction in the note, in consequence of the non fulfillment of some contract made with said Deow as the agent of one Smith, the original payee of said note, and as he (Deow) was

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familiar with the matter could settle any such
claim, if it really existed other than any one else
as it was better to settle all such matters without litigation.
I said Row took said supposition saying he had
business with Mr. Butts and would see what claim he
had set up and left, and soon after returned the same to
this respondent through the exchange office of Mr.
Simard (Respondent being at that time absent
from home) stating that the said complainant refused
payment unless he could be allowed the sum of
fifty Dollars or thereabouts (the precise sum the respon-
dent cannot precisely state as damages he alleged he
had suffered in consequence of some imperfection of a
Threshing Machine which said complainant alleged
said Smith was bound to make good, but which he
& Row denied and protested against on the part of said
Smith, and which said Row denied refused to pay
or arrange and returned the note as aforesaid to Re-
spondent since which time the same has been
under the control of Respondent. Confession in
swearing says that as to the purchase, ownership, whether
the complainant or E. Smith, of a Threshing Machine
it is as a charging complainant said he has no personal
knowledge and cannot therefore swear thereto —
he does not know as to the value or condition work-
ing of any machine as is alleged in said Bill of
Complaint and therefore cannot swear thereto
the same. nor does he know personally when the said

But in all respects except by report. Respondent
 admits the allegation to be true as to his commencing
 a suit in this Honorable Court as charged in said Bill
 of his filing his declaration. Throwing to one of their
 issues ~~to~~ as is charged in said Bill, but denies all
 manner of confederacyth and says he is the owner of the
 supposition as is more fully and at large stated in his
 Response to the Interrogatories ~~but~~ⁱⁿ fact herein
 and has received in manner herein stated at large as fully
 was defined, as respondent came at this late day
 answer to the Interrogatories by complainant put
 as Respondent would change his mind with the
 details of the transaction as aforesaid having committed
 to the same to writing as stated above at the time, which
 has been inserted as herein before stated.

Subscribed and sworn to before me this 11th day of Feb^r 1836
 Wm. A. Deane Clerk of the Court

And afterwards to-
 wit on the 16th day of February A.D. 1836 the complain-
 ant filed this Exception to the answer of Respondent, being
 in the words and figures as follows, to wit-

Specimen Draft
 David B. ~~David B. Leachman~~
 David B. Leachman

And now comes the said
 Complainant by ~~James~~ his Solicitor and
 says to the answer of the said defendant to the Bill of
 Discovery filed herein and insinuates that the said An-
 swer is incorrect, insufficient, evasive, and in-

11 sentiment in this —

First, — The said answer to the first interrogatory of complainant is evasive, uncertain, & insufficient.

Second The said answer to second interrogatory is likewise insufficient.

Third The said answer to 3^d interrogatory is likewise insufficient.

Fourth The said answer to 4th interrogatory is likewise insufficient.

And the whole of said answer is evasive and uncertain.

Wherefore he prays that the said Defendant may be required to answer fully.

J. F. Fennell

And afterwards to wit on the 7th day of March A being one of the days of the February the amended answer of the Respondent in the above mentioned cause was filed, it being in the words & figures as follows, to wit, —

David L. Constantine

Att^y

Sperman, B. Phils

February Term of the New County Circuit Court
In Chancery Sitting —

This Defendant now and at all times seeing and viewing to himself all advantages and benefits of exception to the errors and imperfections contained in said Bill of Complaint of the said complainant for answer thereto, or to so much thereof as he is advised it is material for him to answer unto, he further answering says —

To the first interrogatory, personally by the complainant

That he gave or paid for the note supposed to be referred to in said Bill of complaint, a good and valuable consideration. Therefore, the precise sum or amount he does not now recollect, but it was as sum then owing to the said leastman from the holder of the said supposed Note the precise sum the said leastman does not now remember but he verily believes it to exceed the sum of Twenty five Dollars, and in addition, that to the said leastman gave his obligation or note for the balance, the precise amount of which he cannot state, but he believes the same was exceeding the sum or amount of Fifty hundred dollars, but how much above, Respondent cannot state, nor can he state the precise time, as Respondent made a memorandum in writing of the said Transaction and did not change his mind with the sums or date, as he had committed the same to writing, at the time said Transaction took place and that said memorandum or writing is missing or lost, as this Respondent fully believes, as he has made search for said memorandum, in his office and places where he supposed the same to be and is wholly unable to find the same.

