

No. **12206**

Supreme Court of Illinois

Gowgoske^l

vs.

Day

71641  7

The State of Illinois Appeal from Cook
Superior Court
Albert Gorgoski
Elijah Day 3 And now comes
said Albert Gorgoski, by his attorneys
and say that there is manifest error
in said records proceeding in the Court
below in this Court.

That the Court rendered a decree in
favor of said Elijah Day whereas they
should have rendered a decree in
favor of said Albert Gorgoski, in the
case.

- 2 The Court below sustains the bill of
complaint, when they should have
dismissed it
- 3^d That the decree in this case is erroneous
and not according to law and equity
- 4 That the decree is erroneous in ordering
that the money should be retained
in Court till said Gorgoski executed
a deed of the premises.
- 5 That said decree is in other respects erroneous
good and bad and for these reasons
he prays that said decree be reversed
and set aside and held as naught.
Wade W. Atty for said
Gorgoski

State of Illinois }
County of Cook } SS

Pleas before the Honorable John
McWilson Judge of the Cook County Court of Com-
mon Pleas within and for the County of Cook and
State of Illinois at a regular Term of said Cook
County Court of Common Pleas, begun and holden
at the Court House in the City of Chicago in said
County and State on the first Monday being
the fifth day of February in the Year of our Lord
one thousand eight hundred and fifty five, and
of the Independence of the United States the Seventy
Ninth.

Present the Hon John McWilson Judge
Daniel McTeary Prothonotary
James S. Ward, Sheriff
Attest Walter Kimball, Clerk

Be it Remembered that heretofore to wit on the
Twenty third day of February in the Year Eighteen hun-
dred and fifty four, Elijah Day filed in the office
of the Clerk of the Cook County Court of Common Pleas
his Bill of Complaint in Chancery against Peter
Sowaske Defendant, with Exhibits marked
A & thereunto attached which said Bill of Complaint
and Exhibit A are in words and figures as follows
to wit,

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Cook County Court of
Common Pleas of March
Vacation Sum in the year
One thousand Eight hundred
fifty four — —

To the Hon John W. Wilson Judge of the
Cook County Court of Common Pleas
in Chancery sitting.

Humbly Complaining
sheweth unto your Honor. Your Orator —
Elijah Day Mariner of Cook County
That in the month of February in the
year Eighteen hundred and fifty One and
as your Orator believes between the twentieth
and twenty eighth day of said month
but the precise day your Orator cannot tell
Your Orator made and entered into a cer-
tain Agreement in writing under seal with
One Albert Grogoski the defendant hereto
in and by which Agreement the said defen-
dant agreed to sell assure and convey to
Your Orator by a good and sufficient deed of
Conveyance Lot No seven in Block Number
four in Duncan's Addition to the City of Chicago
with the buildings situated thereon for the Consider-
ation or price of Eleven hundred and seventy
dollars to be paid as follows to wit Thirty
dollars on the delivery of said articles of Agree-
ment Thirty dollars in One year Thirty doll-
ars in two years and Nine hundred dollars in
three years after the date of said articles of
Agreement without interest. Nine hundred dol-

- last being the price agreed upon between your
 Orator and said defendant for said
 premises which was to be paid in three
 years after the date of the purchase and the
 first three payments aforesaid of Ninety dol-
 lars each were for the interest at ten per
 cent per annum on said purchase money
 in advance. By said Articles of Agreement your
 Orator also agreed to make the payment afore-
 said in manner aforesaid. Your Orator further
 shows that on the executing and delivery of
 said Articles of Agreement your Orator paid
 unto the said defendant the first payment
 of Ninety dollars aforesaid and immediately
 entered into possession of said premises under
 said Articles of Agreement and has been in
 the actual occupancy of said premises by
 living thereon from the time of said purchase
 until the present time and still lives on
 the same. Also that in about one year after
 the purchase aforesaid as nearly as your Orator
 could judge or a little before the expiration
 of one year being about the twentieth day
 of February Eighteen hundred and fifty two
 Your Orator caused the second payment
 of Ninety dollars to be tendered to said defen-
 dant in lawful money of the United States which
 said defendant refused to accept. Also that two
 years after said purchase your Orator sought
 said defendant to tender to him the payment
 then due on said Lot to wit the payment then
 falling due and the payment before tender-
 ed but could not find him but was inform-
 ed by Sylvester Lind with whom said defendant

was employed. that said defendant was not in the City of Chicago but that said Lurel was the agent of said defendant. Whereupon your Orator tendered to said Lurel for said defendant the sum of One hundred and Eighty dollars lawful money as aforesaid for the second and third payments on said lot then due and unpaid but said Lurel refused to accept said money as payments on said lot but offered to receive it as rent for said premises Your Orator further shows that on the twenty second day of February Eighteen hundred and fifty four he caused to be tendered to said defendant the sum of ten hundred and Eighty dollars lawful money as aforesaid in full payment of said lot and demanded a deed for the same but said defendant refused to receive said sum of money and utterly refused to execute and deliver to your Orator a deed for said premises. Your Orator further shows that on the day last aforesaid he caused to be prepared at his own expense a deed for said premises from said defendant to your Orator which is hereto annexed and marked exhibit "A" and produced to said Gorki and demanded that he should execute the same but said defendant utterly refused to execute said deed. Your Orator further shows that said Articles of Agreement were executed in duplicate and that both of the copies were signed both by said defendant and your Orator and one copy was delivered to and kept by each of the parties thereto that some two or

three weeks after the executing and delivery of said articles of agreement. James Smith as the agent of your Orator took your Orators copy of said articles to the Office of said Sylvester Lind in whose office said defendant was then employed and delivered the same to said Lind for the purpose of having said defendant sign an additional agreement added to or indorsed upon the same which had been proposed by and agreed to by said defendant and which additional agreement was to the effect that your Orator should get the house on said lot insured and that each party to the said agreement should pay one half of the expense of such insurance and that the policy should be assigned to said defendant for his security and that in case said house should be destroyed by fire that then said defendant should receive the insurance money and credit the same to your Orator towards the purchase money of said premises. That after said agreement had been so left as aforesaid in the office of said Lind in which office said defendant was employed your Orator called at said office for the same but said Lind was unable after full diligent and careful search to find said agreement. Your Orator further shows and charges that said defendant clandestinely fraudulently and secretly obtained possession of said agreement and has concealed or destroyed the same so that it cannot be used as evidence against him for the purpose of defrauding your

Orator. Your Orator further shows unto your Honor that he has never seen said copy of said Articles since it was taken to the office of said Land as aforesaid and has never since had said copy in his possession or power and that said copy has either been destroyed or concealed as aforesaid or else has been totally lost so that the same cannot now be found although your Orator has made diligent but unsuccessful search for the same. That as early as the month of February Eighteen hundred and fifty two when the second payment became due said defendant denied that any agreement for the ^{sale} of said lot had ever been made or ever existed and still denies that any such agreement was ever made. Your Orator further shows that immediately after the purchase of said lot by your Orator as aforesaid the same began to increase in value and has since that time increased largely in value and is now worth the sum of two thousand dollars or more. Your Orator further shows that he has been ready and prepared to make each and every of the payments mentioned in said Articles of agreement at the times they severally fell due and still is ready and willing to make all of said payments and hereby offers to bring the whole amount of the back payments with the payment falling due at the time of filing this bill into court and hereby asks permission to bring said money into court and to deposit the same with the

Clerk of this Court for the use of said defendant whenever he shall be entitled to receive the same under the orders of this Court Your Orator further shows that he has in person and by his agent at various times since the execution and delivery of the article of agreements aforesaid requested of the said defendant that he receive the several payments to be made by Your Orator and to execute and deliver to your Orator a deed for said premises and Your Orator well hoped that said defendant would have complied with such reasonable request. But now so it is may it please your Honor the said Albert Goligowski defendant combining and confederating to and with divers other persons to your Orator unknown but whose names when discovered your Orator ^{proofs} may be inserted herein with apt and proper words to charge them as defendants hereto how to injure and oppress Your Orator the said Confederate and particularly the said defendant absolutely refuses to receive the said several payments for said premises and also absolutely refuses to execute any deed for the same to your Orator. Sometimes pretending that he said defendant never made or entered into any articles of Agreements of any kind with your Orator for the sale to him of said premises

Whereas your Orator expressly charges the truth to be that said articles of Agreements were executed and mutually exchanged—

And delivered by your Orator and said defendant as stated herein before and that said defendant has fraudulently possessed himself of your Orator's copy of said Articles and has destroyed or concealed the same in order to defraud your Orator. All which doings actings and pretences of the said defendant are contrary to equity and good conscience and tend to the manifest wrong and injury of your Orator.

In further consideration whereof and for as much as your Orator remedies at and by the strict rules of the Common Law and is only relievable in a court of equity where matters of this nature are properly cognizable and relievable.

To the end therefore that the said Albert Gorgoski defendant and his confederates may respectively full true direct and perfect answers make according to the best of their respective knowledge information and belief, to all and singular the matters and charges aforesaid (your Orator hereby waiving pursuant to the statute the necessity of the answer of said defendant ^{being put in under the oath of said defendant and their co-defendants} therein particularly interrogated. Your Orator therefore prays that said defendant Albert Gorgoski may be compelled by the order and decree of this Court specifically to perform his said agreements with your Orator for the sale and conveyance of the lot aforesaid and that he may be compelled as aforesaid to convey said lot to your Orator by a good and sufficient

X particularly in every respect as if the answers were here again repeated and said defendant

dud as by said agreement he is bound to do
and that Your Orator may have an attach-
ment against said defendant if necessary
to compel him to abide by and perform the
decree of this Court in the premises. Also in
case the said defendant shall refuse to convey
said premise to your Orator in compliance
with the Order and decree of this Court to
be made herein that then a special commis-
sioner may be appointed by this Court to
convey said premise to your Orator as for and
in lieu of the conveyance of said defendant
and that the conveyance so to be made by
such commissioner may be decreed by this
Court to be good and effectual and to pass
the fee in said premises unto your Orator

And that your Orator may have such other
relief or may have such further relief as the
nature of his case shall require and as shall
be agreeable to equity and good conscience

May it please your Honor to grant unto
your Orator a writ of summons issued out
of and under the seal of this Honorable Court
against the said defendant. Albert Gungoski
returnable to the next March special term of this
Court in manner and form required by law

J. H. Kedzie }
Sol for Complt }

Elijah Day

State of Illinois }
Cook County } Personally appeared before
me this 22nd day of February A D 1854 Elijah
Day whose name is subscribed to the foregoing

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bill of complaint who being by me duly sworn
deposes and says that he has heard ~~the~~ read the
foregoing bill of complaint subscribed by him
and knows the contents thereof and that the
same is true of his own knowledge except such
parts thereof as are therein stated to be upon
information and belief and as to such parts
thereof he believes the same to be true.

Walter Kimball
Clerk

And on the same day to wit on the twenty-third day of February in the year aforesaid a summons issued in said cause out of the office of the Clerk of said Court, in words and figures as follows, to wit,

State of Illinois
County of Cook } S.S.

