

GUYOT, AS LIQUIDATOR, ETC., *v.* HILTON AND ANOTHER.

Circuit Court, S. D. New York.

November 29, 1887.

TRIAL—PRODUCTION OF PAPERS—DISCOVERY.

A motion, made, under Rev. St. § 724, relating to the production of books and writings, to require plaintiffs, the official liquidators of a firm, to produce for defendants' inspection, to enable them to prepare for trial, all the business books of the firm between certain dates, cannot be allowed. The proper practice in the case was by a bill of discovery.

Shipman, Barlow, and Larocque & Choate, for plaintiff.

Horace Russell, for defendant.

LACOMBE, J. This is an application under the United States Revised Statutes, § 724,¹ to require the plaintiff, the official liquidator of Charles Fortin & Co., of Paris, France, to produce for inspection of the defendants, in order to enable them to prepare for trial, all the business books of that firm from the years 1872 to 1878, inclusive. A similar application made in the case of *Colgate v. Compagnie Francaise*, was denied by Judge WALLACE, (January, 1884,) on the ground that the proper practice to obtain such relief in this circuit is by bill of discovery. A statement of the considerations which have induced the adoption of such practice will be found in the report of the same case, upon demurrer to bill of discovery, in 23 Blatchf. 86, 23 Fed. Rep. 82.

The motion is therefore denied.

¹ Rev. St. U. S. § 724: "In the trial of actions at law, the courts of the United States may, on motion and due notice thereof, require the parties to produce books or writings in their possession or power, which contain evidence pertinent to the issue, in cases and under circumstances where they might be compelled to produce the same by the ordinary rules of proceeding in chancery. If a plaintiff fails to comply with such order, the court may, on motion, give the like judgment for the defendant as in cases of nonsuit; and if a defendant fails to comply with such order, the court may, on motion, give judgment against him by default."