

State of Illinois In the Supreme Court
County of Cook } ss. of the 3d. Grand Division,

Edward Williston
Plt. in Error

VS

David Fisher and
Melinda Fisher.

Def'ts in Error.

Deft's Brief and Submissions,

23, Ills. 36

The case not being made out
by the proofs, as stated in the bill of
Complaint, decree cannot be had, no
matter how favorable the case may be
for the Complainant.

Chaffin vs. Heirs of Kimball,

21, Ills. 17.

It has been decided in several
cases by this Court that a Complainant
must recover on the case made by his
bill, and he cannot be permitted to state
one case in the bill, and make out a
different one in proof. The allegations
and proof must correspond, mutually
supporting each other, although a good
case may appear in the evidence specified

is variant from the one stated in the bill, the bill will be dismissed.

Rowan vs Bowles & Co,

31 Feb. 5047

McKay vs Bissett, & Co

It is a settled principle in all cases that the allegations and proofs must correspond - that the latter must make out the former, and that a party will not be entitled to relief, although the evidence makes out a clear case in his favor, unless there are averments in the bill of the shape made by the evidence.

Rowan vs Bowles & Co

11 Feb. 204

Morgan vs Smith & Co

5 Feb. 499

A Complainant in a bill

11 Feb. 195 in Chancery, must recover on the

" " 361 Case made by the bill. The allegations and

14 Feb. 53, the proof must correspond; therefore, if a party were to make out a good case by his evidence, and it did not correspond with the bill, the bill would be dismissed.

McKay vs. Bissett & Co, 5 Feb. 499

Morgan vs Smith, 11 Feb. 195-

White vs. Morrison, " " 361

Gold vs. Ryan, 14 Feb. 53.

12 Ill. 69

Relief will not be granted upon a bill, where the answer denies the allegations of the bill, if the proof is loose and unsatisfactory.

Welby vs. Guineo, 12 Ill. 69,

1 Gil. 187,

A direct and positive denial in an answer to a bill, responsive to an allegation therein, must be controverted by two witnesses, or one witness with strong corroborative circumstances.

Martin vs. Bryden, 1 Gil. 187,

1 Gil. 470

A defendant may, in his answer, rely on any matter, which shows that the complainant is not entitled to the relief he claims in his bill.

Farleton vs. Vitis, 1 Gil. 470

There is but one question in this suit for this Court to decide, that is, whether a complainant can have the relief prayed for without sustaining his bill by proof.

A bill was filed, and after setting forth all the various causes of complaint, special interrogatories

~~is~~ are put to the defendants, the defendants file their answer, in which they deny every allegation in the bill and then answer the interrogatories which are put to them, stating all the facts in connection with the matter in dispute. After which the cause was referred to the master to take proofs, which appears in the record.

Upon the trial of the cause, upon the part of the defendants we concluded that the bill should be dismissed, because there was no proof to sustain its allegations. The Court was of the same opinion, and the order entered was that the bill should be dismissed, at the complainant's costs, a writ of error was sued out and the decision of the Superior Court is brought here for revision. We take the same position here as there, that there was no proof to support the bill and therefore the judgment of the Superior Court was correct and must be sustained, and we would most respectfully refer the Court to the authorities cited in the foregoing brief, all of which is most respectfully submitted.

C. H. Rung
Sept. 20/93

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Sup. Ct. of Illinois

Colward Williston

vs

David Fisher
et al

Sept. Term, 1861

Filed May 15 1861

L. Leland
Clerk

T. H. Runy and
Sept 1861