The People of the State of Illinois
to the Sheriff of said County Greeting,

We command you that you summon Robert Gonskowski if he shall be found in your County, personally to be and appear before the Cook County Court of Common Pleas of said County, on the first day of the next special term thereof to be holden at the Court House in the City of Chicago in said County on the Second Monday of March next to answer unto Elijah Day in his certain bill of Complaint filed in our said Court on the Chancery side thereof for specific performance.

And have you then and there this writ, with an endorsement thereon, in what manner you shall have executed the same.

Witness Walter Kimball Clerk of said Court and the seal thereof at the City of Chicago in said County this 23rd day of February A.D. 1854.
Walter Kimball, Clerk

And afterwards, said summons was returned into the office of the Clerk of said Court by the Sheriff of said Cook County, with his return thereon endorsed in words and figures as follows to wit,

Served this writ by reading to the within named
Robert Grogoski this 28th day of February 1884
and delivering a copy of this writ same date
Cyrus P. Bradley Sheriff
By Michael Regan Deputy

And afterwards to wit on the Eighth day of
April Eighteen Hundred & fifty four the
said defendant Robert Grogoski by Samuel
Lannet & Co. his Solicitors filed in the office
of the Clerk of said Court his answer in said
Cause which said answer is in words & figures
as follows to wit

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Cook County Court of Common Pleas
In Chancery

The answer of Albert Gungorick
Defendant to the bill of Com-
plaint of Elijah Day Complainant

This defendant now and at all times hereafter
saves and reserves to himself all manner of excep-
tion to the manifold errors uncertainties and oth-
er imperfections in the said bill of Complaint
contained for answer thereto or unto so much
and such parts thereof as this defendant is ad-
vised is or are material for this Defendant to
make answer unto answering says. That he
denies that in the month of February in the
year 1851 between the twentieth and twenty
eighth day of February the said Complainant
made and entered into the agreement in writing
with this defendant in and by which said defend-
ant agreed to sell Lot seven in Block No. four

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in Duncans Addition to the City of Chicago
with the buildings thereon for the sum or price
as in said bill stated and further answering
states and charges that this defendant never ex-
ecuted any agreement for the sale of the said pro-
perty to the said Complainant whatsoever at any
time or upon any terms

And this defendant further answering de-
=as the execution of any agreement containing the
conditions and provisions and terms as set forth
in said Complainant's Bill and states and charges
to be the truth that this Defendant on the twentieth
of February 1856 being the owner of lot seven in
Block four in Duncans Addition to Chicago with
the buildings, rented the same for three years for the sum
of Ninety Dollars per annum payable in advance
to the said Complainant, and that in consid-
=eration of the cheapness of the rent the said Com-
=plainant agreed to improve the premises by paint-
ing the house planting out trees and to pay one
half of the premium for insurance this Defendant
paying the other half and that thereupon the
said Complainant did pay this defendant the
sum of Ninety Dollars on account of said lease
and it was then and there agreed and under-
stood by and between this defendant and said
complainant that the agreement for lease of said
lot should be drawn up and executed afterwards

And this defendant further answering
says that within a few afterwards the said Com-
plainant called on this defendant to execute
falsely and fraudulently alleging to this defendant
that they were articles of the lease of the said prem-

and requesting this defendant to execute them and that this defendant being a foreigner and unable to understand and read the English language went to William A Brown of the City of Chicago and was informed by him that the articles of Agreement drawn up by said Day were for the sale of the said premises, and not for this lease

And this defendant further answering says that a few days after that the said Complainant left with this defendant the two agreements hereinbefore mentioned, and which this defendant had shown to William A Brown as afore stated the said Complainant met this defendant in the street and was then and there informed by this defendant that Defendant would not and could not sign and execute the said Instruments in writing for the reason that they were not a lease of the said lot before described but an agreement to sell the same and and this defendant further avers that he this defendant then and there delivered the said instruments in writing to the said Complainant and the said defendant further avers that the said ^{instruments} in writing were not signed and executed by him this defendant when he delivered the same to the said Complainant and the said Complainant at that time and place falsely and fraudulently asserted and assured this defendant that the said Instruments in writing were not agreements of sale but a lease of the said premises hereinbefore described nevertheless the said defendant then and there and at all times after refused to sign or execute the same and this defendant has never executed or signed any agreement for sale

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of the said premises as is most falsely alledged
and charged in the said Complainant's Bill of Com-
plaint

And this defendant further answering
says that some two or three weeks (the precise time
this defendant cannot state) after the conversation
in the street between Complainant and this defendant
as last mentioned that he the said Complainant
came to the defendant at his office and then and
there requested him this defendant to sell to him the
said Complainant the said premises hereinbefore
mentioned and this defendant then and there off-
ered to sell to Complainant the said premises for
the sum of fifteen hundred Dollars which offer
Complainant then and there refused to accept
of and this defendant further says that he the said
Complainant then and there made to defendant
as written offer for the said premises (which said
offer in writing has since that time been mislaid
and lost) which offer said defendant not considering
equal to the fair value of the said premises and suffic-
ient therefor the said defendant then and there refuse
d to accept of.

And this defendant further answering
says that on or about the twentieth day of February
in the year 1852 he this defendant called on
Elijah Ray the said Complainant and then and
there demanded the rent then due and owing from
the said Complainant to this defendant for the use
and occupation of the said premises hereinbefore
mentioned and the said Complainant then and
there refused and neglected to pay the same alleg-
ing and ^{charging} that the same was not then due and

owing to him this defendant and this further says that he ~~frequently~~ called and demanded the rent due and owing from him said Complainant to this defendant and says that complainant always neglected to pay the same but promised to pay the same shortly as soon as he got any money. And this defendant further states and shows unto your Honor that the said Complainant did not at any of the said several times when called on to pay his rent as aforesaid. Claim to hold the said premises heretofore described in any way or manner except as tenant of this defendant under and by reason of the said lease heretofore mentioned.

And this defendant further answering says that on or about the 1st day of April in the year 1852 the said Complainant called on this defendant and then and there tendered to this defendant the sum of Twenty Dollars which he then and there claimed and demanded of this defendant should be credited and applied as a part payment to be made on said lot heretofore mentioned and not as rent then due and owing to this Defendant ~~for~~ for the use and occupation of the said premises as it ought of right to be applied and as defendant desired to apply ^{it} the said sum of Twenty Dollars and this defendant ^{averts} that ~~but~~ then and there refused to receive the aforesaid sum of money as a part payment on the said premises heretofore described for that he the said defendant had never sold the afore said premises or any part thereof to the said Complainant nor had he this defendant ever agreed to sell the same or any part thereof.

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of to him the said complainant as is most false-
ly and fraudulently alledged and charged in
the said Complainant's bill of Complaint but has
only leased the same to him the said Complain-
ant for the space of three years as is hereinbefore
more fully set forth and stated

And this defendant further answering
says and shows unto your Honor that the
said Sylvester Lind mentioned in Complain-
ant's bill of Complaint is not nor has he ever been
the agent of this defendant and this defendant
further says that he is ignorant and therefore cannot
state whether the said Complainant did ever tender
to said Lind as the agent of this defendant the sum
of one hundred and eighty dollars as the second
and third payment on the aforesaid premises
as is alledged in the said Complainant's Bill of
Complaint but this defendant states that if the said
Complainant did tender to the said Lind the aforesaid
sum of money as charged in the said
Complainant's bill of Complaint, that he the said
Complainant did tender the same with the premed-
itated design and intention of injuring and
defrauding this defendant and if any such tender
was made it was made without the knowledge
or consent of this defendant and to a person not
authorized to receive And this defendant further
answering says that he admits that the ^{said} Complainant
did tender to him on or about the twentieth day
of February 1854 the sum of ten hundred and
eighty dollars with a deed and at the same time
demand of him this defendant that he should
execute the same and this Defendant further
admits that he refused to receive the aforesaid

sum of money and to execute the said deed for the reasons hereinbefore stated that is to say for the reason that he had never agreed or consented in any way or manner to sell or convey the said premises hereinbefore described to him the said complainant as is most falsely and fraudulently alledged in said Complainant's Bill of Complaint.

And this defendant further answering says that he never executed or signed any agreements or agreements to sell or convey the said property to said Complainant as is most falsely and fraudulently charged in said Complainant's bill of Complaint and that he never himself or by James Smith as his agent obtained of Complainant any agreement or agreements for the sale of the said premises executed or signed by himself or by any one as his agent to sell the said premises to him the said Complainant And this defendant further answering says that he denies that he ever obtained any such agreement or agreements and destroyed or kept the same as is most falsely and fraudulently charged in said Complainant's bill of Complaint.

And this defendant humbly insists and submits that he ought not be compelled to deed or convey the said lot seven in Block four of Duncans Addition to Chicago to the said Complainant for that he never promised or agreed to sell or convey the same to the said Complainant as is hereinbefore more fully set forth and stated

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And he denies all combination and con-
federacy charged against ^{him} in the said bill
of Complaint without that that any other
matter or thing in the said Bill of Complaint
contained and not herein and hereby well
and sufficiently answered unto confessed
and abided traversed or denied is true to
his knowledge or belief All which matters
and things this defendandant is ready to
prove and maintain as this honorable
Court shall direct and prays to be hence
dismissed with his costs and charges
in this behalf most wrongfully sustain-
ed

Arnold Larned Lay
Sols for Deft

Albert Grogoski
Arnold Larned Lay

And on the Eleventh day of April Eighteen hundred fifty
four said Complainant filed in said Court his Replication
to Defendants answer, as follows to wit:

Cook County Court of
Common Pleas.

In Chancery before the
Judge of the Cook County
Court of Common Pleas
in Chancery sitting

The Replication of Elijah
Pay Complainant to the answer of Albert Grogoski
defendant

This Replicant saving and reserving
to himself now and at all times hereafter all and
all manner of benefit and advantage of excep

tion which may be had or taken to the manifest
insufficiency of the said answer for replication. Thereby says that he will aver maintain
and prove his Bill of Complaint to be true certain
and sufficient in law to be answered unto and
that the said answer of the said defendant
is uncertain untrue and insufficient to be
replied unto by this replicant without this
that any other matter or thing whatsoever in
the said answer contained material or effi-
-ctual in the law to be replied unto and not
herein and hereby well and sufficiently
replied unto confessed and avoided traversed
or denied is true all which matters and
things this replicant is and will be ready
to aver maintain and prove as this honor-
-able Court shall direct and humbly pray
as in and by his said Bill he has already
prayed

J. H. Kedzie
Sols for Compl

And afterwards to wit on the sixteenth day of
November in the year of Our Lord Eighteen hun-
-dred and fifty four said Day being one
of the days of the November Term of said
Court the following proceedings were had
in said Cause and entered of record to wit

Elijah Day }
vs } Bill
Albert Gougeon }
This day comes the said

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Complainant by J. H. Kedzie his Solicitor and
the Defendant by Arnold Lamed & Lay his
Solicitors also came and by their stipulation
it is Ordered that the proofs in this Cause be
closed on the part of the Complainant on the
twenty third day of November instant &
the proofs on the part of the defendant be closed
in ten days thereafter and that this Cause be
brought to a final hearing in Vacation ~~with~~
~~in~~ within twenty days after the proofs shall be
closed before the Judge at Chambers at such time
as shall be hereafter agreed on by the parties or
in the absence of any agreement the time
shall be fixed by the Judge.

