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State of Tennessee.

At a Chancery Court begun and held at the Court house in the town of Fayetteville, in the County of Lincoln in said State of Tennessee, being the Lincoln district of the third Chancery Division of said State On the fourth Monday in August it being the 27 day of said month in the year of Our Lord eighteen hundred and Sixty.

Present the Hon^{ble} B. L. Ridley Chancellor &c
The following proceeding was had to wit,

Simon G. Eddins

vs

Alex^r. D. C. Moore

vs

Be it remembered that on the 25th day of October 1858, the following Bill was filed in The office of the Clerk & Master.

Bill

To the Hon^{ble} B. L. Ridley Chancellor &c for the fourth Division of Tennessee, sitting at Fayetteville in said division.

Your Complainant S. G. Eddins a resident Citizen of Lincoln County Tennessee, would respectfully represent unto your Honor, That on or about the 17th day of October 1858. one A. D. C. Moore a resident Citizen of the County of Marshall in said State, came to your Complainant in the County of Giles, where your Complainant then Chanced to be and informed Complainant, that he had a negro woman named Pecey whom he

2 he wished to sell to Complainant - Said that said Negro was at his house and desired Complainant to call at his house and see her. Complainant told said Moore that he would on the next day call and see said Negro and if he liked said Negro he would give said Moore a trade for her.

That on the next day he did call at said Moore's house in the morning and examined said Negro, was pleased with her. Said Moore at first asked your Complainant \$1100⁰⁰ for said Negro: but your Complainant refused to give said sum for said Negro: but told said Moore that he was willing to give him the sum of \$1000⁰⁰ for said Negro if he would sell her on time. which said Moore agreed to take on a credit until 1st day of March 1857. Complainant agreed to take said Negro upon those terms provided said Moore would keep said Negro as his (Moore's) and deliver her to Complainant when he (Complainant) should send for her on the Monday following. That he lived some 20 miles from said Moore and he could not take the Negro with him then - And he so informed Moore at the time - And Complainant was apprehensive the Negro would run away before he could go home and send for her, and told said Moore if he would agree to keep said Negro as his (Moore's) and would be responsible to deliver said Negro to him when he should send for her that Complainant would agree to take her. Said Moore said he would agree to keep said Negro for said time and would be responsible to deliver her to Complainant when he should send

3 for her - saying he had no fears of her running away - that said Negro could not run off if she desired being too far advanced in pregnancy -

With the express understanding that said Moore was to keep said Negro and deliver her to Complainant

for her - saying he had no fears of her running away - that said negro could not run off if she desired being too far advanced in pregnancy -

With the express understanding that said Moore was to keep said negro and deliver her to Complainant when he sent for her - and if he did not deliver her when sent for, he would be responsible, and to save trouble of coming again - your Complainant on 18th day of October 1856 executed to said Moore for said negro, his note under seal whereby he bound himself to pay to said Moore the sum of \$1000.⁰⁰ on or before 1st day of March 1857. And the said Moore at the same time executed to your Complainant a bill of sale for said negro. But your Complainant would now show unto your Honor that if said Moore had not agreed to keep said negro until he sent for her and had not agreed also to be responsible for her if he did not deliver her when sent for, he would not have executed his said note. But trusting to the good faith and fair dealing of said Moore he executed his said note without putting said condition in said note.

Your Complainant would now show unto your Honor, that he came on hand and sent for said negro on the day agreed upon but said Moore did not deliver said negro according to his said Contract or agreement: but pretended that she run off and gave that as a reason why he did not deliver her.