To the Second interrogatory Respondent further answers

That he cannot positively state the exact Month or year when he first

received the supposed note, but he only believes it was the
 Fall of A.D. 1849 or earlier, if A.D. 1849 or 1851, the number
 drawn thereof being lost as stated in his answer to the first
 interrogatory above made. That his best impression is, that
 it was received in the fall of A.D. 1849, but he believes the same
 was given him by the hand yet he cannot state positively,
 whether by the hand of F. J. Dow or of one D. C. Chapin,
 as both of said persons were business with Respondent in
 relation to said supposed note and in relation to other claims
 made by them, in which they appeared to be nearly equally interest-
 ed, both as to personal matters in claims as to other
 persons, who seemed interested in the supposed note and
 had different conversations with Respondent in rela-
 tion thereto.

To the Third Interrogatory Respondent says
 he cannot answer except as he has to the second Inter-
 rogatory so far as the same is responsive thereto.

To the Fourth
 interrogatory Respondent says that he did not receive the said
 note merely for collection as an attorney, as he was interested
 therein as stated in his answer to the first interrogatory, and
 that said supposed note has continued to first received
 him under the control of Respondent, excepting a short
 space of time, he delivered the same to one Dow, and
 desired him to present the same to Spencer P. Wells
 for payment (as the Respondent had learned from H. P. Wells
 one of the makers of the said note that said complainant
 claimed some small amount on the note, in

consequence of the nonfulfillment of some Contract made with said Row as the Agent of one Smith, the original payee of said note) and as he (Row) was familiar with the matter, said could settle any such claim, if it really existed with some other man, as it was better to come all cash than live without litigation, and said Row took said Unperformed note saying he had business with Mr. Smith and would see what claim he had set up and left and soon after returned the said note to Respondent through the Exchange office of Bra Minard. Respondent being at the time absent from home) informing said Respondent that said Complainant refused payment of said note, unless he could be allowed the sum of Fifty Dollars or thereabouts the price some Respondents cannot state as damages he alleged he had suffered in consequence of some imperfection of a Thrining machine which complainant alleged said Smith had sold him, and which said Row refused to pay a ransom and returned the note aforesaid to Respondent as aforesaid since which time same has been under the control of Respondent.

And Respondent further answering says that as to the purchase, transfer, & delivery the complainant and one H. C. Smith of a Thrining machine as is charged in complainant's Bill, he has no personal knowledge and cannot therefore answer that, nor does he know as to the value or condition or working of any machine as is alleged in said Bill and therefore cannot answer to the same - But does he know personally

When the said Smith & Bone reside next by report, Respondant admits the allegation to be true as to his answering a writ in this court as is charged in said Bill and affiling Declaration therein. & as of service &c as is charged in said Bill but denies all manner of conspiracy and says he is a possessor of the said supposed note as is more fully and at large stated in his Responses to the interrogatories upon which filed and that the same was received in manner therein stated as fully and at large as this Respondant can at this distant day answer to the interrogatories by complainant hereinbefore sent; as Respondant did not charge his mind with the details of the transaction aforesaid having committed the same to writing as stated above, which has been mislaid or lost as hereinbefore stated.

And this Respondent asks that the mat-
ter and things in his answer above set forth may be taken
and received as if the same had been pleaded & answered
by him, separately, to each and all of said interrogatories
or on filed by said complainant - and he asks that all
manner of exception and advantage, may be secured to
this Respondent the same as if formally, pleaded, returned or
answered, and he asks that this suit may be dismissed in
accordance with equity and good conscience.

Abundant with quiet spirit good conscience
 Yours &c &c I have written you this 7th day of Decr D. L. Eastman
 March AB 1836 L. Eastman at f

And on the same day and date and at the same
term of ^{said} Court the complainant filed his exception to
amended answer of the Defendant in the above matter
being in the words and figures as follows to wit:—

Spencer Hull

vs

David L. Eastman

And now comes the said Complainant by
Furnessworth, Solicitor & Counselor is the amended an-
swer of the said Defendant filed herein for the reasons
The same does not fully answer this Bill

First—

2^d

It is wasier

3^d

It is uncertain, & insufficient.