And afterwards to wit on the twenty second
day of December Eighteen hundred and fifty
four said Complainant's solicitor filed in
said cause the report of George Maniere
Master in Chancery of Cook County which
said report is in words and figures as
follows to wit

Masters Report

State of Illinois }
Cook County } ss

Office of Master in Chancery
Chicago December 20th 1854

On the Cook Common Pleas of the April term
1854

Elisah Day }

vs
Albert Gorgastis } In Chancery

Now John W. Wilson - Presiding Judge of said Court in Chancery sitting.

In pursuance of an order made by said Court in the above entitled cause by which it was referred to me to take proof of the parties in this cause as well on the part of the defendant as the complainant by the examination of such witnesses as might be produced before me by them.

I, George Manierre Master in Chancery of Cook County aforesaid do hereby report that on the 12th day of April 1854 the Complainant and defendant appeared before me at my office in the City of Chicago by their solicitors at which time and place I proceeded to a hearing of the matters embraced in the said reference. And thereupon the Complainant produces his own Affidavit of the loss of the agreement set forth in his said bill duly sworn to and the same is herewith annexed marked Exhibit "A"

James Smith being produced as a witness for the Complainant was duly sworn by me and testified as follows in answer to interrogatories propounded to him.

Interrogatory 1st Are you acquainted with the parties Complainant and defendant in this suit.

Answer I am acquainted with both

Interrogatory 2^d Where and with whom was the defendant employed in the

26
3
winter of 1851.

Answer In the winter of 1851 he was about the office of Lind & Smith in Chicago but not in their employ as I recollect at that time but had them the summer before

Interrogatory 3^d Do you know of any contract having been made between said defendant and Complainant in relation to the purchase of a lot and if so state what lot and whether said contract was in writing or not

Objected to by defendant's solicitor

Answer I do know of a contract having been made between the defendant and Complainant in relation to the purchase of a lot. The lot is described as lot seven (7) in block four (4) Duncan's Addition to Chicago and is the same place where complainant lives. This contract was in writing.

Interrogatory 4th Was the contract spoken of executed in duplicate or not

(Objected to by Deft Solr)

Answer - It was executed in duplicate

Interrogatory 5th State whether or not one of said duplicates was delivered to the defendant and the other to the Complainant and if not to whom were the same delivered

(Objected to by Deft Solr)

Answer - One of the duplicate was delivered to each of the parties

Interrogatory 6th Do you know where the Complainant's copy of said contract now is

or what has become of it.

Answer I do not know where it now is I gave it to Mr. S. Lind to hand to Captⁿ Day when he came in from Green Bay.

Interrogatory 7th State all you know in reference to the disposition of said agreement and the circumstances attending the same.

(Objected to by Dep^t Solr)

Answer The contract was left with me by the Complainant for the purpose of having a memorandum made on the back in reference to having the house on the premises insured. That each party was to pay one half the insurance and the policy was to be assigned to the defendant as security and in case the house should be burned the insurance was to be applied upon the payments. The memorandum was written by me upon the said contract and the defendant had agreed to it and to sign it before I wrote it on the contract. After writing the memorandum I took the same to the defendant to get him to sign it which he refused to do. A short time after that I was going South and gave it to Mr. Lind to give to the Complainant when he returned from Green Bay as before stated.

Interrogatory 8th Do you know what has become of Complainant's copy of said agreement since that time

Answer I do not.

Interrogatory 9th Where was defendant stopping at the time you delivered said duplicate agreement to Mr Lind

Answer He was stopping at Lind's Office.

Interrogatory 10th State whether said duplicate agreements

28 5
were signed and if so by whom

(Objected to by Deft Solr)
Answer They were signed by Albert Gorgoski and
Elijah Day

The Complainant hereupon introduced his own affidavit of the loss or destruction of the duplicate agreement referred to and which is herewith annexed as an exhibit marked "A" The defendant by his counsel objected to the introduction of said affidavit and also to the Affidavit itself

Interrogatory 11th - By whom were the Original articles of Agreement mentioned above drawn.

Answer I drew them

Interrogatory 12th - Produce a copy of said agreement as nearly as you can if in your power

(Objected to by Deft Solr)
Answer The copy now produced by me is the same in substance as the original as nearly as I can now recollect it. The amount to be paid for the lot and times of payment are the same as in the original I do not know whether the other printed parts of said copy are the same or not The copy produced by the witness is herewith annexed as exhibit "B"

Interrogatory 13th - State the date of said Articles of Agreement as nearly as you can recollect it

(Objected to by Deft Solr)
Answer It was dated about the end of February or 1st of March 1851

Interrogatory 14th - State whether you was present at the

signing of said agreements and by whom the same was signed.

(Objected to by Deft Solr)

Answer I believe I was present when the same were signed and think I witnessed them but am not sure they were signed by Albert Grogoski and Elijah Day.

Interrogatory 15th — State whether said article had been executed previously to the delivery of Complaint and Copy to said Lind

(Objected to by Deft Solr)

Answer They were

Interrogatory 16th — Do you know of any conversations between the defendant and Complainant in regard to the sale of said lot previous to the execution of said Articles of Agreement if you state what the same was fully.

(Objected to by Deft Solr)

Answer I do know of conversations between the defendant and Complainant previous to the execution of said articles of Agreement in relation to the sale of said lot I heard them conversing about the price before the trade was concluded and when the trade was concluded they stated to me the terms of it They said the terms were to be nine hundred dollars and ninety dollars or ten per cent interest a year in advance ninety dollars was to be paid down ninety dollars was to be paid in one year ninety dollars in two years and nine hundred dollars in three years. Nothing at that time was agreed on touching the insurance

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of the premises.

Interrogatory 17th State at whose request you drew up the said Article of Agreement

Answer I do not recollect in particular which party requested me to draw them up but it was agreed to by both parties that I should draw them up.

Interrogatory 18th State whether at the time of signing said Articles any money was paid and if so by whom to whom what amount and on what account

Answer Objected to by Deft Solr
There was ninety dollars paid at the time of signing by the complainant to the defendant on account of and as first payment on the premises mentioned in said agreement that was the interest for one year in advance.

Interrogatory 19th Was there at the time of executing said Articles any conversation or agreement or at any other time to your knowledge between the parties in relation to leasing said premises

Objected to by deft solr
Answer There never was any such conversation or agreement to my knowledge.

Interrogatory 20th State if you know of the Complainant giving to the defendant any and how much money for the purpose of effecting an insurance upon said house also the circumstances attending the same.

Objected to by Deft Solr
Answer I do not recollect whether I was present when the money was paid or not my

impression is that there was money paid by Complainant to the defendant towards the insurance of the premises.

The defendant by his Solicitor thereupon interrogated the witness as follows

X Interrogatory 1st Have you had any quarrell with the defendant at any time and if so when

Answer I do not recollect of any

X Interrogatory 2^d Did you ever at any time and if so when come into the Lumber Yard of Sylvester Lind and threaten to beat the defendant or make any assault on him

Answer I never made any assault upon him I recollect of one time going into Mr Lind's yard and telling Gorgoski that I would not allow him to come into my yard and interfere with customers There was no striking or beating nothing further took place.

X Interrogatory 3^d Are you in any way related to the Complainant and if so how?

Answer I am not neither by marriage or otherwise neither is he in my employ or been for a year back

X Interrogatory 4th Does the defendant understand the English language

Answer I have never seen any difficulty in his understanding it when he was with Lind and me

X Interrogatory 5th Was you assisting the complainant in getting the property of Gorgoski the defendant
Objected to by Complainant Solr

Answer I don't recollect of any assistance that I gave unless it was in making out the papers which was all that I had to do with it

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* Interrogatory 6th What was the house on the property worth at the time of said pretended sale.

Answer I don't know what it was worth I should think it was worth between four or five hundred dollars to build such a one.

* Interrogatory 7th What was the land worth at the time of the pretended sale exclusive of the building.

Answer I do not recollect of any sales at that time.

* Interrogatory 8th Did you not state to defendant and give him to understand that the papers drawn by you were leases of the property for three years?

Answer I did not.

* Interrogatory 9th State whether the agreement between Complainant and defendant at the time of said pretended sale to Complainant was or not that defendant should lease the premises for three years to the Complainant for three years for the sum of Ninety dollars a year payable in advance and that on account of the lowness of the rent the Complainant should improve the premises by painting the house setting out trees and paying one half of the insurance.

Answer There was no such agreement. They did not state to me that it was any such thing.

* Interrogatory 10th Have you any interest in the event of this suit or are you to have any portion of the lot if recovered.

Answer I have not the slightest interest in the event and am not to have any portion of the lot if recovered.

* Interrogatory 11th Do you swear positively that the contract spoken of by you was executed by the Defendant.

Answer I do.

* Interrogatory 12th Was there any subscribing witness to said pretended contract and if so whom Also what was the day of the month it bore date

Answer To the best of my recollection I witnessed it myself I don't recollect the day of the month it bore date

* Interrogatory 13th Was the pretended contract executed on the day it was drawn up by you.

Answer I do not recollect whether it was executed that day.

* Interrogatory 14th Was not the same taken away from the office by the Complainant before execution.

Answer I don't recollect that it was

* Interrogatory 15th Did the Defendant at the time of the execution of said contract say anything about leasing or having leased said premises to the Complainant

Answer Nothing

* Interrogatory 16th Who was present at the time of the execution of the said pretended contract

Answer I don't recollect who was. *nobody was*

* Interrogatory 17th Did you ever state if so when in the office of Sylvester Lind to the defendant "You won't get back your property from E Day while I live or words to that effect."

(Objected to by Complainant's Solr)

Answer No Sir not that I have any recollection of

* Interrogatory 18th Do you know of any offer or offers being made by Complainant to defendant for the purchase of said property and if so when where and what were they

Answer The only offer I know of was the one made by complainant before the contract spoken of was

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entered into it was at Lind & Smith's office in Chicago about the end of February or 1st of March 1851 I cannot state positively which. The terms were the same as before stated.

Interrogatory 19th — How long after the alleged execution of said contract did you see the contract and did you examine it afterwards at any time and if so when.

Answer I do not recollect of seeing it until after its execution until Day handed it back to me for the purpose of having the memorandum about insurance written on it. This was a short time afterward I did not examine it after it was executed that I recollect of.

Interrogatory 20th — Did you read over said contract before or at the time of execution and can you state positively whether the same were agreements for sale or lease.

Answer To the best of my recollection I read the contract over after I filled up the blanks. and I can state positively the same were agreements for sale.

Interrogatory 21st — Can you swear positively that defendant understood the nature of the contract.

