

VERMONT FARM MACHINE Co. V.
CONVERSE.

Circuit Court, D. Connecticut. February 3, 1882.

1. REOPENING CAUSE—GROUNDS FOR,
INSUFFICIENT.

A motion to “reopen” a cause, and allow defendant to take additional testimony, was denied; the defendant not stating that the evidence was not accessible at the trial, or that it was not then known to him, or that it is material.

On motion to reopen the cause and allow additional testimony to be taken.

W. E. Simonds, for plaintiff.

Charles B. Tilden, for defendant.

SHIPMAN, D. J. This is a motion to “reopen” the cause and allow the defendant to take additional testimony upon 16 points. The testimony seems by the record to have been closed on November 25, 1881, when the plaintiff’s rebutting testimony was taken. The defendant did not then suggest that he was intending to reply. He does not now state that the evidence was not then as accessible and as well known to him as it is now, or that it is material. He says that the statements of the plaintiff which it is desired to answer “consist for the most part of new matter, not yet set forth or alluded to in the *prima facie* case made by the plaintiff, and not being in reply to anything set up by the defendant,” and that the testimony “tends to injure him and prejudice his rights in the present suit.”

I am of opinion that when the plaintiff closed his rebutting testimony the defendant did not think that this new matter required any reply or was of importance. Subsequent reflection leads him to fear that, if it is unanswered, it may prejudice his case, but he does not think that it will injure him, or that it is of importance.

If the case is opened, and the defendant is allowed to take testimony upon 16 points which are not claimed to be material to the case, I think that the present compact record would become needlessly voluminous, and that needless expense would be imposed upon both parties.

The motion is denied.

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