J. H. Furnessworth

for Comptt

And afterwards, to wit on the 8th day of March 1836
the said Defendant filed his second amended answer
being in the words & figures following to wit:—

David L. Eastman

vs

Frederick T. Tamm (ID 1836)

Spencer, P. Hull

of the New County Circuit Court

This Defendant now and at all times saving
and reserving to himself all advantages, and benefit of
excepting of the errors & imperfections contained in said
Bill of Complaint, and for further answer thereto
or to so much thereof as he is advised it is material
for him to answer unto, he further answering says
To the First interrogatory propounded by the said
complainant. —

That he gave and paid for the note supposed to be referred to in said Bill of Complaint, a good and valuable consideration therefor and that he is the holder and possessor of the same for and in consideration of said valuable consideration, by him paid to the holder of the said note the precise sum he paid for said note he does not now recollect - but it was a sum due and owing to the said Merchant from the holder of said note the precise amount of said indebtedness he cannot now state, but he believes to be exceeding the sum of Twenty five Dollars, and in addition to said sum, and owing he paid for said note his promissory note in writing for a sum exceeding Twenty five Dollars, but ~~how~~ much above Twenty five Dollars Respondent cannot state, nor can Respondent state the precise time when the transaction took place as Respondent made a memorandum of the said transaction or purchase and did not change his mind thereon and that said writing is lost or mislaid as Respondent fully believes as he has made diligent search in his office and places where he supposed the same to be and has been wholly unable to find the same, that the contents of his office have been moved two or three times since the said Memorandum was made. But he only believes he became possessor of said note in the fall of 1849 -

T. the Second

Respondent further answering says: That he cannot positively state the month or year when he first received the supposed note, but his best recollection is that

that it was in the year 1844 and that Respondent cannot state as the facts were committed to writing and the same is stated above. And that he cannot state more fully or positively as to the time when he received said note than he has above stated. That he was not positively know or recollect from whom he received the said note, but it was from the houses of P. H. Dow & D. Chapman, but of which he cannot state, as said Dow & Chapman, were business with Respondent in relation to claims they held against different persons, and in relation to the said supposed note, and they both appeared interested in this supposed note, and had different interviews with this Respondent in relation thereto. Respondent further states that he cannot state more fully and positively in relation to said second interrogation than he has above stated for the reasons above stated.

To the Third Interrogatory Respondent says he cannot answer other & more fully than he has answered in the first and second answers above so far as the same are responsive.

To the ^{Fifth} ~~Third~~ Interrogatory Respondent says he did not receive the said note merely for collection as stated by the complainant as he is the holder, and purchaser of said note for a valuable consideration as above set forth in his answer to the foregoing interrogatories and that said supposed note has ever since as received been under the control of Respondent excepting a short space of time he delivered the same to one

Dow, induced him to present the same to Spencer B. Huls for payment, (as Respondent has learned from R. V. Huls one of the makers of this said note that said complainant claimed some small deduction on the note in consequence of the non fulfillment of some contract made with said Dow as the agent of one Smith, the original payee of said Note, and as he the said Dow, ~~was~~ was familiar with the matter, could settle any such claim if it really existed better than any other means, as it was better to settle all such matters if possible practicable without litigation, & said Dow took said supposed Note, telling respondent he had some business with Mr. Huls & would see what claim he had set up and left and soon after returned the said note to respondent through the Exchange office of Bra Minard, Respondent being at that time absent from home, informing said Respondent - that said Complainant refused payment of said note, unless he could be allowed the sum of Forty Dollars or thereabouts (the precise sum Respondent cannot state) as damages he alleged he had suffering in consequence of some imperfection of a Threshing Machine which Huls alleged said Smith had sold him, and which said Dow refused to acknowledge or arrange, and returned the said note to Respondent as aforesaid, since which time same has been under the control of Respondent.

(And Respondent further answering says at the time he received said note first as aforesaid for such valuable consideration as offset he had no knowledge whatever of the pretended defence set up by

The Complainant or that there was any just
 defence to said Note, but on the contrary the same
 came into Respondent's hands for a valuable considera-
 tion and in the lawful course of business. Nor does
 he personally know of any purchase & discount, &c. as charged
 in said Bill and therefore he cannot answer. Nor does he per-
 sonally know as to the value & working of any machine as is alleged
 in said Bill and therefore, cannot answer. Nor does he personally know
 where the said Row or Smith resides & therefore, cannot state. Respond-
 ent admits that he commenced suit as charged in said Bill, but de-
 nies all manner of confederacy with said Smith & but on the
 contrary states that he is the bona fide holder of the said Note for a val-
 uable consideration as herein above stated. And that respondent
 has as fully and possibly answered all the several matters charged in Com-
 plainant's Bill that he deems material to be answered or that he is
 bound in Law to answer, as he can truly answer for the reasons
 stated in the answers above made having committed the duties
 & monies to writing and the same having been mislaid or lost
 as above stated.