Answer I can swear that it is and was my belief that he did.

Interrogatory 22^d — At what time did you deliver the contract spoken of in your direct examination to Lind.

Answer I think it was in July 1851

Interrogatory 23^d — Have you any enmity against the defendant.

Answer Not the slightest

Interrogatory 24th — Do you know whether or not the Com

plainant took away the contract from Said office after you left it there.

Answer Complainant did not to my knowledge.

Interrogatory 35th Did you owe Complainant on or about the 20th of February 1852 any wages and if so how much and whether you made any advance of money to Complainant about that time for the coming year or any advances whatsoever and if so what.

(Objection to by Complainant's Atty)

Answer I do not recollect whether I did owe him or not in February 1852 or about that time I do not recollect whether I made any advances to Complainant about that time or not.

Interrogatory 36th Whether or not you while partner of Mr. Lind made an error of three hundred dollars in overcharging on fees against Mr. Lind and if so whether defendant exposed the error and whether by reason of such exposure you are not inimical to Defendant.

Answer I do not recollect of making any such error I do not recollect that the defendant exposed the error and I have no hostile feelings against him.

Interrogatory 37th Was Complainant delivering lumber for you during summer of 1851 or 1852.

Answer In the fall of 1851 he was delivering lumber to me. In 1852 he delivered lumber to Shepard Sheriff & Smith of which firm I was partner.

Direct examination resumed

Interrogatory 21st Was the house which you said would cost from four to five hundred dollars to build new and if not was the same worth less than first cost and how much less

Answer The house was not new I think it was worth less than first cost but I cannot say how much less

Interrogatory 22^d What do you know about defendant Gangoski's requirement or abilities in regard to reading writing speaking the english language at the time of making said contract

Answer He could read the english language and I never knew of his having any trouble in reading orders in writing He could write the english language He wrote a very good plain hand and was in the habit of charging orders that he gave the lumber on and entering sales for cash He could speak the english language not as well as one who had been brought up to it but so as we could understand him The time I speak of is about the time of making said contract and when he was with us the summer before.

Interrogatory 23^d State whether or not said defendant was at that time competent to readily understand what was spoken or read to him in english And what language did he use in the transaction of business.

Answer I believe he was competent to understand then what was read or spoken to him in english He sometimes used the english and sometimes the german depending upon the person

whom he was transacting business with
Interrogatory 24th Did defendant read over ^{said} the articles of agreement before he executed the same
(Objected to by Dft Solr)

Answer I do not recollect

Interrogatory 25th Did he look at or examine the same before he signed or were they read to him
(Objected to by Dft Solr)

Answer I do not recollect whether he looked at or examined the same It is my impression that took them with him from the office to examine or get some one to examine them before they were signed He brought them back as I recollect and they were executed

Cross Examination resumed
Interrogatory 26th Did defendant make any other entries than in the day book or blotter of your firm

Answer He did not.

Sworn & subscribed before me
this 12th day of April 1854
George Manum
Master in Chancery

James Smith
I

Deposition of Daniel S. White

Daniel S. White being first duly sworn deposes and says

Interrogatory 1st Are you acquainted with the parties to this suit

38 15
Answer I am

Interrogatory 2^d Were you present at the making of any Contract between said defendant and Complainant for the purchase of any and what lot and if so was the same in writing or not
(Objected to by deft Solr)

Answer I was present at the making of a contract between the parties for the sale of a lot & House being the same where the Complainant^{now} resides

Answer The agreement was in writing

Interrogatory 3^d State whether or not the same was executed (Objected to) in your presence and if so by whom

Answer It was executed in my presence by the Complainant and defendant.

Interrogatory 4th Did you see said contract and did you hear it read or read it

Answer I saw Mr Smith draw it up I heard it read but did not read it myself but I saw it after it was signed

Interrogatory 5th State whether said the defendant read said agreement or heard it read before signing it

Answer He was present at the time it was read before it was signed.

Exhibit B. was produced to witness and the following interrogatory thereupon propounded

Interrogatory 6th Look at exhibit B and state whether or not that is substantially a copy of the Contract above spoken of by you. (Objected to)

Answer I could not say it is word for word the same as was read there. but the price and

terms and the parties are the same and I think it describes the same property

Interrogatory 7th — Did you hear any conversation between the parties previous to the signing of said agreement if so state what it was.
(Objected to by Dist Solr)

Answer The complainant and the defendant were talking together for four or five days previous to the signing of the papers about the sale. The defendant wanted more cash down than what the complainant paid him the price talked ^{was} of and the defendant finally came to the conclusion that he would take nine hundred dollars ninety dollars in advance as interest ninety dollars in one year and ninety dollars in two years and nine hundred dollars in three years. This was the substance of the conversation

Interrogatory 8th — State whether any money & what amount was paid by whom and to whom

Answer The Complainant paid ninety dollars to the defendant.

Interrogatory 9th — Was anything said by Defendant at the time of said sale or previously thereto about leasing said premises to the complainant

Answer I heard the defendant try to lease ^{the premises} to the complainant the latter said he did not want to lease but wanted to buy.

Interrogatory 10th — Was there any agreement between said parties to lease the premises

Answer None that I know of

Interrogatory 11th — Have you had and conversation

40 17
with said defendant subsequently to said sale in relation to said sale to the Complainant and when were such conversation and what did said defendant say to you on the subject

(Objected to)

Answer I have had a number of conversations with the defendant since said sale and in relation thereto. They took place the following summer. He said he did not want me to inquire the Complainant he wanted him to earn the money so the Complainant could pay for the house and lot that he had sold the lot to the Complainant at that time and wished him to be employed until he had paid for it. [Towards the spring of 1852 a further conversation took place in which he denied the sale of the house and lot in the fall succeeding in talking it over he denied the sale again]

(All the answer of the witness included within the brackets was objected to by Complainant's solicitor as not called for by the interrogatory) and it was insisted upon by the solicitor of defendant and received subject to exception)

Interrogatory 12th During the first year succeeding said sale did said defendant in conversations with you ever claim that he had leased said lot to the complainant or deny that he had sold it to him

(Objected to by Deft Solr)

Answer The defendant in his conversations with me during the year succeeding said sale never

claimed that he had leased said lot or denied that he had sold it to the Complainant

Interrogatory 13th — Had said premises increased in value during the first year after said sale and if so in what proportion

(Objected to by Deft Solr)

Answer The premises increased in value about ten per cent during the first year

Interrogatory 14th — Had said premises ^{portion} increased in value up to the 23^d February 1854 and if so what were they then worth (Objected to)

Answer I think they had increased in value up to 23^d February 1854 about two hundred & twenty five per cent.

Cross Examined by Defendant Solicitor

X Interrogatory 1st — Are you inimical to the defendant and have you had any difficulty with him at any time and if so when.

Answer I am not any more than to any ^{other} man — I have had some hard talks with him at various times when I have been discharging at the dock

X Interrogatory 2nd — Did you see the defendant sign the contract spoken of by you in direct examination

X Answer I did

Interrogatory 3rd — What was the nature of the agreement or contract spoken of

Answer That complainant was to pay nine hundred dollars ninety dollars in advance ninety

dollars in one year and ninety dollars the ^{second} year as interest for each year the principal was to be paid in three years it was on agreement for the sale of the premises

x Interrogatory 4th State all that the defendant said in the conversations with you in reference to this matter in the spring of fall of 1853 referred to in your answer to a direct interrogatory
(Objected to by Compt. Lohr)

Answer He said in those conversations he had not sold the premises I said I thought he had I told him that he had sold it that I saw the agreement drawn up and signed. He then asked me where the Complainant's agreement was. I told him I supposed the Complainant had it He said Complainant had no agreement without it was for a lease.

x Interrogatory 5th What reason was stated by defendant in those conversations why he denied any sale

Answer He said there was no agreement and that they could not produce any.

x Interrogatory 8th Can you swear that no other agreement than the one spoken of by you was ever made by the complainant and the defendant than the one spoken of by you.

Answer It is the only agreement I know of

x Interrogatory 9th Was there any offer or offers made by the complainant to defendant to your knowledge for the purchase of the property subsequent to the time of the execution of said agreement if yes what were they.

Answer I never knew of any after that

X Interrogatory 10th State whether in the four or five days negotiation spoken of by you in direct examination any thing was reduced to writing

Answer There was nothing of the negotiation reduced to writing previous to the agreement that I know of. The agreement spoken of was the only matter reduced to writing.

X Interrogatory 11th Did defendant in the conversations ^{had} with you in the spring & fall of 1852 state the terms of the lease to the complainant spoken of by him if so state what they were (Objected to for non production of lease)

Answer He said the terms were ninety dollars a year rent

X Interrogatory 12th Did he state to you in those conversations that he had been deceived by Complainant (Objected to by Compt & Solr)

Answer He did not

X Interrogatory 13th Was the written agreement spoken of by you signed at once by the parties without any difficulty after reading it

Answer It was not signed then. It was signed between four to six in the afternoon but I am not positive whether it was the same day or not.

Direct Examination resumed

X Interrogatory 15th State whether or not intermediate the drawing and signing of said contract the said defendant took the same to examine or obtain advice upon the subject (Objected to by Deft Solr)

Answer He took it away but I do not ^{know} whether he got advice upon it. He took it for that purpose.

Answer I have had conversations with the defendant this spring but none previous to the spring of 1854.
Interrogatory 3^d Did you ever hear any conversations between said parties in relation to the sale of said lot if so state when and where and what the conversations were. (Objected to by Deft Solr.)

Answer In February of 1854 I heard the parties talking in relation to the sale of said lot at different times in front of Lind & Smith's Office and in their office in Chicago. The conversations were that the defendant wanted to sell the lot and the Complainant wanted to buy the same. The defendant asked one thousand dollars for the lot and the Complainant offered nine hundred dollars for it. No trade was made in my presence.

Interrogatory 4th State whether you were present at the drawing of any papers for the sale of said lot and whether the defendant was present at the same time and whether said defendant knew of what was being done and if so whether he made any objection to the same or not.

Answer I was present at the drawing of papers between the parties but whether they was for the sale of the lot I do not know. The defendant was around there off and on in and out while the papers were being drawn but I could not say whether he knew what was being done I did not hear him make any objection to the papers.

Interrogatory 5th Did you see any money paid at or

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about the time of drawing the papers referred to and if so by whom, to whom what amount and on what account. (Objected to)

Answer I saw money paid by the Complainant to the defendant about the time of drawing the papers referred to to the best of my ~~knowledge~~ recollection ninety dollars was paid but I cannot state positively upon what account.

Interrogatory 6th Have you any recollection or impression from what you then heard from the parties for what the said ninety dollars was paid (Objected to)

Answer My impression is that it was paid on the house and lot as interest on the nine hundred dollars I mean the purchase money.

Interrogatory 7th Was anything said by the defendant at the time of drawing said papers or of paying said money about leasing said premises to said Complainant.

