

to the persons who controlled said patents; that through them, and by means of such introduction, defendant purchased and obtained the right to use said patents, and in part sold the same, realizing therefor a large amount of money, (the precise amount of which is unknown,) and also caused to be organized a corporation for the use of said patents, with a capital stock of \$250,000. The complainant demands his 5 per cent. upon these sums, and, averring that he has asked for an account which has been refused, prays for discovery and for relief. The defendant has demurred, and the demurrer must be sustained. The complainant has a plain, adequate, and complete remedy at law, and therefore, under section 723, Rev. St. U. S., suit in equity cannot be sustained. Upon proof of his contract, and of the sale of the patent and the organization of the company, he can at law recover the full amount of his claim. Such proof can be secured without the aid of a court of equity. If the defendant is within the hundred-mile limit, he can be subpoenaed as a witness, and required by a *duces tecum* to produce his books and papers; if he is beyond that limit, his testimony may in like manner be taken under section 863, Id. All the facts within his knowledge may be thus proved as fully as they could be on an accounting. Moreover, under section 724, Id., he may be required to produce books or writings in his possession which contain evidence pertinent to the issue.

Demurrer sustained.

HAT-SWEAT MANUF'G Co. v. WARING *et al.*

(Circuit Court, S. D. New York. March 31, 1891.)

DISMISSAL OF BILL—ANSWER FILED.

A complainant is not entitled as of right to dismiss his bill after the answer is filed, setting up that the license to use a patent upon which the suit is brought is fraudulent and void, and showing that defendant is entitled to a decree for its cancellation.

In Equity.

John R. Bennett, for complainant.

Wetmore & Jenner, for defendants.

LACOMBE, Circuit Judge. Should the defense set up by the defendants be made out by the proof, they would be entitled to a decree not simply denying complainant's right to money damages, or an accounting, but also declaring the license upon which the suit is brought to be fraudulent and void, and directing its cancellation. The complainant is therefore, under the authorities, not entitled as of right to dismiss its own bill at this stage of the case. *Electrical Accumulator Co. v. Brush Electric Co.*, 44 Fed. Rep. 602; *Stevens v. Railroads*, 4 Fed. Rep. 97. Nor, under all the circumstances, should it be allowed to do so. If complainant suffers default, defendants may take a decree dismissing the complaint, declaring the license void, and directing its cancellation; but such decree will, of course, show upon its face that it was entered upon