Your complainant would now show unto your Honor that he contracted with said Moore for said Negro at a low figure and that as complainant has heard and believes and charges said Moore soon became dissatisfied with said Contract - said he had sold said Negro too low and that she was worth more money than he had agreed to let your Complainant have her for. That soon after said Moore said or pretended said Negro had run off he said she had a fine boy child and she and the child were worth \$1300⁰⁰. That said Moore came to your complainants house and told him, if he would give him up the bill of sale he could get said Negro - and if Complainant would not do that - then he would not try to get and deliver her - or words in substance the same - And that said Moore has said to various persons that he did not deliver said Negro according to Contract - that he had sold her too low and that she had a child since she had run off and that she and her child were worth \$1300⁰⁰ and told another person that if your Complainant would give him up said bill of sale he could get the said Negro: - But Complainant told him Moore - all he wanted was for said Moore to comply with his Contract Your Complainant would now show unto your Honor that said Moore never has delivered said Negro to your Complainant. And Complainant believes

and charges that said Moore knew when said Negro was when he pretended she was run off - at least for part of the time and could as your Complainant believes have gotten possession of her and delivered her according to his contract if he had desired so

your Complainant. And Complainant believes

5 and Charges that said Moore knew where said Negro was when he pretended she was run off - at least for part of the time and could as your Complainant believes have gotten possession of her and delivered her according to his contract if he had desired so to do: but this he fraudulently failed to do, as your Complainant believes - to induce your Complainant to rescind said agreement.

Your Complainant would now show unto your Honor, that notwithstanding said Moore did not comply with his said contract in the delivery of said Negro (who was worth as Complainant states more than he contracted to give) he in open violation of his agreement with your Complainant sued your Complainant on said note or writing obligatory in the Circuit Court for said County of Lincoln and at the July term 1858 thereof obtained a judgment against your Complainant for the sum of \$1082⁶⁰ and the cost of said suit. - From which judgment your Complainant prayed an appeal to the Supreme Court of Tennessee at Nashville in December, which was granted your Complainant he having given bond and security as required by said Court.

Your Complainant would now show unto your Honor that said appeal being granted vacated as he is advised said verdict and judgment.

Complainant would now further show

6.

unto your Honor, that the Consideration for which said note or bill single was given has entirely failed by reason of said Moore having failed, and as Complainant believes fraudulently failed to deliver said M^{rs}.

Your Complainant would now further show that said M^{rs} as he believes and Charges has died and said Moore never can deliver her and therefore never can Comply with said Contract and the Consideration for said note must forever be a failure - That Complainant has never received anything for the Consideration of said writing obligatory and that it is contrary to equity and good conscience for said Moore to Collect said sum or any portion thereof from your Complainant - and that he has the right as he is advised to file this his bill and ask the interposition of this Hon^{ble} Court and its aid to prevent the said Moore from working the injury to your Complainant by Collecting said money from him or any portion of the same or harassing or vexing him with a suit upon said writing obligatory.

The premises considered and inasmuch as your Complainant is without an adequate and unembarrassed remedy save in this Hon^{ble} Court - he prays that said Moore may be made a party defendant to this bill and that he answer all and singular the allegations therein contained in as

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full a manner as if the same were put to him in interrogatories - And that upon the hearing of the Cause your Honor will pronounce a decree directing said Moore to deliver up said writing to be cancelled or that he be perpetually enjoined from prosecuting said suit

full a manner as if the same were put to him in inter-
rogatories - And that upon the hearing of the Cause
Your Honor will pronounce a decree directing said
Moore to deliver up said writing to be cancelled or
that he be perpetually enjoined from prosecuting said suit
any further. And to this end and until this Cause
can be heard that your Honor will order Copy of Bill
and subpoena to issue &c. Commanding &c. and that
Your Honor will grant a writ of Injunction to issue
enjoining said Moore and his Attorney John M.
Bright and J. R. Bright of Lincoln County from further
prosecuting said suit in the meantime - And upon
the hearing of this Cause that your Honor will grant all
other and further relief that the nature of this Cause may
require And as in duty bound your Compliment will
ever pray &c.

This is the first application for an Injunction in
this case.

Respectful
Compliment

State of Tennessee

Lincoln County

This day personally appeared before
me S. G. Eddins the Complainant in the foregoing bill
and made oath in due form of law that the things and
matters of fact stated in the foregoing bill are true to
the best of his knowledge information and belief

Sworn to and subscribed

S. G. Eddins

before me Oct 23rd 1858.