Answer I did not hear anything about leasing
Sworn to & Subscribed before me }
this 13th day of April 1854 } John Spry
George Mancure }
Master in Chancery }

Sylvester Lued being first duly sworn deposes and says in answer to the interrogatories propounded as follows.

Interrogatory 1st Do you know the parties complainant and defendant and how long have you known them
Answer I know the parties I have known them about

four years - between three and four years.

Interrogatory 2^d Do you recollect of any article of agreement in relation to the sale of a lot from defendant to Complainant having been delivered to you by James Smith and if so when and for what purpose.

Answer I recollect that a paper was handed to me at my office in Chicago by James Smith. He stated to me that that was a contract between Gungoski and Day and asked me to get it signed. It was three years ago this spring.

Interrogatory 3^d Can you state whether or not it was the principal ^{agreement} or a memorandum thereon in relation to insuring the house on said premises to which you were requested to obtain defendant's signature.

Answer I cannot state as I never opened the paper.

Interrogatory 4th Do you now know where said paper is or what has become of it and if not state what was the last knowledge you had of it.

Answer No Sir I do not know. It was handed to the bookkeeper in my office Rev James Wilcox and he died very soon after.

Interrogatory 5th Have you made any searches or examinations for said paper and if so state the same fully.

Answer I have made searches and examinations for the same but not until after Wilcox died. When the papers of Wilcox were delivered out of the office I examined them carefully to see if there was any papers belonging to me or the paper in question among them. I have looked only in my safe for it.

Interrogatory 6th State in what particular place valuable papers were kept in your office at the time of receiving the paper in question and further whether defendant had access to such place

Answer They were all kept in my safe in a little tin box and sometimes in a drawer in the safe. The defendant had access to the safe.

Interrogatory 7th How often did you search in said safe for said paper and in what other places have you searched for the same

Answer I don't think I searched but once I have searched no where else except among ^{Mr} Milcox papers

Interrogatory 8th Did you at any time remove the papers in question to any place except your office

Answer I never removed the papers to my knowledge I never seen it after I delivered it up to the bookkeeper.

Interrogatory 9th State whether at or about ~~the time~~ ^{said} of receiving the paper by you ~~you~~ you heard any conversations between the parties in relation to the sale by the defendant to Complainant of lot 7 Block 4 Durcans Addition If so state the same fully.

(Objected to)

Answer I heard conversations at two different times between the parties in relation to trading about that property I don't think I heard any conversation between the parties at or about the time of receiving said paper All the conversation I heard on the subject at that time was with James Smith when he asked me about getting it signed.

Interrogatory 14th State whether or not you learned from conversations with said defendant or conversations between said parties at or about the time of receiving said paper that Defendant had sold the lot in question to Complainant and if you are not positive in regard to the same state what is your best impression on the subject

Answer I don't think he ever told me that he had made a final sale of the lot I understood from the defendant it was a lease and I understood from Smith & Day it was a sale -

Interrogatory 11th Was there any controversy at or about the time of the delivery of said paper to you between the parties as to whether said paper was a lease or an agreement of sale or did said controversy arise sometime subsequently

Answer I do not think or know that there was any controversy at that time between the parties upon that subject.

Cross Examined by Deft's Solr

X Interrogatory 1st Did any person other than the defendant have access to the safe and the papers there in at the time the paper engased of was put there if so state whom. (Objected to)

Answer Yes James Smith had access and also Mr Mileox

X Interrogatory 2^d Did you ever see the paper after you delivered it to Mr Mileox

Answer No Sir

X Interrogatory 3^d Did the defendant ever sign the paper

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handed to you to your knowledge and did you request him to sign it and if so what did he say.
(Objected to)

Answer

Defendant never signed the paper handed to me to my knowledge I talked to him on the subject at the request of James Smith he shook his head and said no no he would not sign the paper It seems to me that he said signing the paper and taking notes would make a sale of the property and that he would not do it.

X Interrogatory

4th In the month of February 1851 state what was the defendant knowledge of the English language.

Answer.

It was very imperfect. He had been with me about a year before it might have been longer. He used to read and write English in the day book. He was rather a poor speaker of the language. He could read his own writing very well but that of others he was a little puzzled.

X Interrogatory

5th Did you show him or did he examine the paper in question

Answer

I don't think I showed him the paper but he knew well what was wanted. He did not examine it as long as I did the paper

X Interrogatory

6th Did Complainant ^{or any one for him} ever ask you if the defendant signed the paper left with you if so when.
(Objected to)

Answer

The Complainant did not that I recollect of but James Smith who was acting for him did

X Interrogatory

7th How long has the defendant been in your

employ and what is his character for honesty and business qualifications state fully.
(Objected to)

Answer The defendant has been in my employ for over four years I have always found him honest and trustworthy to the letter of the law. I do not know a man I would sooner trust in my business as a sawman in a lumber yard than him. His qualifications for business are good as far as he understands the English language.

X Interrogatory 8th Did Daniel White ever state to you and if so when that he was not present when the agreement spoken of was executed and that he never saw the defendant execute the same.
(Objected to)

Answer I don't recollect that ~~he~~ ever so stated

X Interrogatory 9th Do you know of any offer or offers for the purchase of the property in question made by Complainant to defendant subsequent to the delivery of the paper spoken of to you if so state when and what they were!

Answer It seems to me there was some proposition afterwards made by the Complainant but I do not recollect what it was

X Interrogatory 10th State whether James Smith has any interest to your knowledge in the purchase of said lot and if so what (Objected to)

Answer I don't know that he had

X Interrogatory 11th State whether James Smith and the witness White have any ill feeling against the defendant to your knowledge

Answer I have heard it often said but I cannot say they neither one of them told me so Mr White

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made the remark in my office that if the ^{Complainant} Complainant was not able to carry it up to the highest Court that it would be taken up where he left it I think Smith has the feeling towards defendant that he would not employ him but I do not think he would injure him I do not think he is that kind of man

Direct examination resumed
Interrogatory 12th Do you know of Complainant paying defendant any sum of money and if so at what time what amount and for what purpose as you learned from the parties at the time
(Objected to)

Answer I am not sure that I do

Interrogatory 13th State whether on or about the 20th day February 1852 and if not then at what time Complainant offered to pay you any and what sum of money for the defendant and on what account
(Objected to)

Answer I have a remembrance that the Complainant did make a proposition to pay me money for defendant in the month of March 1852 and the contract with defendant I was not authorized to give him a receipt for what he wanted but I would have received it as rent but not on a contract. At the time of this offer the defendant was in my employ but whether he was at home or not I cannot say How much money was offered by the Complainant at the time spoken of I cannot say but it was spoken of as thirty dollars.

Interrogatory 14th State whether on or about the 20th of February

1853 Complainant called upon you and offered to pay any and what sum of money on the alleged contract with defendant for the defendant
(Objected to)

Answer I don't recollect of the Complainant ^{doing} saying that but it strikes me that Mr Kedzie made ~~me~~ a proposition to pay me a sum of money for the defendant on account of the alleged contract. It was in the spring of 1853 and I think in March 1853 but I am not sure of the time. I don't know how much was offered to be paid and I am not sure that any thing at all was offered.

Interrogatory 15th At any times or times if any at which money was offered by the Complainant or by any one on his behalf was the same refused on account of its being insufficient in quantity or amount or only because Complainant insisted on paying it as on a contract
(Objected to)

Answer I think it was refused because it was proposed to be paid as on a contract.

Interrogatory 16th Was the defendant present or in the City at the time or times of offering to pay said money

Answer That I don't recollect. He was in my service the year round except a week or two a year when he wanted to travel.

* Interrogatory Did the defendant ever give you any authority to receive money for him or was you his agent

Answer he never did and I was not his agent

Sworn to and subscribed before me

this 13th day of April 1854

George Manierre Master in Chancery

S. L. Linn

524 31
William A. Brown being first duly sworn deposes and

says

Interrogatory 1st Are you acquainted with the parties to this suit

Answer I know the defendant but not the Complainant

Interrogatory 2^d State whether or not in or about the month of February 1857 any paper or instrument relating to the sale of lot seven in block four in Kansas Addition to ~~Chicago~~ between the defendant and Complainant was exhibited to you by the defendant and if so what was the nature of such paper or instrument

Answer I have no recollection of ever seeing such a paper that I know of or of having one presented to me

Interrogatory 3^d Did you at or about said time advise said defendant that a paper or instrument between the parties was an instrument of sale and not a lease of said premises. (Objected to)

Answer I have no recollection of having ever given any advice on the subject.

Interrogatory 4th Did said defendant at or about the time aforesaid make any complaint to you that the Complainant had tried or was trying to procure an article of sale for said premises from him fraudulently under color or pretence of a lease.

Answer I have no recollection of it.

Sworn to & Subscribed before me
this 13th day of April 1857

George Manion
Master in Chancery

W. A. Brown

James Smith being recalled on the part of the Complainant and again duly sworn deposes & says as follows.

Defendant by his Solicitor objects to the recalling of said witness and to his again testifying and objects to all the testimony he may give

Interrogatory 1st State whether or not all and singular the facts heretofore sworn to by you in your previous examination in this Cause are true in manner and form as before stated

(Objected to by Dep't Solr)

Answer All that I swore positively to are true and all that I stated according to my recollection or belief or impression I believe to be true in manner and form as herein before stated.

Interrogatory 2^d Do you know and if so state whether the Complainant did or did not enter into possession of said lot 7 in block 4 in Duncan Addition to Chicago and if so when and by what right and by whose consent or authority and for what purpose.

(Objected to by Dep't Solr)

Answer I know that the Complainant did enter into possession of said lot shortly after the purchase of the same by him as before stated by me. He obtained and took such possession by the defendant's Consent under the contract. At the time he took possession it was with the knowledge of the defendant and as a part execution of his agreement

Interrogatory 3^d How long has the Complainant contin

-ued in such possession.

(Objected to by Dep. Sols)

Answer He has continued in possession from the time he took possession until this time He is in possession now by actual residence thereon.

Sworn to & Subscribed before me

this 14th day of April 1854

George Manine

Master in chancery

of Cook County

James Smith

Daniel O. White being called on the part of Complainant deposes as follows.

Defendant by his counsel objected to the calling of said witness and to his giving testimony and objects to all the testimony he may give on the present examination.

Interrogatory first - State whether or not all and singular the facts heretofore sworn to by you in your previous examination in this cause are true in manner and form as hereinbefore stated by you. (Objected to by Answer)

Answer. They are true

Interrogatory 2^d Do you know and if so state whether the Complainant did or did not enter into possession of said lot 7 Block 4 in Duncan Addition to Chicago and if so when and by what right and by whose consent or authority and for what purpose.

(Objected to)

Answer I know that Complainant did take possession of the house on said lot 7 in Block 4 in said Addition to Chicago the same spring he bought it

with the consent of the said defendant for the purpose of living on it under the purchase made from defendant

Interrogatory 3^d How long has Complainant continued to reside on said lot (Objected to)

Answer Upwards of three years and until the present time.

