

WOOSTER v. GUMBIRNNER.

Circuit Court, S. D. New York.

May 5, 1884.

EQUITY PRACTICE—MASTER TO PASS ON
QUESTIONS OF EVIDENCE.

Under the seventy-seventh rule of equity the admission and rejection of evidence, according as it may be proper or otherwise, rests entirely within the sound discretion of the master.

In Equity.

A. Comstock, for complainant.

Jos. S. O'Callaghan, for defendant.

WHEELER, J. The question in this case, certified by the master, as to whether the orator shall be allowed, in rebuttal, to introduce evidence that is not strictly rebutting to the defendant's evidence, but tends to prove the orator's case, as made in his opening, more fully and specifically than his opening evidence did, must, in the first instance, at least, rest in the sound discretion of the master. The seventy-seventh rule in equity provides that he shall regulate all the proceedings, and shall have full authority "to direct the mode in which the matters requiring evidence shall be proved before him." These provisions must include the order of putting in evidence that would, at any stage of the proceedings, be lawful and competent, and which would not deprive either party of any substantial legal right.

The question is remitted to the master.