And Respondent therefore asks that his answer
 above set forth may be taken and remain as if the same had
 been placed & answered by him separately to each and all of said
 interrogatories above filed by said Complainant and he asks that all
 manner of profusion and adumbration may be ^{heard} ~~passed~~ to this respond-
 ent the same as if formally placed & answered and that this suit
 may be dismissed &c.

Subscribed & sworn to before me this 8th day of
 March A.D. 1836

J. S. Cushman

J. S. Cushman
 atty for

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United States of America
State of Illinois, Kane County. Meas before the Honorable Isaac S. Wilson
Judge of the Tenth Judicial Circuit in the State
of Illinois and presiding Judge of the Kane County
Court at a Term of said Court at a Term of said
Court begun & held at the Court House in Geneseo
in said County on the Twelfth day of May in the
year of our Lord one Thousand Eight hundred & fifty six

Present The Hon Isaac S. Wilson, Judge,
Lawrence P. Barker, Sheriff.
vs
Nathaniel Luther Dearborn, Clerk

Whereas heretofore, to wit on Monday the 21st day of
January A.D. 1856, being one of the days of the Ordinary
Special Term of said Court the following among other
proceedings were had to wit:

Spencer Shultz

v

Bill for divorcing

David L. Dearborn

This day comes the Defendant
in his own proper person and files a Return to the
Complainant's bill herein, and thereupon the Complainant joins
After argument of counsel the Court being fully advised
Counsel said Return. It is therefore considered by the Court
that the plaintiff has had notice of & from the Defendant
his costs in and about this cause expended and having ^{of} ~~expended~~
therefor

And afterwards, to wit on the 26th day of September 1853 being one of the days of the September Special Term the following among the proceedings were had, to wit:

Spencer Hinds

David L. Cashman

Bill for Discovery

Continued generally

And afterwards, to wit on the twelfth day of March 1854 being one of the days of the February Term of said Court the following among other proceedings were had to wit:

Spencer Hinds

David L. Cashman

Bill for Discovery

This day comes the plaintiff by Farnsworth his ~~attor~~ ^{attor} & accepts to the answer of Defendant, as amended, after argument of counsel the Court being fully advised, sustains said exception to which ruling of the Court the Defendant accepts, thereupon the Defendant is ruled for further answer by tomorrow morning.

And afterwards, to wit on the 17th day of May 1854 being one of the days of the present ^{May} term of said Court the following among other proceedings were had to wit:

Spencer Hinds

David L. Cashman

Bill for Discovery

This day comes the plaintiff by Farnsworth his ~~attor~~ ^{attor} & accepts to the answer of

Defendant, after argument of counsel the court being fully advised sustains said exceptions - To which ruling of the court the Defendant excepts - And Defendant not answering further Bill takes as confessed for want of an answer, to which ruling of the court the Defendant excepts & prays an appeal to the Supreme Court which is allowed on condition that Defendant file Bond in Sum of \$3000 with Roller French as security

And afterwards, is set on the 20th day of May 1856 the following Bond was filed to wit -
 Know all men by these presents that I David Eastman as principal
 as surety, of the county of Kane and State of Illinois have held and firmly bound to
 Spencer B. Hulls of the County aforesaid, in the penal sum of Three Thousand Dollars to be paid
 to the said Spencer B. Hulls, his Executors, administrators or assigns to which payment will and
 duty to be made or bind ourselves our heirs, Executors, administrators and assigns jointly, by these pres-
 ents sealed with our seals this 20th day of May A.D. 1856 - The condition of the above obligation
 is such that whereas a judgment was rendered in the Kane County Circuit Court at the May
 Term A.D. 1856 in favor of said Hulls and against the said Eastman in a case in ^{the} Chancery side thereof
 on a bill of Discovery, from which judgment finding of the Court the said Eastman has, prayed an
 appeal to the Supreme Court now if the said Eastman shall pay or cause to be paid all judgments
 costs interest and damages in case judgment shall be affirmed and also any fees and costs of appeal
 then this bond is to be void, & otherwise to be and remain in full force & effect -

D. L. Eastman (Seal)
 Roller French (Seal)

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State of Illinois
Hancock County

I Luther Deakins Clerk
of the Circuit Court in and for said
County & State do hereby certify that the
above foregoing is a full perfect and
complete copy of all the Pleadings and
orders of Court as appear from the files
and records of said Court

In Witness my hand Seal of said Court at
Geneva in said County this 26
day of my 1856

Luther Deakins
Clerk

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D. L. Eastman
vs
Spencer Huls.