Sworn to & subscribed before me

this 14th day of April A.D. 1854

George Mancine
Master in Chancery

David T. White

Fredrick Allen being called on the part of the Complainant after being sworn deposes as follows

Interrogatory 1st Do you know the parties to this suit or either and which of them and how long have you known them ^{or either of them}

Answer I do know them both - have known Complainant four years - have known defendant three or four years or ever since he became a clerk for Mr S. Lind

Interrogatory 2^d Have you ever had any conversations with the defendant in relation to selling Lot 7 Block 4 in Duncan's Addition to Chicago and if so state when and where such conversations occurred and what said defendant stated to you in regard to the same. (Objected to by Deft Solr)

Answer. I have had conversations with defendant about his having sold a lot to Complainant said conversations were about three years ago. at Mr S. Lind's office in Chicago I heard defendant say he had sold a house and lot to Complainant and that Complainant was to pay him five hundred dollars for the same - Complainant was to pay some

ething down and the balance in three years.

Interrogatory 3^d What house and lot did defendant refer to as having sold to Complainant.

(Objected to by Dep^t)

Answer The same House and lot which the Complainant now occupies and has occupied for the last three years.

Cross examined by Defendant's Solicitor
Interrogatory 1st Did the defendant in the conversation referred to by you in answer to direct interrogatory state to you that he had leased the property to Complainant for three years?

Answer I never heard defendant say he had leased the lot in question to Complainant.

Subscribed and sworn to
before me this 14th day
of April 1857

Fredrick ^{his} Allen
mark

George Manierre
Master in Chancery

Benjamin H. Thomas being first duly sworn deposes and says as follows
1st Interrogatory— Are you executor of James Wilcox deceased

Answer I am.

3^d Interrogatory— Have the papers belonging to his estate and other papers in his possession at the time of his death come into your possession as such executor.

Answer The papers belonging to his estate have come into my possession But no other papers except

ing such as relate to business in which he was personally interested except those belonging to the Chicago Temperance saving Assⁿ in which he was secretary came to my hands.

3^d Interrogatory

Have you examined and looked over all the papers of said Wilcox which have come in to your hands

Answer I think I have

4th Interrogatory

Have you seen or found among said papers any copy of a contract between Albert Longoski and Elijah Ray in relation to the sale and purchase of a lot

Answer - I have not

Cross Examination

1st Interrogatory

Do you mean to be understood that you have examined all the papers of the said Wilcox which were in his possession at the time of his death or only those which came into your possession as Executor or Administrator.

Answer - I have examined only those which came in to my possession as Administrator.

2^d Interrogatory

Were there other papers in said Wilcox's possession at the time of his death besides those which were examined by you.

Answer - There was at least I was so informed

Direct Examination resumed

5th Interrogatory 5th - Did you take or receive from the

Office of S. Lind all the papers which said Wilcox had at that place at that time.

Answer — I did take all papers that I could find belonging to Wilcox or in which he was interested
6th Interrogatory 6th —

Have you examined all the papers taken from M^r Lind's office and was said agreement among the number.

Answer — I have examined them and have seen no such agreement.

Sworn to & Subscribed before
me this 19th day of November
1854

B. W. Thomas

George Manierre
Master in Chancery
of Cook Co.

James Smith being first duly sworn deposes and says.

Defendant objects to re-examination of this witness

1st Interrogatory — Do you know whether the printed form contained in the copy marked Exhibit B. in this testimony is the same as that used for the original agreement from Albert Goufaski to Elijah Day for the sale of the lot in question.

(Objected to by Def^t Attorney)

Answer — I do not

2^d Interrogatory — Was there in the said original agreement any clause of forfeiture of the lot for

now payment of the purchase money on the days at which it was made payable.

Objected to
Answer — I could not swear positively that there was but my impression is that there was
3^d Interrogatory

State whether or not any days of grace were allowed in said contract for making payment on said lot if so how many

(Objected to)
Answer I think there were some days of grace allowed but how many I could not swear positively. Nor am I positive that there was any

Cross Interrogatory

1st X Interrogatory — Are you able to state that the contract produced by the complainant at your previous examination as a copy in substance of the Contract between him and the defendant is not such Copy.

Answer

That copy is a true copy in substance of the agreement as near as I can recollect.

2^d X Interrog. If there was any material variation in said contract from the one produced state what it was and if there was any additional clause added to or subtracted from said contract as produced in that which was exhibited state in what said addition or subtraction or material variation consisted.

Answer — About the printed part of the contracts I don't recollect anything about it It was one of the

62 29
common printed agreements. The written part contained in the form is as near as I can recollect about it the same as the original agreement between the parties.

3^d ~~X~~ Interrogatory

State whether any alterations was made in the printed part of the contract which you say was executed

Answer — I do not recollect that there was. If I had made any I think I should but it is so long since that I would not swear positively to such things

4th ~~X~~ Interrogatory — Have you any reason for knowing or thinking that the printed part of the contract produced by the Complainant as a copy of the agreement between him and Goussaki differs in any essential particulars from that which you say was executed.

Answer — I have not. The printed part I don't recollect exactly about the reading of it but I have no reason for believing that it differs in any essential particulars from the common form.

5th ~~X~~ Interrogatory

Did you assist Mr Kedzie in preparing the copy of the Contract which has been used in this investigation

Answer — Mr Kedzie asked me if I would tell him about as near as I could recollect what the agreement was and I did so I was present when he filled up the blank

Direct examination resumed
Interrogatory — If the printed copy produced is the

same as was used in said original agreement state
whether the blank for the number of days of grace
was filled up or not in the original agreement.
(Objected to)

Answer - I cannot say positively whether blank was
filled up or not. As I stated before I think there
were days of grace but cannot state positively.
Sworn to & subscribed before
me this 17th November 1854 } James Smith
George Manierre }
Master in Chancery }

John H. Kedzie being first duly sworn deposes
and says

1st Interrogatory - Do you know anything and if
so what in regard to any tender or tenders of
money made by the Complainant or in his be-
half to the defendant or any one in his behalf
upon the agreement between the parties touching the
alleged agreement of sale and purchase of the lot
in question if so state fully what you know and the
conversation which took place at the time of such
tender or tenders. Also any other facts of your own
knowledge bearing on the Case.

In answer to the foregoing interrogatory
John H. Kedzie produces the following testimony
in writing and by consent and agreement of the
parties the same is herewith annexed as part of
his deposition and is in the words & figures
following to wit.

Answer of John H. Kedzie to the foregoing inter

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-rogatory

State of Illinois }
Cook County } S

John H. Kedzie being duly sworn in this case deposes and says that on the twenty fifth day of March A.D. 1852 he tendered to Albert Gowgowski the defendant in this suit. Ninety dollars in gold and fifty cents in silver as the agent of Elizabeth Day Complainant in this suit on account of lot seven in Block four in Duncan Addition to Chicago claimed by said Day to have been purchased by him from said Gowgowski said tender was made in the lumber yard of S. Sind in Chicago. Said Day was with the deponent at the time Deponent took the money consisting of American gold and silver coin out of a bag in presence of said Gowgowski and offered it to him and stated to him that he offered it to him on account of lot seven in Block four Duncan Addition to Chicago purchased of him by said Day said Gowgowski made reply "Where is his agreement" Deponent said to him "You probably know that better than we do" and charged said Gowgowski with having said Day's copy of the agreement for said lot in his possession To this charge said Albert Gowgowski made no denial and no reply of any kind but said that he should not receive the money on the lot but that he was willing to take it as rent. Said Gowgowski did not at the time say that any rent was due to him for said lot nor did he make any complaint that the rent was not paid nor did he ask or demand that the rent should be paid to him but simply

said he was willing to receive the money as sent. On said conversation said Gougoski further said in reference to paying said money on the lot aforesaid "It is to late now" any way "the time is gone by" So this statement deponent replied to him "It is your own fault that you have not had the money sooner as Mr. Day has been trying for more than a month to get you to take your money" So this charge said Gougoski made no denial and in reply referring to said charge said Gougoski further said with some passion that he never would receive the money except as sent and told this deponent that he need not trouble himself by making the tender deponent then informed said Gougoski that the money would be left with this deponent and that he could call and get it at any time he pleased and thereupon left said Gougoski. Deponent further says that said money was accordingly left with him for several months but that said Gougoski never called on him for the money either as a payment or for rent. Deponent further says that as early as the 28th day of February A D 1852 said Day consulted with this deponent as to what course he should take in regard to said Lot in consequence of said Gougoski's refusing to take the money on the same that this deponent then advised said Day to make further efforts to induce said Gougoski to receive his money and to get some of Gougoski's friends to assist him. said Day in persuading said Gougoski to take his money that at various times between the 28th day of February 1852 and said 25th day of March 1852 said Day called on this deponent and informed this deponent

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from time to time of the efforts that he said Day had made and that finally on the 25th day of March when said Day had given up all hope of inducing said Gougoski to take the money on said lot this deponent advised said Day to make a formal tender of the payment then due and sufficient to pay the interest for the delay if any beyond the time of payment mentioned in the agreement in accordance with which the sum of Ninety dollars for the payment and fifty cents for interest was tendered to said Gougoski as aforesaid.

Deponent further says that on the 23^d of February A.D. 1854 before the commencement of this suit he again tendered to said Gougoski at a public house on Randolph in the City of Chicago kept by Frederick Weiss the sum of the hundred and eighty dollars in American gold coin by taking the same out of a bag and offering it to him in full payment for the lot, ^{as the agent of said} Elijah Day who was also present at the time Deponent further says that upon said last mentioned tender being made said Gougoski said "I suppose the law will have to decide the matter but it is unnecessary to make the tender I told you that before" Deponent further says that on the occasion of the last ^{tender} mentioned said Gougoski was very polite and apparently friendly towards this deponent and seemed surprised that this deponent should deem it necessary again to make a tender after what said Gougoski had said in the first conversation referred to above. On the occasion of the last tender above mentioned said Gougoski repeatedly assured this deponent that it was un-

= necessary to make any tender to him as he did not care anything about a tender of the money. At the time of said last mentioned tender said Gougoski made no objection whatever that the payments then tendered or either of the payments for the years 1852 or 1853 were not paid or tendered in due time nor did said Gougoski then say or pretend that there had been any forfeiture by said Day by reason of not paying or tendering any of the payments on said lot at the times at which they were payable nor did said Gougoski then claim or pretend that he had leased the premises to said Day nor that any rent was due him for said premises nor did said Gougoski then offer to receive the money then tendered or any part thereof as rent for said premises. Deponent further says that at the time of making the last tender aforesaid this deponent prepared and produced to said Gougoski the deed attached to the bill in this cause and requested him to execute the same which said Gougoski utterly refused to do. Said Gougoski made no objection to the form of the deed but said he would give no deed whatever. Deponent further says that at the time of the first tender aforesaid when the deponent charged upon said Gougoski that said Day had been urging the money upon him for more than a month said Gougoski made no objection that said Day had not tendered the money in specie nor did said Gougoski then allege the want of a specific tender nor any other excuse for not having accepted the money when it had been urged upon him by

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said Day

Deponent further says that the copy of agreement given in evidence by Complainant marked "B" is in the hand writing of this deponent and was prepared by him under the direction of James Smith a witness herein that this deponent never saw the original agreement and that said Smith did not profess to know whether the printed part of said Original agreement was the same as this Copy or not nor could said Smith tell this deponent what was the exact form of the printed part of said Original agreement. Deponent further says that he used the printed form employed in this case simply as a convenient frame work for the purpose of introducing into it the written parts of the original agreement given him by said Smith.

