

SMITH VS. CARRIGAN.

The depositions falling far short of sustaining the allegations of the bill against the sworn denial of the answer, the bill is dismissed for want of equity.

Smith vs. Carrigan.

[DECEMBER

Appeal from Independence Circuit Court in Chancery.

Hon. WILLIAM R. CAIN, Circuit Judge.

STILLWELL & WOODRUFF, for appellant.

Mr. Chief Justice ENGLISH delivered the opinion of the Court.

Smith obtained judgments at law against Carrigan on two writings obligatory, made by one Wood as principal, and Carrigan as security.

Carrigan sought, by the bill in this case, to enjoin the judgments on the grounds that he signed the bonds, at the request of Wood, and on his representation that one McMillen was to sign them as co-surety; and delivered them to Wood upon the express condition that they were not to be delivered to Smith until McMillen signed them. But that Wood fraudulently delivered them to Smith, without the signature of McMillen, and that Smith was cognizant of the fraud, etc.

The material allegations of the bill, on which the relief is asked, are denied by the sworn answer of Smith, and the depositions read upon the hearing fall far short of sustaining the allegations against the sworn denial, etc.

The court below erred in rendering a decree for injunction, as prayed by the bill; and the decree must be reversed, and the cause remanded with instructions to dissolve the injunction, and dismiss the bill for want of equity.