

ROBINSON TOBACCO CO. v. PHILIPS AND  
OTHERS.

*Circuit Court, S. D. New York.* July 10, 1882.

EQUITY—PRACTICE.

Where a cause was set down for hearing upon the pleadings or defendant's motion, expressly to preclude complainant from introducing evidence which it was its duty, under the rules, to introduce in time to permit defendants to reply, complainants cannot be permitted to introduce exhibits and documents not made by proper reference a portion of the bill.

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*Munday, Evarts & Adcock* and *Worth Osgood*, for complainant.

*Banning & Banning*, for defendants.

WALLACE, C. J. This cause having been set down for hearing upon the pleadings on motion of the defendants, and because of the complainant's default in taking proofs as required by the rules, the complainant cannot be permitted to introduce exhibits and documents upon such hearing which are not made by proper reference a portion of this bill. The order setting down the case for hearing upon the pleadings was made expressly to preclude the complainant from introducing evidence which it was its duty, under the rules, to proffer in time to permit the defendants to reply to it.

The bill is dismissed, with costs.

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