

WOOSTER *v.* CLARK AND OTHERS.

*Circuit Court, S. D. New York.*      August 29, 1881.

1. TESTIMONY—RULE 69.

Equity rule 69 is imperative that no testimony taken after time shall be allowed to be read at the hearing.

On Motion to Strike out Testimony.

BLATCHFORD, C. J. The motion to strike out the testimony taken on the part of the defendants must be granted. Rule 69 is imperative, that no testimony taken after time shall be allowed to be read at the hearing. The plaintiff duly objected on the record to the taking of what was taken, on the ground that it was taken after time, and such objection has never been waived. Moreover, the defendants, after that, specially moved for time to take proofs, and the motion was denied.

The proof of the sale of a binder is sufficient. It is plain that it infringes claims 2, 4, and 5. The granting of the reissue to the plaintiff is sufficient proof of his title to sue.

There must be a decree for the plaintiff.

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