R. Parquerson.

Clk. Court

7

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 that he be perpetually enjoined from prosecuting said suit
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 and subpoena to issue &c. Commanding &c. and that
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 enjoining said Moore and his attorneys John W.
 Bright and J. R. Bright of Lincoln County from further
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This is the first application for an Injunction in
 this case.

Respectfully
 Complainant

State of Tennessee }
 Lincoln County }

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 me S. G. Eddins the Complainant in the foregoing bill
 and made oath in due form of law that the things and
 matters of fact stated in the foregoing bill are true to
 the best of his knowledge information and belief
 Sworn to and subscribed S. G. Eddins
 before me Oct 23rd 1858.

R. Farguhanson.

Clk & Master

To the Clerk Master of the Chancery Court at Fayetteville.
 Upon Complainant executing bond with good security in
 double the amount of the debt complained of payable to
 defendant and conditioned to prosecute his suit with
 effect - or on failure - to pay and perform such decree
 as may be rendered against him - Issue the writ of
 injunction as prayed for 23rd Oct. 1858.

Wm. P. Martin, Judge & C

Bond

Know all men by these presents that we Simon G. Eddins
 and William F. Kerchival all of Lincoln County and State
 of Tennessee are held and firmly bound to Alexander D. C.
 Moore in the sum of Twenty one hundred and Sixty Six
 dollars for the payment whereof well and truly to be
 made we bind ourselves our heirs, executors and adminis-
 trators jointly severally and firmly by these presents, sealed
 with our seals, and dated this 25th day of October 1858.

The Condition of the above obligation is such, that whereas
 the above bound Simon G. Eddins has filed in the office
 of the Clerk Master of the Chancery Court at Fayetteville
 Tennessee his Injunction Bill in equity against the said
 A. D. C. Moore - Now if the said Simon G. Eddins shall
 well and truly prosecute said bill with effect, or in
 case of failure therein shall pay and satisfy all such
 judgments and decrees as shall be rendered against
 him in the premises and shall furthermore pay, abide
 by and perform all such judgments and decrees as
 shall be rendered or pronounced in any suits or
 suits hereafter to be brought for wrongfully suing

9 out the injunction prayed for and granted, then
 the above obligation to be void otherwise to remain in
 full force and virtue

S. G. Eddins (Seal)

W. F. Kerchival (Seal)

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the above obligation to be void otherwise to remain in
full force and virtue

S. G. Eddins (Seal)

W. F. Kerchval (Seal)

February Term 1859.

This cause came on to be heard upon the
Complainant's bill and the defendant's Demurrer thereto
and upon argument being heard The Court decess that
said demurrer is sustained: whereupon the Complain-
ant moved the Court for leave to file an amended
bill which is granted him and he is allowed until
rule day in May to file said amended bill.

Amended
Bill

Be it remembered that on the 29th day of March 1859
the following Amended bill was filed in the office of
the Clerk & Master.

The amended bill of S. G. Eddins to a bill here-
tofore and on the 25th day of October 1858 filed in the
Chancery Court at Fayetteville Tenn. against Alexander
D. C. Moore -

Your complainant would shew unto your
Honor that in said Original bill among other things
and matters not necessary now herein to state, that
he alleges on or about 18th day of October 1856 he bought
Conditionally a negro woman named Pacey of defend-
ant Moore for the sum of \$1000. upon condition that
he (moore) would keep said negro at his own risk
and as his own and deliver her to Complainant

when he should send for her - and to save trouble and trusting to the fair promise of the defendant to deliver her to Complainant according to his contract the Complainant executed his note to the defendant for the sum of \$1000. due six months after date and the defendant executed his bill of sale to your Complainant for said negro; that Complainant according to his agreement sent for said negro: but that the defendant did not deliver her according to his contract: but pretended that she had run off - and that said negro was in said defendant's neighbourhood and that he could have got her and delivered her: but that he fraudulently kept said negro out of the way and that she finally died and that defendant cannot now deliver her: but that he had sued your Complainant upon said note in the Circuit Court of Lincoln County Tennessee upon said note or writing obligatory and that he had obtained a judgment against your Complainant for the sum of \$1084⁰⁰. That your Complainant had appealed from said judgment to the Supreme Court of Tennessee at Nashville and thereby vacated said judgment - all of which will more fully appear by reference to said original bill all of which is re-adopted in as full and complete a manner as if the same was here incorporated.