Deponent further says that he has had extensive practice and observation in drawing agreements for the sale and purchase of real estate in the City of Chicago for five years past both in buying and selling real estate and in drawing such agreements as a conveyancer for other. Deponent further says that in the use of blanks of the kind used for said Exhibit "B" the blank for the number of days of grace is usually filled with the numbers "ten" "twenty" "thirty" or "sixty" that so far as the practice and observation of this deponent is concerned sixty days grace are often given in such instruments than a less number and that less than twenty or thirty days grace for making ~~for making~~ the payments are seldom allowed in instruments of that kind. Deponent further says that at the time of making the first tender aforesaid he told said Gougotski distinctly that he could

receive his money at any time he pleased there after by calling at the office of this deponent in the City of Chicago and then informed said Gorgoski of the street and number of deponent's office and that this deponent has at all times since said first tender been ready and prepared to pay said Gorgoski on the part of said Day all payments due from said Day to said Gorgoski on account of said lot but that said Gorgoski has never called upon deponent for any of said payments nor offered at any time whatever to receive said payments from this deponent nor any of them.

The defendant objects to the whole of the foregoing answer as not responsive to the interrogatory and particularly to such portions of it as relate to conversations between the witness and the Complainant or to the acts of the Complainant at times when the defendant was not present.

Cross Examination by Defendants Solicitor

Kedzie Examined by defendant

1st Interrog - Are the days of grace which are put in agreements matters of special agreement between the parties in each case.

Answer - Usually they are matters of special agreement in each particular case, but in a large por

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tion of this particular form as sold by the stationers the blank in this form is printed "Sixty" before the word days and sixty is the only printed number that I have ever seen in those blanks.

2^d X Interrog - Are there printed blanks containing in days of grace whatever and no blank for their insertion for sale at stationers in this City.

Answer There are

3^d X Interrog Is the matter of having days of grace or the number to be allowed just as much a part of the contract as any other of the terms of the Contract and depending wholly upon the understanding of the parties.

Answer

It may be and often is a matter of special contract and in important purchases by intelligent business men it is usually a matter of special contract.

But in many cases a blank is used indifferently which may or may not have a provision for days of grace and no special agreement is made in regard to days of grace. The matter of days of grace is not so generally a matter of special contract between the parties as other terms of the Contract such as the price and the times of payment.

4th X Interrog

On the first conversation of which you have spoken was it pretended by the said Day that he had ever before made any tender of the money due on said Contract to said Gougoski.

Answer - On that occasion the said Day said very little if anything. I do not recollect that he

said anything at all. but I in his presence and as his agent said to Gougoski "it is your own fault that you have not had your money sooner as Mr Day has been trying to get you to receive it for more than a month. To which said Gougoski made no reply.

5th X Interrogatory - Did you know of your own knowledge of from any other source than from the statements of said Day that said defendant had been before requested to receive said money.

Answer - I have no personal knowledge that the money was ever offered to said Gougoski or refused by him previous to the 25th of March 1852 but I know of other facts which make morally certain to my mind that the money had been previously offered to said Gougoski. The facts alluded to are said Days coming to my Office repeatedly and consulting with me in regard thereto that he should do in consequence of said Gougoski's refusing to take the money for the lot in question. The said Day came to me to consult on that subject as early as the 28th day of February 1852 and I think considerably earlier. I know that date from the entry of a charge against said Day in my books but I think said entry was not made until sometime after the first conversation with said Day upon that subject. (Defendant excepts to so much of answer as relates to conversations with Day)

6th X Interrogatory - Are there any facts which make morally certain to you that tender was made which you know of your own knowledge or have

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derived in any other way than from the statements and acts of the Complainant in the matter.

Answer— I know of no other than what I have already stated viz the acts of said Day in consulting me as aforesaid and the conversations with said Gougoriki.

7th X Interrogatory

What acts of the Complainant can you mention as forming the basis of your moral certainty that he made a tender except the act of his coming to your Office to consult with you in relation to his ^{difficultly} ~~officially~~ with the defendant

Answer I know of no acts of said Day occurring at the time except his coming repeatedly to my Office to consult with me as aforesaid and his bringing the money to me and requesting me to make a formal and legal tender of it.

(Left Excerpts to so much of the Answer as relates to Conversations with Complt

8th X Interrogatory X

When did the Complainant bring any money to you and how much did he bring.

Answer He never brought any money to me before the 25th day of March 1853 that I recollect. I think he then brought one hundred dollars.

9th X Interrogatory — Did you know when and where he got the money that he brought to you at that time.

Answer — I do not. I think he brought the money to me in bills and that I assisted him in getting it exchanged into gold.

10th X Interrogatory - Do you not know that he raised the money about the time of the tender and for that purpose

Answer - I think he did not raise it about the time of the tender I know that he had the money for nearly a month or more before I had made the tender. Upon reflection I think the money had been left with me previously to the 25th March 1852.

11th X Interrogatory - What reasons have you for thinking the money was left before that time and when was it left

Answer I have an indistinct recollection of said Day coming to my office sometime previously to the tender and stating to me that he had no use for the money except to make this payment and desired me to keep it for that purpose

12th X Interrogatory - Is there any allegation in the bill of Complaint in this Cause that any tender was ever made by the said Complainant to the defendant prior to the 25th March 1852.

Answer I think there is.

13th X Interrogatory - Who was present when said alleged tender in March 1852 was made

Answer

There was no one present except Day Gongo-ski and myself

14th X Interrogatory - Do you not know either from your own knowledge or the statements of the said Day that he asked the said defendant to allow him to pay the \$90. due in February 21st 1852 and assigned as the reason that James Smith

74 57
would not pay him what he owed him and he could not get the money.

Answer

I do not know any thing of the kind either of my own knowledge or from conversations with the said Day. [But on the contrary I do know that from the time said Day first conversed with me on the subject he was prepared to make the payment] The latter clause of the answer was excepted to at the time by defence counsel on the ground that his interrogatory was fully answered by the first clause.

15th X Interrogatory - Will you produce your book containing the charge against Day and show the date of said entry in said book.

Answer

Book produced and the following entry found therein viz

Elijah Day

1852
Feb 28th To Counsel in regard to house & lot lot of Albert Goussorki ————— \$5.00

16th Interrogatory When said defendant refused to receive the money tendered on the 25th of March 1852 and assigned as a ground that the time of payment had long since elapsed was any claim made by said Day or by you for him that there were any days of grace in said contract and that the days of grace had not passed.

Answer On said conversations nothing at all was said about days of grace to my recollection by either party (I replied to said Goussorki as before stated)
Deft Excepted to last Clause of Answer

17th X Interrogatory - For what was the fifty cents tendered on the 25th March 1852.

Answer - It was tendered for the reason that said Day had not a copy of the said contract in his possession and did not know precisely when the payment fell due and tendered the fifty cents as interest money in case the time had run over. It was tendered at my suggestion not because I supposed that amount of interest had accrued upon the payment but for extra safety in any event.

18th X Interrogatory - Was any tender made to said Gougeon at said 25th March or at any other time to your knowledge of the sum of Eleven dollars & fifteen cents for the City, State & County taxes (or any other sum) due on said premises for the year 1851.

Answer - Not to my knowledge.

19th X Interrogatory - Was any tender ever made to your knowledge to the said defendant of the taxes & assessments due upon said premises for the year 1852, 1853 or either of them.

Answer - There was not to my knowledge.

19th X Interrogatory - Did said Day to your knowledge ever pay the taxes on said premises from the time of the alleged purchase of the same to the time of the demand of said deed.

Answer - I have no knowledge on the subject as to whether said Day paid said taxes on said lot or not.

20th X Interrogatory - Did not said Day inform you at

78 83
his earliest conversation with you on the subject of his difficulties with the debt that the contract which he claimed to have been made was dated as early as the 20th February/85.

Answer — He did not inform me so to my recollection. According to my best recollection he informed me that he was of the impression that it was dated between the 20th and 28th of February/85.

21st Interrogatory Did he ever claim or pretend that it was executed in any other month than February

Answer — He never claimed that it was executed in any other month than February but he did not profess to know certainly at what time it was executed. He never mentioned any other month than February to my recollection.

22^d Interrogatory — Did you in said conversation with Gougeon make any claim on the part of the Complainant of any specific tender of the amount due having been made or did you state to him merely that Complainant had been endeavoring to get him to receive the amount.

Answer — I do not think I stated to said Gougeon that any specific sum had before been tendered to him but after tendering him the sum of Ninety dollars fifty cents I told him as before stated that it was his own fault that he had not received his money sooner as Mr. Day had been trying to get him to take it for more than a month.

23^d Interrogatory — If any tender had before been made at the time when the amount was due why was a second tender made of the same payment on the 25th March?

Answer The tender was then made by witness for the purpose of preserving evidence of it

24th X Interrogatory - If it was to have the proper proof as as you allege why was no allusion made to the first tender in answer to the declaration of the defendant that the money was tendered to late

Answer Allusion was made on that occasion to Day's previous efforts to have said Goussier receive the money I spoke for Day on the occasion and said all that I supposed was necessary.

25th X Interrogatory - Did you not know as the Attorney of Day that it was desirable to establish the fact of an actual tender of the money on the day ^{on which} it was due by the terms of the alleged agreement.

Answer I did know that it was desirable but I did not know the exact time at which the money was payable.

26th X Interrogatory - If you had any reason to know or believe at that time that an actual tender had been previously made could you have been so negligent of the interests of your Client as to fail to charge the defendant with notice of that fact in reply to his claim that the tender made by you was too late

Answer I should have thought it my duty to charge him with notice of such fact and supposed I had done so sufficiently.

27th X Interrogatory

Do you think that if you had then known of any actual tender of the money by the Complainant at an earlier date that you would

55
20
have no allusion to said tender specifically instead of making the general assertion that the Complainant had been seeking to induce him to receive the money for a month.

Answer

I think that if I had known of my own knowledge of a former tender having been made on any particular day that I should have alluded to it.

28th X Interrogatory — On your conversations with said Complainant in reference to his rights under said agreement would not the first point to which your attention and inquiry would have been directed have been the fact of tender of the amount due at the time required and if such tender had claimed to have been made by said Complainant at said time would it not have been charged by you upon said defendant specifically.

Answer

The fact of tender would certainly be an important one in such case though I do not know that it would be the first requiring examination. Had I known of a specific tender of my own knowledge I should no doubt have mentioned it.

29th X Interrogatory — If you had known of any such tender of your own knowledge you say you should have alluded to it if you had known it from any claim or statement of the Complainant would you not also have been likely to have alluded to it.

