ceeding provided by law," and the remedy and proceedings in this record are clearly under sections 3184, 3185.

The conclusion I arrive at is that complainant has not acquired title to the lands sued for, or any interest in them, and as the bill seeks no equity save such as would grow out of an ownership legal or equitable of the lands and lots, or some interest therein, it must be dismissed. But as the assessment of taxes seems to have been valid, and as Alexander & Co. were at fault, as well as the revenue officers, in the matters which led to this litigation, I shall direct that all the costs in this litigation incurred or placed thereon by the defendants, be paid out of the estate of E. L. Allen, for which execution may issue.

DREXEL and others *v.* BERNEY, Ex'r, etc.

(*Circuit Court, S. D. New York.* November 17, 1882.)

EQUITY—RESTRAINING ACTION AT LAW—DEFENSE AT LAW.

Where the facts disclosed by a bill in equity would avail as a defense to an action at law, which is sought to be restrained, and complainant is not entitled to a discovery, the bill is demurrable.

Tracy, Olmstead & Tracy, for complainants.

Lord, Day & Lord, for defendants.

WALLACE, C. J. The facts disclosed by the bill will avail the complainant as a defense at law to the action which is sought to be restrained by the bill. They do not show a defense of an equitable character distinctively. Even if formerly the complainant might have been entitled to a discovery, now that parties can be examined in the same manner as other witnesses, at the instance of the adverse party, there is no necessity for such relief. *Heater* v. *Erie R. Co.* 9 Blatchf. 316; *Markey* v. *Mut. Benefit L. Ins. Co.* 3 Law & Eq. Rep. (1st Cir.) 647. The jurisdiction of a court of equity in this regard rests upon the inability of the common-law courts to obtain or compel the testimony sought, and when it can be obtained by the process of the latter it is an abuse of the powers of chancery to interfere. *Brown* v. *Swan*, 10 Pet. 497.

The demurrer is allowed.

YALE LOCK MANUF'G CO. v. COLVIN.

(*Circuit Court, D. Vermont.* December 1, 1882.)

DOCKET FEE—COPY OF ANSWER.

Where there was no hearing and no decision of the court, no docket fee is provided by the statute; but copies of an answer required by the rules to be furnished are taxable.

In Equity.

Betts, Atterbury & Betts, for plaintiff.

Henry A. Harman, for defendant.

WHEELER, D. J. This cause was discontinued by the orator with costs to the defendant. The clerk in taxing costs refused to tax a docket fee of $20, and for the answer; and the defendant appeals from this taxation. The discontinuance was the voluntary act of the party. There was no hearing and decision of the court; therefore no docket fee is provided for by the statute. No costs for the answer itself are provided for, and none are taxable for it. The copies of an answer required by the rules to be furnished are taxable. The making the answer is an incident to the appearance, and no statute makes any allowance for it. The rule (equity rule 25) in regard to it is a limitation without anything to operate upon, as the statutes and rules now stand.

PAINE v. CENTRAL VERMONT R. CO.

(*Circuit Court, D. Vermont.* November 7, 1882.)

PROMISSORY NOTE—DEFENSES—PAROL TESTIMONY—SUIT BY INDORSEE—EQUITIES.

Defendant, a railroad corporation, executed a note, payable *on demand*, for money loaned by the payee, with the understanding that such note should stand against assessments on payee's subscription to the capital stock of defendant, and be delivered up when the stock was issued. Assessments large enough to cover the note were made. Afterwards, and three or four months after its date, the note was transferred to the plaintiff as security for a loan. The difference between the amount of the note and the assessments was paid in cash; and the stock was delivered after the plaintiff took the note. *Held*, that in a suit brought by the holder of such a note against defendant it was subject to all defenses that it would have been subject to in the hands of the original parties, as it must be considered as having been taken by the plaintiff after maturity, being payable on demand, under circumstances that should have put him upon inquiry, and that parol testimony was admissible to show the understanding between the original parties at the time the note was given