

ZUNKEL *v.* LITCHFIELD.*Circuit Court, S. D. Iowa.*

1884.

## REFERENCE OF A QUESTION OF VALIDITY OF EVIDENCE TO A MASTER FOR REPORT.

In the event of interrogatories being propounded calling for testimony so clearly and manifestly foreign to the controversy that they ought to be rejected at the very threshold of the case, the court will not hesitate to make a reference to the master, with instructions to report whether any interrogatories, to which specific objections are made, call for answers manifestly irrelevant to the controversy.

In Equity.

This cause is now before the court upon objections to certain cross-interrogatories propounded to the defendant, Litchfield. The motion is “for an order of reference of the cross-interrogatories, and the objections thereto, to a master of the court, to examine them, and report upon the sufficiency and validity of the complainant’s objections to the same.”

*C. H. Gatch*, for the motion.

*Phillips & Day*, *contra*.

LOVE, J. There is no doubt that a court of equity may, in its discretion, entertain such a motion. There is just as little doubt that the court ought to exercise its discretion to refer in such a case with the greatest possible caution. It is manifest, on the one hand, that interrogatories may call for disclosures wholly immaterial to the controversy, and even scandalous and impertinent. A party may, under pretext of making proof material to his cause, greatly abuse the privilege of examining witnesses when not in the presence of the court, and I must say that this privilege is greatly abused in the practice of the bar. Under the semblance and protection of a legal examination a party may, when the court is not present, attempt to give vent to his malicious feelings toward his adversary

or his witnesses. It is manifest that he may thus attempt to expose his adversary or his witnesses to public ignominy and disgrace without any legitimate purpose whatever. He may vex the party opposed to him by attempting to bring into the cause matters wholly foreign to the issue to be tried. It would be most unreasonable to contend that the court should in such extreme cases allow the examination to proceed, leaving the party to such remedy as he might have by motion to suppress, after the intended mischief is inflicted. There can be no serious difficulty where the interrogatories involve matter of mere scandal and impertinence wholly foreign to the controversy. It is well-settled practice to refer the pleadings to the master to purge them of scandal and impertinence. There is no doubt that interrogatories may be referred for the same reason. But where the alleged ground of reference is that the testimony sought to be elicited 197 by the interrogatories is wholly irrelevant to the issue, a serious difficulty arises. How can the court or master, without going into the whole case in advance of the hearing, determine whether the testimony sought is wholly irrelevant or not? A chancery case often presents difficult and complex questions and various issues. It frequently happens that one matter of evidence becomes necessary to rebut or explain some other matter of evidence coming incidentally into the inquiry. Counsel must necessarily, in filing interrogatories, anticipate testimony which his adversary's witnesses may give, and seek, by cross-interrogatories, to explain or rebut it. Hence the extreme—indeed, almost insuperable—difficulty of assuming to strike out interrogatories *in limine*. The safer course is to allow the interrogatory to be answered in any doubtful case, and determine the objections to it at the hearing, or in the progress of the cause, upon a motion to suppress. Nevertheless, it may occur that interrogatories may be propounded

calling for testimony so clearly and manifestly foreign to the controversy that they ought to be rejected at the very threshold of the case. When such appears to be the case the court will not hesitate to make a reference to the master, with instructions to report whether any interrogatories to which specific objections are made call for answers manifestly irrelevant to the controversy. If any doubt exists as to the materiality of the testimony sought, the court will not interfere, but leave the party to his ordinary remedy by motion to suppress.

The defendant's motion is sustained, and the reference ordered, with the foregoing instructions. See *Cocker v. Franklin & Bagging Co.* 1 Story, Rep. 169.

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