

The answer, so far as it is responsive to the bill, is evidence for the defendant making it; but if the defendant, by his answer, admits a fact alleged in the bill, and then sets up another matter in avoidance thereof, this matter in avoidance is not responsive to the bill, and his answer is not evidence of it. *Clarke v. White*, 12 Pet. 190; *Tilghman v. Tilghman*, Baldw. 494; *Randall v. Philpips*, 3 Mason, 383; *McCoy v. Rhodes*, 11 How. 140; *Hart v. Ten Eyck*, 2 Johns. Ch. 87.

In this connection matter in avoidance is something subsequent to and distinct from or *dehors* the fact admitted; but, if the admission and avoidance constitute one single fact or transaction, the answer is evidence of both. *Hart v. Ten Eyck*, *supra*, 88, and note.

The plea of *non est factum* denies the execution of the deed by the defendant, puts the fact of execution in issue, and under it you may prove, because comprehended in it, that the defendant was imposed upon, and put her name to the paper under an erroneous impression as to its character or contents. *Van Valkenburgh v. Rouk*, 12 Johns. 338; 2 Greenl. Ev. § 246; Chit. Pl. 519; 2 Phil. Ev. 148. And so here the answer is competent, and, until contradicted, sufficient evidence that the defendant put her name to this instrument under an entirely erroneous impression of its contents, which impression was designedly produced by the false representations of the plaintiff's agent.

The only conclusion from the premises is that the defendant Julia McCallister did not execute the mortgage, so far as her portion of the premises is concerned, and, as to that, the bill must be dismissed.

Afterwards the plaintiff had leave to reinstate the case, and take testimony to prove the due execution of the mortgage, notwithstanding the averment in the answer to the contrary, which was done, and a decree given enforcing the lien of the mortgage upon the property of the defendant Julia McCallister.

DOBSON v. GRAHAM.

(Circuit Court, E. D. Pennsylvania. June 27, 1889.)

1. DISCOVERY—SECRETS OF MANUFACTURE.

Workmen pledged to secrecy, and employed in a factory in which the business is conducted in private, to secure the secrecy of the machinery and methods of manufacture, will not be compelled, in a suit against their employer, to answer interrogatories, and describe the peculiarities of his machinery, where no evidence has been introduced to show that the secrets of the defendant were used to conceal an invasion of complainant's rights.

2. PATENTS FOR INVENTIONS—PRESUMPTION OF INFRINGEMENT.

No presumption of infringement of complainant's patent by defendant arises from the fact that the workmen who constructed complainant's machinery were employed to erect defendant's machinery.

3. SAME—INSPECTION OF DEFENDANT'S MACHINERY.

Complainant will not be granted an inspection of machinery of defendant kept in secret, and claimed to embody important secrets, when complainant produces no evidence tending to show that it infringes his patents.

¹Reported by Mark Wilks Collet, Esq., of the Philadelphia bar.

In Equity.

Bill to enjoin infringement of patent by John Dobson against Richard Graham. Plaintiff called defendant's workmen to show infringement, and asked them to state wherein the defendant's machine differed from complainant's. This they refused to do under advice of counsel. Plaintiff moves for an inspection of defendant's machinery, and to compel the witnesses to answer interrogatories. Motions denied.

Hector T. Fenton, for complainant.

Strawbridge & Taylor, for respondent.