Filed May 22 1856
L. Leland
Clerk

Filed April 28 1857
L. Leland
Clerk

D. L. Eastman } Supreme Court
 vs }
 Spencer & Huls } Term 1858
 vs }
 Spencer & Huls }

This is a Bill for discovery, in aid of a suit at law,

Parties to the bill of discovery are Spencer & Huls vs David L. Eastman,

Parties to the suit at law are, David L. Eastman vs Henry E. Leachman, Spencer & Huls and Henry V. S. Huls.

Suit at law was commenced May Term 1854

Bill for Discovery was filed June 16, 1855.

It sets out that defendant had commenced his suit at law, counting upon a promissory note made by the complainant and said Leachman and Henry V. S. Huls, dated August 6th 1849, for \$141, due on 20th of Oct then next, also \$141, due in succession from that time; said note was payable to H. E. Smith & Co. by them endorsed, as appears by said bill after the same was due,

It states an "information belief"

that said Eastman is not the owner
of said note, but that it belongs to
said Smith or B. H. Dow, that it was
sent to a left with said Eastman for
collection; that he never paid any
thing for it and that it was received
by him after it became due, proved
proved and that said Eastman may
truly answer,

1st What if anything, when, how and
how much he paid for said note,

2^d When he received the said note and
from whom,

3^d How he became possessed of said note,
whether by letter or by hand it was
delivered, and if by letter, that he
produce the letter enclosing it to him,

4th Whether he used the said note for collec-
tion simply as an attorney—

5th Proceeding he stated of the suit as was
xx —

Defendant demurred to said
bill for the following reasons,

1st The court of law which then had jurisdiction of the case, if necessary, have afforded the relief sought—

2^d It appears from the affidavits filed, that there are other witnesses by whom the same facts can be proven, as are sought by the bill of discovery;

Quinn was concerned by the court—

Answer of defendant filed March 6th 1856, sets up that defendant paid for said note, a good and valuable consideration, to wit, The sum of twenty five dollars & upwards due ~~to~~ from the holder of said note to defendant, and also his promissory note in addition thereto, for upwards of two hundred dollars the precise amounts he cannot state as such amounts were committed to writing and such writing is lost or misplaced (giving fully the reasons how lost &c. &c.)

That he cannot positively state when he first received said note, but believes it was in the fall of 1849. Cannot state the date, as that was committed to writing and is lost. That he cannot state more fully or positively on said

points. - That he received the note of
B. H. Davis & G. Chopin, but of which
he cannot positively state, as both were
interested in said note, and he
has mixed with said defendant in relation
to said note. That he cannot more
fully or positively state as to these points.

That he did not receive said note
for collection; that it is the bona fide
holder and purchaser of said note
for a valuable consideration -

That at the time he purchased
said note - he had no knowledge
of any defence to said note and
that the same came to his hands
in the natural course of business
and for a valuable consideration
- Also asks his answer to be taken
as if pleaded or answered separately
to each and all of said interrogatories
and that all manner of exceptions
and advantage be saved to said
respondents as if pleaded or answered
and that said plea may be dis-
missed.

Answer was accepted to by complain-
ant and exceptions sustained.

- the court entered decretal order
of "pro confesso" as to said bill against
said respondent of records, 2^d
which ruling of the court in sustaining
said exceptions and entering such
final decretal order (pro confesso)
the defendants then etiam accepted-

Some Honors are please to
notice that this case now stands
open by its pleadings & rulings of the
Court below to see the points made
by the defendant below,

"The first question in order seems
to be -

Has the plaintiff by his bill
presented such a case as entitles
him to a discovery?

Certainly not

1st It nowhere appears that any issues
are formed in the suit at law, and
the facts are no issues were made
at the time of filing said bill below,
- hence this is a "fishing bill" all
predecated as "information & notice"
in such a manner as to preclude the

every circumstance of the complaint,
and grounds for the sole purpose of delay
with the chance of hunting out some kind
of note which may be pleaded. The
allusion to which is sufficient to
alarm the conscience of a country
Chancery, properly alive to its own duties
and at "first blush" presents such a
want of equity in this bill (feeling bill)
as to cast it from the forum of equity
justice. Feeling bills are never
tolerated by courts of equity. They have
been looked upon in every age & country
with great disfavor, in every legal forum,

2^d The second point is. The complaint
by his bill declares, that he has other
witnesses by whom he can prove the
discovery or evidence sought —

