

true that the court denied this motion and ordered judgment on the report as a matter of course. But defendant's counsel was fully heard on the motion to vacate the judgment, and the only offer of proof then made was an offer to show that the plaintiff was not surprised by the answer "for the reason that negotiations had been going on to try and effect a settlement of the claim since the suit was brought." The court correctly ruled that this evidence did not establish the defendant's right "to file the set-off over the plaintiff's objection."

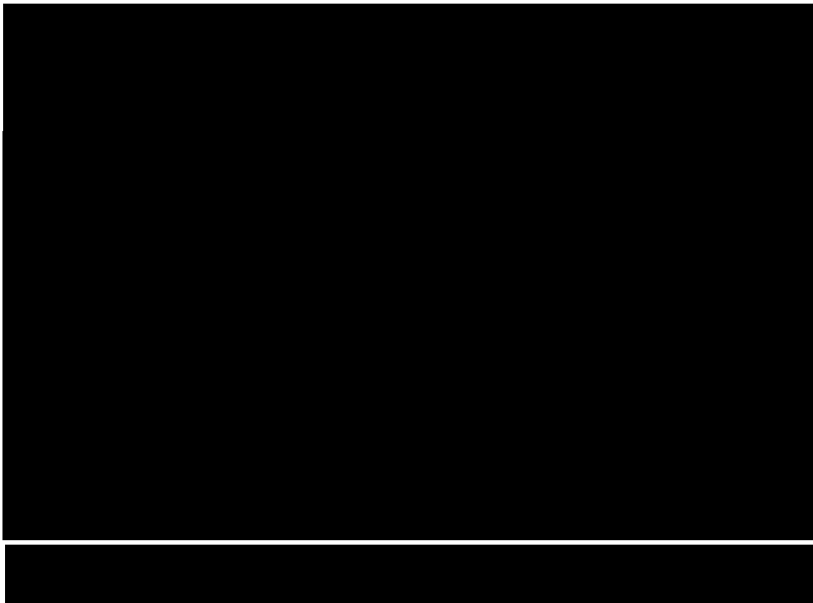
Here, as in the case of *Ela v. Goss*, 20 N. H. 52, 57, the defendant "has not shown that substantial justice requires a new trial, or that any real injustice has been done" by the refusal of the court to receive the belated plea. It follows that the motion to vacate the judgment was properly denied.

*Exceptions overruled.*

All concurred.

Rockingham, }  
March 1, 1938. }

ETHEL INGRAM, *Adm'x v.* BOSTON & MAINE RAILROAD.



*Robert W. Upton and Laurence I. Duncan (Mr. Duncan orally),*  
for the plaintiff.

*Hughes & Burns and Charles F. Hartnett (Mr. Hartnett orally),*  
for the defendant.

MARBLE, J. Although section 8 of chapter 336 of the Public Laws provides for the production of the books, records and papers of domestic corporations it does not in our opinion deprive the court of its equitable power to order discovery. "Notwithstanding . . . changes, made by statutes, which seem to remove the very foundation for any interposition by equity, it has generally been held that the legislature has not abridged nor affected the auxiliary equitable jurisdiction to entertain suits for mere discovery of evidence and production of documents, and that such equitable jurisdiction still exists, where not expressly abolished by the statutes." 1 Pomeroy, Eq. Jur. (4th ed.), s. 193, pp. 269, 270. See, also, Bispham, Equity (10th ed.), s. 558; *Reynolds v. Company*, 71 N. H. 332, 345.

In exercising this equitable power, however, a trial judge should be careful to observe the very definite limits of his authority. "The fundamental rule on this subject is, that the plaintiff's right to a dis-

covery does not extend to all facts which may be material to the issue, but is confined to facts which are material to his . . . cause of action; it does not enable him to pry into the defendant's case, or to find out the evidence by which that case will be supported." 1 Pomeroy, Eq. Jur. (4th ed.), s. 201. On the other hand, although the plaintiff is not entitled to a statement of the evidence material to the defence, he may nevertheless compel the discovery of all the facts material to his own cause of action, even though the defendant's evidence may thereby be incidentally disclosed. *Ib.*, citing *LaCoss v. Lebanon*, 78 N. H. 413, 414; *Bispham, Equity* (10th ed.), s. 561.

It is no objection that the evidence sought may be merely cumulative. *Reynolds v. Company*, 71 N. H. 332, 339. Nor need its materiality be definitely established. Its production will be ordered if the court can fairly find that it may in any way be material to the plaintiff's cause. *Peck v. Ashley*, 12 Met. 478, 481; *Reynolds v. Company, supra*.

The principles which govern discovery in general are applicable to the discovery of documentary evidence. 1 Pomeroy, Eq. Jur. (4th ed.), s. 205, p. 310. In the case of *Davis v. Company*, 79 N. H. 377, the trial court expressly found that the plaintiff was unable properly to prepare his case without an opportunity to inspect the documents sought to be discovered and that justice required their production. The order in the present case is assumed to be based on such a finding, under the rule that where no findings appear which make an order improper, all special findings necessary to justify it were presumably made. *LaMarre v. LaMarre*, 84 N. H. 553. See, also, *Keyes v. Baird*, 88 N. H. 449, 451, and cases cited.

It is suggested that the allowance of the motion may require the disclosure of facts which will subject the defendant to a penalty under P. L., c. 238, ss. 38, 39. There is nothing in the record, however, to indicate that any such claim was made at the hearing. Moreover, it is the general rule that a corporation has no privilege against self-incrimination. *Hale v. Henkel*, 201 U. S. 43; *Wilson v. United States*, 221 U. S. 361, 382; *Wagner &c. Co. v. Mali*, 74 Fed. (2d), 666, 670.

The defendant also contends that excessive hardship may result to it if compelled to comply with an order which grants to the plaintiff "the untrammelled right to inspect at will" the records in question. There is some force to this contention. The order is a very broad and general one, and if the defendant desires that some safeguard be imposed, it may request the Superior Court to appoint a

special master who will see not only that the order is properly complied with by the defendant but that the plaintiff does not inspect any records "not legitimately necessary to enable her" to prove her case on the trial. *Motley, Green &c. Co. v. Company*, 174 Fed. 734. See, also *Glenney v. Stedwell*, 64 N. Y. 120, 123.

*Exception overruled.*

All concurred.

Rockingham, }  
March 1, 1938. }

ALBERT J. CROOK, *by his father and next friend*, ALBERT W. CROOK

*v.*

ERWIN T. PARKHURST.

[REDACTED]

[REDACTED]

*William H. Sleeper* (by brief and orally), for the plaintiff.

*McLane, Davis & Carleton* (*Mr. Carleton* orally), for the defendant.

BRANCH, J. Upon May 10, 1936, the plaintiff, Albert J. Crook, then a boy eight years old, coasted in a cart down a private driveway