

**Case No. 1,927.**

BRONSON v. KENSEY et al.

[3 McLean, 180.]<sup>1</sup>

Circuit Court, D. Illinois.

June Term, 1843.

**PRACTICE—PRODUCTION OF BOOKS AND PAPERS—NOTICE.**

A motion to produce a paper, in the possession of the plaintiff, which is necessary to enable the defendants to plead, may be granted in the discretion of the court, although no notice has been given. But, where the possession of a paper is desired to be used in evidence, a notice is necessary.

[Cited in U. S. v. Hutton, Case No. 15,433.]

At law.

Mr. Arnold, for plaintiff.

Mr. Butterfield, for defendants.

**OPINION OF THE COURT.** This action is brought on a penal bond of sixteen thousand dollars, to pay eight thousand dollars. And it is alleged that the notes, amounting to eight thousand dollars, were given when, in fact, but four thousand dollars were received, and it is suggested that the notes will show the above state of facts. The notes, it is averred, were given before the penal bond, and on this suggestion of facts a motion is made by defendants' counsel that the plaintiff be required to produce the above notes, to enable them to plead in the case. This motion was opposed on the ground that it is made too late, and that no notice has been given. A notice to the opposite party is necessary when the object is, to obtain a paper in his possession, to be used in evidence. But this is not strictly the object of the present motion. It is to produce certain notes, which for the reasons stated are necessary to enable the defendants to make their defence. The court directed the plaintiff to produce the notes.

<sup>1</sup> [Reported by Hon. John McLean, Circuit Justice.]