Your Complainant would now show unto your Honor - That on the day before he bought said

negro he met the defendant in Giles County and he proposed to sell said negro to your Complainant and told your Complainant to meet him at his defendant's house the next morning and examine the said negro; which Complainant agreed to do. That

negro he met the defendant in Giles County and he
 proposed to sell said negro to your Complainant and
 told your Complainant to meet him at his defendant
 house the next morning and examine the said
 negro; which Complainant agreed to do. That
 Complainant did on the next day in the morning
 go to defendant's house; (but the defendant
 was not at home) he examined said negro to
 his satisfaction and as the defendant was not
 at home your Complainant started to come home
 and when he had got as far as Seales' he met
 with defendant and told him he had been to
 see and examine said negro to his satisfaction
 and that he would give \$1000. for her upon six
 months time - provided defendant would keep
 her at his own risk and deliver her to Complainant
 when he sent for her - which was to be on
 the Monday following - To this defendant then
 and then agreed.

Defendant thus informed Complainant
 that one Parkum had some negroes to sell in his neigh-
 borhood and if Complainant desired to see them
 he (the defendant) would go with him. To this
 Complainant agreed and as they were going to see said
 Parkum's negroes they would have to pass defendant's
 house it was agreed by Complainant and the
 defendant to go by the defendant's and close up
 the trade by executing the note and the bill of sale
 for said Breezy. - This they did - and when

they went to the defendants it was in the afternoon, but the trade was made before said parties went to the defendants together and they only went there to close the trade as above stated - That they went in and complainant made no examination of said Becey, sat down and wrote a bill of sale and the note as agreed upon previously by the parties - And thus the complainant and defendant left together for Parkman's to look at his negro. That he did not when at the defendants in the evening make any examination of said negro and that he executed said note only upon condition that the defendant would keep said negro at his own risk and deliver her when complainant sent for her and if defendant had not have agreed previously to keep her at his own risk as aforesaid complainant would not have executed said note unconditionally as he did do.

Complainant would now show unto your Honor that no white person was present at the time he wrote said note and bill of sale and while he was at defendants in the evening - but a young brother of the defendants who was there only a little while and left before your complainant and defendant left as aforesaid, and as complainant now remembers before said writing was finished.

Your complainant would now show unto your Honor, that upon the trial of said case in the Circuit Court one of the material and important ques-

tions submitted was whether complainant bought said Becey upon condition that defendant would keep her at his own risk and deliver her when complainant sent for her - or whether complainant bought her without any condition and took her at his

ious submitted was whether Complainant bought said Betsy upon condition that defendant would keep her at his own risk and deliver her when Complainant sent for her - or whether Complainant bought her without any condition and took her at his own risk of her running away before he sent for her. That very much to the astonishment of Complainant the defendant introduced his said brother on said trial and by him proved among other things, that Complainant bought said Betsy in his presence in the evening at the defendant's and that there was no condition in the trade - That the defendant was to keep and deliver said negro to Complainant when he sent for her as aforesaid but the trade was unconditional and that Complainant asked defendant to permit said Betsy to remain at his house until he came and sent for her. By all which proof now Complainant was taken by surprise and which is not true in fact - and Complainant charges that defendant knows it is not true. That defendant knows that the trade was made before they went to his house together, and that it was upon condition that he would keep said negro at his own risk and deliver her when sent for by Complainant.

