

ROBINSON *v.* PHILADELPHIA & R. R. Co.
AND OTHERS.¹

Circuit Court, E. D. Pennsylvania. September 2, 1886.

EQUITY—EVIDENCE—ADMISSION IN ANSWER.

An offer of evidence touching a fact which is admitted to be true by the answer will be refused.

In Equity.

Richard C. Dale, for complainants.

Franklin B. Gowen, for defendants.

MCKENNAN, J. This is only a renewal of an application made to the court, with somewhat greater formality and expansion, and is properly disposed of by the result of that application, and the reasons given for its refusal by the judge who decided it. I do not propose to repeat those reasons, or to reargue the question there decided. It is sufficient to say that, in my judgment, the fundamental issues in the case were properly defined, and that the contested evidence is impertinent to those issues, and is therefore inadmissible. The second offer made by the defendant was not before the court on the former occasion, and the competency of the evidence stated in it was not, therefore, considered. I am unable now to see how the facts proposed to be proved can condone the fault of the mortgagor, or are responsive in any way to the allegation of such default in the bill, which is explicitly admitted in the answer, without qualification. Hence I cannot regard as admissible an offer of evidence touching a fact which is admitted to be true, and to which the answer in no other way refers than to admit its truth. This offer must therefore be rejected.

¹ Reported by C. B. Taylor, Esq., of the Philadelphia bar.

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