It is expressly charged in said
bill that the note referred to is the property
of Smith or the payee of said note, or of
B. D. Doe and that the same was endorsed
to said Carter by said Smith, —

Now if this be true then (Smith
& Doe) cannot each of them sue

competent witnesses to prove such facts,
and this is in substance all that is
sought to be discovered by said bill,

The complainant avers
never in his life, that he is not ad-
vised of the residence of said witness
(Luther Dow) or that there is any reason
why their testimony cannot be had,
except he averts an information and
belief, that they do not reside in this
state -

Now the other makes of the said
note may know of witnesses to prove
the matters sought by the discovery, or
these witnesses may have been in the
same county of Maine at the time the
said bill was filed, (and the fact is
the said Dow was as I understand)
and subject to the process of said court
& yet the bill may be true as it only
states - an "information & belief" that they
reside out of this state, and not that
they are beyond the jurisdiction & process
of the court -

Our statute expressly provides
that the testimony of any "non
resident" witness, which shall be
necessary in any suit at law or

this state, the party desiring the same
may use and his commission
and cause his testimony to be taken
by a special commissioner and the
same shall be evidence as -

The Law is well settled
that it must appear in the com-
-plaint to be for discovery, that the
discovery sought, cannot be proven
by other testimony, than that of the
defendant - that the facts are
material to the issues, at law, &
that they are known to the defendant.

Hennings Co. R.

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U.S. Dist (Oct 1891) Page 422

It now appears in complaint to
be that the evidence cannot be
had to establish the facts sought
to be discovered, in the said at law,

True he says "he has no
witnesses by whom he can prove
"how" or in "what manner" or from
whom or when the said Eastern
obtained said note."

From the language "He has no
witnesses" The language is admittedly
disguisely outfit, it is intended

to convey an idea, that is not true
as intended to be understood, though
as used it may be so, and one not
comprehended or embraced in the language
used, it is intended to express a notion
convey an idea which the bill itself
denies. The bill expressly states in sub-
stance that the facts sought to be
discovered are known to Smith & Dox
or one of them, as it states that they or
one of them owns the note & sent it to
defendant for collection recently, hence
they or one of them must know all
that the defendant can on the subject.

The bill never here
charges that complainant or agents
in the suit at law do not know of any
other witnesses by whom the same
facts can be proven, or that there
are not such witnesses that can be
produced or their testimony enforced
in the suit at law (he only says
he "has none") and it affirmatively
appears from the bill he could
obtain in the suit at law all the
testimony sought by this proceeding.

It is a very familiar principle
of law with this court, that every thing

which makes against a plea must
 be most strongly taken against the
 pleader and the same rule applies
 with greater force in Bills of this kind
 which seek delay & discovery is motions
 of the rules of law - and as the plaintiff
 has failed to affirmatively show himself
 entitled to discovery sought - the bill must
 be dismissed -

When a suit was brought on a
 negotiable instrument a Bill by the
 maker setting up that it had passed
 from his hands to a third person or
 from a third person to the present holder
 improperly, praying discovery. Held unnecessary
 as such third person ought be a
witness in the suit at law & an injunction
 was denied in aid of such suit at
 law.

3 Edwards Ch R

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If a Court of law can compel the
discovery sought, a Court of equity
will not interfere -

1 Johns Ch R

562

Basson Bass & Hensold (2 Paine Ch R)

478

2 Kent 11 S. & C. (Chancery) 117

2 Humphreys

290

1 2nd Ch R

547 508

Having signed of the bill in
my judgment -

I next proceed to show that
it is fully amended, allowing it to be
sufficient upon its face -

I beg leave to call your Honors
attention to the answer, and in
so doing will report the material points
of the bill in their order.

1st That if anything, when and how
and how much be paid for said note,

Ans. I gave and paid for said note
referred to in said bill of exemption
a good and valuable consideration.
that I am holder and possessor
of the same for and in consideration
of such valuable consideration, by me
paid to the holder of said note, to wit:
for a sum exceeding twenty five dollars,
due from said holder to defendant,
and also My promissory note for some
two hundred dollars, that to the best re-
-collection of defendant such purchase
took place in the fall of 1849, and what
the precise sums or amounts were, or

the precise date he cannot state, as
they were committed to writing at the
time and such writing is lost -

Now can it be said, that this
answer is not satisfactory and as far
as can be given under the circumstances
of the case, the question is peculiar
- it calls for brief promptly, times &
manner, all of which are replied
to as definitely as the defendant can
do, he so answers.