That the defendant introduced his brother as rebutting proof upon the trial and after Complainant had closed his proof and when it was too late for the Complainant to have or obtain

the benefit of the testimony of the defendant on said trial, as he is advised in any manner pointed out in the law - Complainant charges that it was distinctly understood between him and the defendant that he bought said negro only on condition as stated above and this fact was well known to the defendant and he knows of no other by whom he can prove this fact, but the defendant by a discovery from him.

Complainant further shows that there are other material facts in this and in said original bill which he can only prove by a discovery from the defendant. That he could not get the benefit of a discovery from the defendant in the trial of said cause after he found that it was necessary to have the same for the attainment of Justice and that he believes he can contradict the testimony of said witness by the testimony of defendant. That said witness was the only one examined in said case who proved that Complainant bought said negro without any condition.

That Complainant never got any consideration for said note; that it would be without conscience and against equity to make him pay the same when on account of the fraudulent conduct of the defendant he was prevented from getting said negro.

Complainant states, on account of the con-

duct of the defendant his remedy in a court of law is an embarrassed one and that he believes he has not had justice done.

The premises considered Complainant prays that said Moore may be made a party defend-

dust of the defendant his remedy in a court of law is an embarrassed one and that he believes he has not had justice done.

The premises considered Complainant prays that said Moore may be made a party defendant to this and said original bill and that he answer all and singular the allegations therein contained upon his Corporal oath - That Complainant may have a discovery from him touching all the allegations in said original and amended bills - That Copy of bill and subpoena may issue &c Commanding &c And that your Honor will grant the relief as prayed for in said original bill - and that your Honor will grant all other and proper relief and as in duty bound your Complainant will ever pray &c

Respectfully
Complainant

State of Tennessee
Greene County } This day personally appeared before me Simeon G. Eddins and made oath in due form of law that the things and matters stated in the foregoing bill are true to the best of his knowledge information and belief

Sworn to and subscribed
before me March 29th 1859.

S. G. Eddins

R. Farguhason

Clerk & Master.

Demurrer

The Demurrer of A. D. C. Moore the defendant to the amended bill of Complaint of Simon G. Eddins

This defendant by protestation - not confessing or acknowledging all or any of the matters and things in the said Complainants original bill or amended bill contained, to be true in such manner and form as the same are therein set forth doth demur thereto and for Cause of demurrer that said Complainant by his said amended bill, shows that he had a good legal defence in the Circuit Court and does not show a sufficient reason why he did not avail himself of the same

2nd Said Complainant in his said amended bill shows that he had a good legal and equitable defence in the Circuit Court and does not show a sufficient excuse for not availing himself of the same on the trial in the Circuit Court -

Wherefore and for divers other Causes of demurrer appearing in the said amended bill the defendant humbly demands the judgment of the Honorable Court whether he shall be compelled to make any other or further answer to the said amended bill and he prays to be hence dismissed with his reasonable Costs in this behalf most wrongfully sustained.

Filed Augt 24th 1859.

Bright & Bright Sol^s
for defendant.

Chancery Court Augt Term 1859.

This matter came on to be heard upon defendants demurrer to Complainants original and amended bills - and the Court orders that the same be continued until the next term of the Court.

This matter came on to be heard upon defendants demurrer to Complainants original and amended bills - and the Court orders that the same be continued until the next term of the Court.

Chancery Court February Term 1860.

This cause is continued to be argued on demurrer at the next Term of the Court.

Chancery Court August Term 1860.

Decree

This cause came on to be further heard upon Complainants amended Bill and defendants demurrer and argument of Counsel and the Court being of opinion that said demurrer is well taken doth therefore order a judgment and decree that said demurrer be sustained and that Complainants Original and Amended Bill, be dismissed and that said Injunction be dissolved and that defendant be permitted to go on and prosecute the suit now pending in the Supreme Court and that said Complainant pay the costs of this proceeding for which let execution issue.

