

Case No. 17,077. WALKER V. KREMER ET AL.
[4 Wkly. Notes Cas. 432.]

Circuit Court, E. D. Pennsylvania.

Oct. 8, 1877.

EQUITY—RIGHT TO ACCOUNT.

In equity. Sur demurrer to bill. The bill filed by the complainant, assignee in bankruptcy of the State Insurance Company of Missouri, set forth that the defendants [Kremer & Elmes] had contracted to act as general insurance agents of the State Insurance Company in Pennsylvania. After the contract was ended, the defendants furnished a statement, showing a certain amount to be due the company, of which a considerable portion had been subsequently paid. The bill prayed for (1) an alternative decree for the balance as stated by the defendants, or for an account from them; (2) discovery in and of the account if decreed. The defendants demurred to the bill.

Mr. Ferriere, for the demurrer, argued that the complainant's remedy was at law, since an account had been stated, and accepted by the company, payments having been made thereon. No discovery, therefore, was necessary.

A. Sydney Biddle, contra.

There is no averment in the bill that the company accepted the account stated. They received payments on it, and are willing to accept it as correct. This does not preclude them from their right to an account in equity, if the defendants dispute their own account rendered.

THE COURT (MCKENNAN, Circuit Judge, and CADWALADER, District Judge) overruled the demurrer, and ordered an answer to be filed.

[See Case No. 17,076.]