Now it appears that this
purchase took place more than seven
years since, the maker of this note
had been in California some three
years of this time, the great lapse of time
and the fact that a memorandum of
the purchase was made in writing at the
time - and the party not having charged
his mind with the matter as it was
in writing, is certainly enough to rebut
the fact of indefiniteness, as to exact date
or amount, the fact that this memorandum
is lost and cannot be found, is
explained by the precise facts as to date
and cannot be stated, though they
are substantially stated -

The defendant states most positively
that he has as fully and definitely
answered, as he can do. (under given
the circumstances) under oath -
Does he know better than any other
man - how much he remembers
and how definitely he is impressed
with the points in question? Now unless
perjury is committed, this answer is
true. And if true, the court must
enforce perjury from this defendant
in a further answer, because it may
differ as to what a man ought to
know, or remember, or the plaintiff
below must be forever deprived of
all remedy in his suit at law, and
thus he judicially robbed of some
\$400, rightfully belonging to himself
and his family - Such is not
the just rule of equity.

Q. When he received the said
note and from whom -

Aus. I cannot positively state when I
first saw said note, but my best recollection
is that it was in the fall of 1848. at what
particular date. I cannot state

as the notes were committed to writing and the same is lost as stated above, - he cannot state more fully or positively as to time when he issued said note. - then he has above stated.

That he does not recollect from whom he received said note, but it was from the hand of Dow or Chopin - cannot state of which, as both had an interest in said note and both saw business with defendants in relation thereto, that he cannot state more fully and positively in relation to said records being so, than he has done.

Will a Court of Equity compel a defendant to disclose what he does not know? If not there is the answer full, and unless a Court to aid a suit at law (when the same proof can be had at law by living witnesses) will utterly compel a party to state what he does not know. This answer is full.

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Whether he issued said note merely as an attorney?

Ans I did not receive said note merely
for collection as stated by complainant,
I am the holder and purchaser of
said note for a valuable consideration
and have no knowledge whatever
at the time of such purchase that there
was any defect in said note -

It cannot be said that the last word
is not sufficient, as it expressly denies
the points alluded to & refers to in said
interrogatory -

But the Court below
decided all of these suggestions
in the negative and entered a
final decree of pro confesso as
to said bill

But as all men are mortal
and courts are made of men, the
law has wisely provided, that
the opinion of any one man may
be appealed from in matters of
this kind, and as men have
been found in history who have
been moved by prejudices or some
personal disposition to administer
the measures of their power to those

who by mere position they can revoke,
It only teaches us all the humbling
lessons. That all men may come
to my humble affection. The Court
below in this case greatly erred in
its rulings in this case. Through
some causes not known to me,
yet which are most apparent are
an examination of this case.

Believing this case must be reversed
and the bill dismissed I most
cheerfully submit this case, believing
in the great legal maxim.

There is no wrong without
a remedy.

J. A. Eastman

Reck

STATE OF ILLINOIS,
SUPREME COURT,

ss. The People of the State of Illinois,

TO THE SHERIFF OF THE COUNTY OF

Kane

GREETING:

BECAUSE, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of Kane county, before the Judge thereof, between Spencer B. Huls Complainant.
v David S. Eastman

defendant, it is said that manifest error hath intervened, to the injury of the said

David S. Eastman

as we are informed by his complaint, the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; THEREFORE, WE COMMAND YOU, that by good and lawful men of your county, you give notice to the said Spencer B. Huls

that he be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Monday ~~the third Monday~~ ^{in April} next, to hear the records and proceedings aforesaid, and the errors assigned, if he shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Spencer B. Huls notice, together with this writ.

WITNESS, The Hon. WALTER B. SCATES. Chief Justice of our said Court, and the Seal thereof at Ottawa, this 4th day of May in the Year of Our Lord One Thousand Eight Hundred and Fifty-Seven.

S. Leland
Clerk of the Supreme Court.
By J. D. Rice Deputy

Executed this writ May the Eleventh
 AD 1857 By Personally Reading the same to
 the within named Spencer B Huls
 G E Carwin Sheriff
 Ram County, New Mexico

Filed July 23. 1857
 J. A. Land
 Clerk

for	
shovels	500
5-100 huts	400
100 huts	100
	\$1000

Eustman
Hails 57

Argument

Filed April 23, 1858

B. Belmont
Clerk

D. S. Eustman
Per my

Know all Men by These Presents, That

David L

Eastman of Kane County, Illinois

as principal, and Nolla French
as security, are held and firmly bound unto

of said Kane County in the State of Illinois in the
penal sum of Three Hundred Dollars good
and lawful money of the United States, for the payment of which, well and truly to be made, the said
David L. Eastman as principal and

bind themselves their heirs, executors, and administrators, jointly, severally, and firmly by
these Presents.