Appeal

From which decree the Complainant prays an appeal to the next term of the Supreme Court - which is granted him upon his entering into bond and security in the Sum of Two hundred and fifty Dollars -

Bond

Know all men by these presents that we S. G. Edkins and W. F. Kitchwal all of the County of Lincoln and State of Tennessee are held and firmly bound to A. D. Colmore

in the sum of Two hundred and fifty dollars for the payment of which well and truly to be made we bind ourselves our heirs executors and administrators sealed with our seals and dated this 30th day of August 1860.

The condition of the above obligation is such that whereas at the August term of the Chancery Court at Fayetteville in the Case of Simon G. Eddins against A. D. Calhoun the following decree was pronounced to wit: "The Court being of opinion that the demurrer is well taken, doth therefore order adjudge and decree that said demurrer be sustained and that said original and amended bill be dismissed and that said injunction be dissolved and that defendant be permitted to go on and prosecute the suit now pending in the Supreme Court. And that said Complainant pay the costs of this proceeding for which let execution issue" - From which decree the Complainant prays an appeal to the next term of the Supreme Court which is granted him upon his entering into bond and security in the sum of Two hundred and fifty dollars - Now after said Simon G. Eddins shall prosecute his appeal with effect and shall abide by and perform such decree as said Supreme Court of Tennessee at Nashville shall pronounce in the Cause then this obligation to be void - Otherwise to remain in full force and virtue.

S. G. Eddins (Seal)

W. F. Knechal (Seal)

State of Tennessee
Lincoln County
I Robert Garquhison Clerk & Master of the Chancery Court at Fayetteville Tennessee hereby Certify that the foregoing eighteen pages contain a full true and perfect transcript of the Record

State of Tennessee
 Lincoln County I Robert Farguhanson Clerk &
 Master of the Chancery Court at Fayetteville Tennessee
 hereby Certify that the foregoing eighteen pages contain
 a full true and perfect transcript of the Record
 and proceedings had in the cause wherein Simon
 G. Eddins is Complainant and S. D. Colmore
 is Defendant as the same remains of Record and
 on file in my office

In testimony of which I hereunto sub-
 scribe my name and office the seal
 of said Court at office in Fayetteville
 The 10th day of November 1860.

R. Farguhanson
 Clerk & Master

Bill of Cost

Clerk & Master - R. Farguhanson - Filing 2 Bills ²⁵	50
Filing Demurrer 25 - 2 Affidavits to bills ²⁵ 50	75
Injunction bond 50 - Entering security 25	75
Registering bond 25 - Issuing 2 Specs to answer ⁷⁵ 1.50	1.75
Issuing 2 Injunctions ^{1.00} 2.00 - 2 Orders of Court ²⁵ 50	2.50
Entering Cause for trial 10 - 2 Continuances ²⁵ 50	.60
13 Rules on docket ¹⁰ 1.30 - Dismissal 25	1.55
2 Judgments on demurrer ⁵⁰ 1.00 - Postage 15	1.15
Final Judgment 75 - Entering decrees 40	1.15
Copy Original Bill 2 ^{1.50} - Copy Am ^d Bill 2 ^{1.80}	4.30
Entering Order of Appeal & taking bond	75
Making out and entering Bill of Cost	50
	<u>16.25</u>

Am't Clk & M. fees brot. forward		\$ 16.25
Sheriff. W. M. Hopwood - Executing 1 Injunction	1.00	
" " " Executing 2 Subpoenas to Am't ^{ies}	<u>2.00</u>	3.00
" W. S. Alexander - Executing 1 Injunction		<u>1.00</u>
		\$ 20.25
Clk & M. R. Farguherson - Transcript Certificate & Seal		<u>6.20</u>
		\$ 26.45

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the remedy not by appeal and not
by bill.