BUTLER, District Judge. These motions must be dismissed for the reasons stated at an earlier period in the case. As then said, the plaintiff filed his bill charging infringement of his rights without having any positive knowledge upon the subject. He seems to have relied upon the chance of obtaining evidence to support the charge from the defendant and his workmen. Such a case is not entitled to the special favor of a court of equity. The defendant's business is conducted in private, for the purpose of securing to himself (as he asserts) the use of his peculiar machinery and methods of manufacture. These secrets of his business, if they cover nothing unlawful, are his property and as well entitled to protection as the rights secured by the plaintiff's patent. His workmen are bound by express contract not to divulge them. In the absence of such contract equity would imply an obligation of equal force. If it were shown that these secrets are used as a cloak to cover an invasion of the plaintiff's rights, or if there was reliable evidence tending to show it, and justifying a belief that they are sound, the motions would be sustained. But there is no such evidence before us. It appears that the defendant employs certain workmen who were formerly employed by the plaintiff; that these workmen are familiar with the plaintiff's patented machinery, and that they aided in constructing the defendant's. This is substantially all. These workmen have been permitted to answer questions directed towards a comparison of the defendant's machinery with the plaintiff's except where the answer would tend to describe wherein the former differed from the latter, and thus to describe the peculiarities of the defendant's machinery. The court cannot properly compel them to go further, nor, in this state of facts, compel the defendant to submit his machinery to inspection.

MEYER *et al.* v. CADWALADER, Collector.¹

(Circuit Court, E. D. Pennsylvania. June 18, 1891.)

1. CUSTOMS DUTIES—HAT TRIMMINGS.

The clause of the tariff act of 1883, providing for "braids, plaits, flats, laces, trimmings, tissues, willow sheets and squares, used for making or ornamenting hats, bonnets, and hoods, composed of straw, chip, grass, palm-leaf, willow, hair, whale-bone, or any other substance or material not specially enumerated or provided for," includes goods known, respectively, as "chinas" and "marcelines," and principally used for lining hats, if such goods are trimmings, and are chiefly used for making or ornamenting hats, bonnets, and hoods.

2. SAME—MEANING OF WORDS.

The term "trimmings" should not, under the evidence, be given any technical or particular commercial meaning, but should receive its popular signification and common import, as used and applied in ordinary life.

3. SAME—COMMERCIAL DESIGNATION.

The mere fact that chinas and marcelines are bought and sold by those particular names, and are called "linings," does not necessarily exclude them from the class of trimmings if they are in fact trimmings chiefly used either for making or ornamenting hats, bonnets, and hoods.

4. SAME—FORM IN WHICH ARTICLE IS IMPORTED.

The fact that the articles are imported by the piece, and must be cut up before they are actually applied to use in making or ornamenting hats, does not exclude them from the class of trimmings, if they are distinctly adapted and chiefly used for trimming hats, bonnets, and hoods, and are not specially enumerated or provided for in the act.

5. SAME—SILK ACT OF 1875.

Hat trimmings are dutiable under the hat-trimming clause of the act of 1883, and not under the silk act of February 8, 1875, notwithstanding that silk is their component material of chief value, and that they contain less than 25 per cent. in value of cotton.

At Law. *Assumpsit* to recover an excess of duties alleged to have been illegally exacted by the collector on goods imported by the plaintiffs in 1884. The facts are sufficiently set forth in the charge. The verdict was for the plaintiffs.

Frank P. Prichard and Henry E. Tremain, (Cyrus E. Woods, Harry T. Kingston, Augustus R. Stanwood, and Charles Currie, with them,) for plaintiffs.

W. W. Carr, Asst. U. S. Atty., John R. Read, U. S. Atty., W. P. Hepburn, Sol. of Treasury, and William H. Tuft, Sol. Gen., for defendant.

ACHESON, Circuit Judge, (*charging jury.*) This is an action by Meyer & Dickinson, importers, against the collector of the port of Philadelphia, (the United States being the real defendant,) to recover an alleged excess of duties paid under protest on goods entered at the custom-house on February 18, March 26, and April 16, 1884. The goods which were the subject of the duty were chinas and marcelines, the latter being made wholly of silk, and the former of silk and cotton, silk being the component material of chief value. The custom-house officers assessed upon the goods a duty of 50 per centum *ad valorem* under the last clause of Schedule L of the tariff act of March 3, 1883, (22 St. 510,) which reads:

¹ Reported by Mark Wilks Collet, Esq., of the Philadelphia bar.