Witness, wheny we have hereunto set our hands

and seals

this just day of May A. D. 1857

The Condition of the abobe Obligation is such, That, whereas, the above named —

Spencer B. Huls
did, at the May Term of the Kane County Circuit Court,
held in and for the County of Kane in the State of Illinois, A. D. 1856 recover a
judgment against the above bounden David L. Eastman

obtain a decretal order totting a Bill of discovery pro
confesso, as against the above bounden David L.
Eastman

for the sum of

said David L. Eastman to reverse which said judgment, he said a order the
ha sued out a Writ of
Error from the Supreme Court, within and for the Third Grand Division of said State. Now if the said
David L. Eastman
shall duly prosecute said Writ of Error, and pay, or cause to be paid, all judgments, costs, interest and
damages which the said Supreme Court shall adjudge against him

and abide the order and judgment of said
Supreme Court in this behalf, then this obligation is to be void, otherwise to remain in full force and effect.

D. L. Eastman [SEAL.]

[SEAL.]

Nolla French [SEAL.]

[SEAL.]

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Huls
v
Eckman

Filed May 4, 1873
J. Seland
Clerk

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,
TO THE CLERK OF THE CIRCUIT COURT FOR THE COUNTY OF *Kane* - GREETING:

BECAUSE, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of *Kane* County, before the Judge thereof, between *Spencer B. Huls Complainant*
and David S. Eastman

~~plaintiff and~~

defendant it is said manifest error hath intervened, to the injury of the aforesaid

David S. Eastman as we are informed by *his* complaint, and we being willing that error should be corrected if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the *first Tuesday after the third Monday in April* next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

WITNESS, The Hon. WALTER B. SCATES, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *4th* day of *April* in the Year of Our Lord One Thousand Eight Hundred and Fifty-seven

S. Leland
Clerk of the Supreme Court.
By J. B. Rice Deputy

David S. Eastman
vs
Spencer B. Hulls

Writ of Error

This writ of Error is
to operate as a Super-
seas and as such
is to be obeyed by all
concerned.

L. Leland
Clerk
By J. H. Hine Deputy

Filed May 4, 1857

L. Leland
Clerk

Supreme Court:

Ottawa, April 1, 1859.

David L. Eastman

vs

Spencer Hulls

} Error to Bank Co.

I am advised by Mr Eastman, filly in error that by agreement between the parties. In the above cause, the case below is to be reversed, and the suit in this Court finally disposed of at costs of doft in error, - And in case the said case is disposed of as above, and the same is in error. The same may be re-instated by leave of the Court.

April 23/59

John Beveridge.

for Mr Eastman

Superior Court
David L. Eastman
vs
Spencer Huls

Filed April 21, 1859
R. H. Arnold
Clerk

David L Eastman

vs } Appeal from Supreme
Spencer B. Hulls } Superior Court

And the said Plaintiff avers
and as cause of error in the above entitled
suit, files the following to wit:

1st

The Complainant does not present by his
Bill such a case as to entitle him to
the aid of a Court of Equity to compel
the discovery sought in aid of the suit
at Law - In the reason that it does not
show, that the same aid cannot be had
at Law from other witnesses - though sought
in this Bill - but on the contrary it does
appear from the face of his Bill that the same
evidence can be had at Law -

2^d

The Bill of complaint does not show what
the issues were in the Court at Law, so as
to enable the Court to see the materiality
of the discovery sought -

3^d

The Bill is not by the proper parties
It being in the name of one of the makers
of the note referred to - while it should
be in name of all the parties to the
suit at Law -

4th

The Court erred in sustaining the
exceptions of the Complainant to the 2^d Answer of Defendant -

5th

The Court erred in entering final decree
in the case,

E. L. Lebond

Att'y for Plaintiff

In the Supreme Court
Huls
as
Eastman

And the said Huls comes
by his Attorneys James W. Thompson
and moves to dismiss this appeal
because this court has no jurisdiction
of appeals from judgments of the
character of the one from which this
appeal is taken

James W. Thompson
for appeal

Eastman
vs
Huls

Assignment of
Clerk

Filed June 11, 1886
Leland
Clerk