The decree must be affirmed
with costs. Wright;

did and never was delivered - then this
constituted a valid defence upon the trial
at law to the suit upon the note for the
purchase money and Comptroler having
failed there cannot come into equity
upon the same matter unless some bond
or accident intervened to prevent the
defence at law which is not pretended.
It is true he did not ~~have~~ have the dis-
covery now sought ^{from defendant} upon that trial - but
he might have had - either by interven-
tion or by bill of discovery and a bill for that purpose
now comes too late. It must be had
raised on the trial at law & weighed
by the jury with the other evidence. 3 Yen.
99-106. - further is it a ground of equity
that Comptroler was surprised upon
the trial at law by the signing of a receipt
as to the terms of the Contract. That
might have furnished grounds for
a new trial at law - but not in equity.
And it is not shown that any effort
was made to obtain a new trial
upon this, or any other ground. And
if it were and improperly denied

the remedy was by appeal and not
by bill.

The decree must be affirmed
with costs. Wright;

[Faint, mostly illegible handwriting at the top of the page, possibly bleed-through from the reverse side.]

Printed in Paris 23
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NO. 0

Wm. G. ...
...

Printed 15th Dec 1860

of J. B. ...

J. B. ...

...

By the Court;—

The petition no ground upon
which this bill can be maintained and
the Chancellor gave the proper decree
in dismissing it upon demurrer. If
it be true that in purchasing the slave
Bredy by employment of defendant
the contract was not to be complete
on the slave at the risk of employment
until the Monday following - when
defendant was to deliver her - and
in the meantime she run away and

G. G. Eddins

v

A. D. G. Moore

1st - This is a Bill of Discovery and comes too late. It should have been filed pending the suit at law, that the facts disclosed in the answer might have been used as evidence before the jury.

Shannon v. Durham 3 Yes, 106.

Barker v. Telkin, 1 John. C. R. 466.

2^d - A party will not be aided by a court of Chancery, after a trial at law, unless he can impeach the justice of the verdict, on grounds of which he could not have availed himself at law, or was prevented from doing it by fraud or accident, or the act of the other opposite party, unmixed with negligence or fault on his part. *Murray v. Smith* 3 Yes - 127

Lafferty v. Brown 3 Inst. 221.

3^d If the defence is purely legal, then Chancery Court has no jurisdiction. *7 Humph. 42.*

4th If the defence were of such a character that a court of Equity would have had original jurisdiction, concurrently with a court of law, the right of a party to avail himself of his defence at law, will not oust the jurisdiction of Chancery, if defendant neglects to demur & answer over to the merits. *7 Humph. 42.*

5th. The Complainant by his own showing went voluntarily into the trial - made no effort to postpone the trial - show upon what instrument he was and made his defence in the court of law - says the witness was present when the note & bill of sale was written, and says the witness was introduced on rebutting proof - says he wants a discovery from Dept to contradict the witness - why did he not seek the discovery before he went into trial at law - the general rule of law is, that a new trial is not to be granted to give the party an opportunity to impeach the credit and integrity of a witness - is relief to be granted merely because the Compt went to trial unprepared, *Smith v Lowry* 1 John C.R. 321

Head whole case

2^d Story Eq. L., Sect. 893-7.
Surprise is the only ground really set up for equitable relief - This would be ground for a new trial at law, but no ground of appeal to the Chancery Court for new trial.

6th If Sumner overruled - Appeal lies
Code Section 3157.

7- The appeal in the nature of a writ of Error only suspends the judgment & does not annul it - *Hombrough v Mitchell* 1 Wood 539

G. H. Eddins

173 Brief-Exhibit

A. H. C. News

Briefs

J. G. Eddins

Decree

A. W. C. Moore

Be it remembered that this Cause came on for hearing before the Honorable Supreme Court of Tennessee, on the 20th December 1860, on a Transcript of the Record from the Chancery Court of Lincoln County, — The Court is of opinion that there is no error in the Decree of the Chancellor, dismissing Complainant's bill on the Demurrer of the Defendant, and this Court doth therefore affirm the same. And this Court doth decree that said bill be dismissed, and that Complainant pay all the costs in the Chancery as well as in this Court, for which let execution issue.

S. G. Eddins

to M. H. Hecred,

A. C. Co. Murd

Emt, 295