

ROCKHILL v. HANNA.

{4 McLean, 200.}¹

Circuit Court, D. Indiana.

May Term, 1847.

TRIAL—OVER—NOT IN POSSESSION.

The plaintiff is not bound to give oyer of an instrument, of which he is not in possession; and which is as accessible to the defendant as to the plaintiff.

At law.

Mr. Morrison, for plaintiff.

Mr. Smith, for defendant.

OPINION OF THE COURT. The defendant prayed oyer of the bond, etc. But the court held that as the plaintiff was not in possession of the instrument, oyer could not be demanded. *Parasset v. Gautier* [Case No. 10,709]. The action is not on the bond. No profert is made of it. It is on file in the clerk's office and recorded by him, and equally accessible by both parties. The court, therefore, held that the plaintiff was not bound to give oyer.

{See Case No. 11,980.}

¹ [Reported by Hon. John McLean, Circuit Justice.]

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