Answer

If the Complainant had given me the particulars of a specific tender made by him

I should perhaps have referred to it more specifically.

Q 1st X Interrogatory — If so important a part of the Complainant's rights as a tender of the money at the time required had ever been pretended by him in his conversations with you would you not have ^{into and} ascertained all the particulars of said tender with a view to satisfy yourself whether such tender was a legal one whether it was in time in proper money or whether it was otherwise sufficient to secure his rights under said agreement.

X Answer. — Not necessarily at first. The reason why I did not immediately set about obtaining proof of a tender in this case was that I did not deem it possible at that time that litigation would grow out of the matter and that said Gougoski would persist in refusing the money and therefore advised said Day to go back and endeavor to get said Gougoski to take his money and if necessary to get some of Gougoski's friends to go with him to induce him to accept of his money. As soon as I became satisfied that he would not receive the money of said Day I set about making a legal tender and preserving evidence of it.

Q 3rd X Interrogatory — Between the time of your first consultation and your tender on the 25th March had you become aware that it was possible that litigation would grow out of said matter and if so and if the Complainant had made known to you the important fact of a previous tender at the time required by the contract would

82 87
you not have inquired into the particulars of said tender for the reasons and purposes stated in the 30th Interrogatory and with a view to charge the defendant therewith when you made the tender of the 25th March

X Answer I was aware of the possibility of said Day's having to resort to litigation but I did not suppose it probable even then that said Gougostei would permanently refuse to accept his money and fulfill the agreement. It would be natural to enquire into the particulars of such tender and I did so and found it was defective in at least one ~~particular~~ respect that he had no sufficient proof of it and therefore advised that he renew the tender in the presence of a witness. x

33^d Interrogatory Would not a specific charge of a previous tender to the defendant if it had been made to him and not denied by him have furnished you with the proof in which you say you were deficient

Answer It would have furnished presumptive proof but I deemed it prudent to have more positive proof of a tender having been made.

34^d Interrogatory Did the making of a tender a month after the time it was due furnish you any proof of a tender having been made at the requisite time

Answer At the time of making the tender of 25th March I had no knowledge that it was a month or any

other time after the payment was due for the season this I did not know the date of the agreement nor what number of days of grace if any were allowed therein Making and proving a tender on the 25th March would not necessarily show that a tender had been made before that time.

34th Interrogatory - Have you not already sworn that you never heard the Complainant name any other month than February as the time when the contract was made. And if so had you not good reason to suppose that the tender in March was behind time and if so and there were any days of grace claimed by said Complainant would you not have inquired particularly about the days of grace and claimed the benefit of them in making the tender in March -

Answer I have already sworn that I did not recollect that the Complainant specified any other month than February as the date of the agreement but I then wished to qualify my answer by saying as I now do that said Complainant did not confine the date to the month of February but as the contrary said he could not tell the exact date. I had no reason for supposing the tender on the 25th March under the circumstances of the case was too late to seize the Complainant's rights I know nothing about the number of the days of grace therefore it did not occur to me to make any allusion to them on the 25th March.

35th Interrogatory Do you mean to swear that the complainant did not always give you to un

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- understand from the time of his first consultation with you to the filing of the bill in this cause that the alleged contract was executed in February 1852 and has he not so sworn in said bill.

Answer. I do not mean to swear that the Complainant always gave me to understand that said agreement was dated in February. What I do mean to swear is that I inquired of him specifically as to the date of said agreement and that he informed me that he could not tell the date of said agreement but thought it to be between the 20th and 28th of February 1851. I do not recollect the precise language of the bill on that subject.

36th Interrogatory. If the contract was always stated by said Complainant as dated between the 20th and 28th of February and you were making a tender on the 25th of March would it not have been likely that you would have deemed it desirable or important to have charged the defendant at said time with a specific tender at the time fixed by the Complainant as the date of said agreement or to have claimed the benefit of the days of grace if any such had been claimed by him as allowed in said contract.

Answer. I have to say that said Complainant never ^{claimed} to know the date of said agreement nor stated it to be between the 20th and 28th of February but only gave it as his opinion that it was between those dates. I should have deemed it desirable to have charged the defendant with a specific tender had I known of any such of my

own knowledge I did not deem it necessary to make any allusion to days of grace for the reason that I know nothing about the provision of the contract on that subject and for the further reason that in transactions of this kind payment or tender on the exact day is seldom insisted upon in practice as a condition for saving a forfeiture

37th Interrogatory - If you had known of any such tender from any claim or statement of the Complainant would you not have been as likely to have mentioned it as if you had known it of your own knowledge

Answer I cannot say that I should have been as likely to mention it from simply having heard of it from the Complainant as if I had known it of my own knowledge and in either case I might have omitted mention of it through inadvertence or oversight

38th Interrogatory - Had you any better evidence or information as to the date of the Contract than the statement of the Complainant and if said statement fixed it between the 20 and 28th of February had you any ~~the~~ reason for fixing any other date as the true date of the Contract

Answer I had no other or better evidence in regard to the date of the contract than the statement of the Complainant but said Complainant never asserted to me that the date was between the 20th and 28th February but on the contrary stated to me that he could not tell the date but gave it

82 61
as his best impression that it bore date between
the 20th and 26th February I had no reason for
fixing any other date as the date of said Agreem-
ent

39th X Interrogatory - If there was such a possibility
of litigation as rendered it necessary or important
in your professional judgment to make a
tender nearly a month after the time named
by the Complainant as the date of the Contract
was it not quite as important that you
should have sought to charge the defendant
with a tender at the proper time and would
you not have done so if you had had any
reason to suppose that such tender had
been made

Answer [I did not consider it so necessary to prove
a tender before the 25th March both for the rea-
son that I entertained strong hopes of avoiding
litigation by said Gougorkis eventually taking
his money and for the further reason that I con-
sidered that said Gougorkis himself had prevented
a tender being made upon the precise day
on which the money was payable by the terms
of the agreement if so be that said day had
already elapsed by fraudulently destroying or
concealing the said agreement as I believed]

Defendant by his Counsel except to so much
of the foregoing answer as relates to the opinions & state-
ments of the witness with regard to acts of the defend-
ant in reference to which he has no knowledge.)

If a formal tender of the money had previously
been made to my knowledge or I had been in-
formed by said complainant of such a tender

having been made on any specific day I should probably have referred to it more specifically. But inasmuch as I knew of no such tender of my own knowledge and had not been informed by the Complainant of such tender having been made on any specific day I did not think necessary to charge it upon said defendant more specifically than I did. The view I took of the subject was that if an offer had been made by said Day to make the payment to said Gorgostis on said lot and that the same had been refused by him for other reasons than that the tender was not made in specie (if so be it was not made) or for any informality in the mode of making it that then it was a sufficient tender at least in equity for the purpose of saving the Complainant's rights and for that reason I did not consider it necessary to say more than I did on the subject.

40th Interrogatory — Do you then mean now to be understood that no specific tender of the amount due to the defendant was made before the 25th day of March to your own knowledge or stated to you to have been made by said Complainant.

Answer — I do mean to state that I have no personal knowledge that any specific tender was made previous to the 25th March. In regard to what I understood from the Complainant on this subject I will say that I was informed by him that previous to the 25th March he had repeatedly offered and urged the money upon said Gorgostis and that he refused to receive the same not on account

63
90
of the money not being tendered in specie or any other informality in the mode of tendering the money but because he repudiated entirely the contract with the Complainant.

41st X Interrogatory — Did you not state in answer to the 39th Interrogatory that you never had been informed by the Complainant of any specific tender having been made of the amt. due on said contract prior to the 25th March.

Answer — I stated or meant to state in answer to said interrogatory that I had no information from said Complainant of a formal tender having been made on any specific day, but I did not mean to imply thereby that no such tender had been made and especially that said Complainant had not before that time separately urged the money upon said Gougoski.

Deft by his counsel excepts to the statements of the witness with regard to the declarations made to him by the Complainant and not responsive to the matter of the interrogatory.

42^d X Interrogatory

Do you now mean to say that the said Complainant made a specific tender of the sum of ninety dollars or only that he offered to pay the defendant without making any specific tender of such amount previous to the 25th of March/852.

Answer — I do not know nor of my own knowledge that he made any specific tender or even that he offered to pay before that time except as

I inferred it from the acts of the parties as before stated

43^d X Interrogatory. Did you understand from the Complainant that he made any specific tender of the amount before the 25th March to the defendant or that he merely offered to pay the defendant the amount that was due without making any specific tender

Answer - I do not know that I understand what is meant by a specific tender in this connexion in this interrogatory but what I understood from the Complainant was that he offered said Gowgooki the money but upon what day or whether the money was in bills or in specie I was not informed.

44th X Interrogatory

Can you state either from your own knowledge or from any other source that the Complainant ever tendered the sum of \$90. to the defendant between the 20th & 28th days of February 1852.

Answer I cannot so state from my own knowledge. if by the expression "other sources" information from the Complainant be intended I can state that I was informed by him that he had tendered to him the money previous to the 28th of February but whether before or after the 20 day of February I do not know.

45th X Interrogatory - Have you not already stated in answer to a former interrogatory that the Complainant never did inform you that he had made a tender of the money to defendant prior to the 25th March

Answer - I have no recollection of so stating I may

92 65
have stated he never informed me of any formal tender in specie, ^{having seen made in specie} prior to the 25th March 1852

46th X Interrogatory - Is not a tender of money in bills if specie is waived just as specific & formal a tender as if made in gold.

Answer. I consider a tender in bills if not objected to as good as a tender in specie but I should not consider a tender in bills so well entitled to the appellation of a formal tender as where it is made in specie in presence of a witness

47th X Interrogatory - Would you not consider a tender in bills just as good to bind the Contract as if made in gold if specie was waived

Answer I certainly should

48th X Interrogatory - Will you then now state that if you knew on the 25th March 1852 the Complainant had made a valid tender of the amt due at the time required by the Contract and knew also that it was of the utmost importance for the Complainant to establish an exact fulfillment of the Contract on his part why you never alluded to the fact of such tender or charged the defendant therewith in answer to his express denial that the tender made on the 25th March was in time.

Answer I did allude to the fact and charged it upon said Gougoski on said 25th March as I supposed with sufficient explicitness in the manner I have before stated. One reason why I did not charge it more explicitly was the fact that I had not been informed of the particulars day

and circumstances of the offer or offers by said to pay said money: and another reason was that I considered the tender then made under the circumstances of this case as sufficient to save the rights of the Complainant

49th X Interrogatory - What became of the money that was left with you by the Complainant at the time of the tender of the 25th March and was the said tender kept good to the time of the filing of this bill

XXX Answer. - I think the money was never withdrawn from my hands but that in the fall of the same year it was applied by me with the consent of said Day to the payment of a debt from him to me falling due about that time for land (but with the understanding between him and me that at any time I should hold myself in readiness to pay the defendant the amt due from said Day to him ^{whenever} ~~and when~~ called for and I did always thereafter hold myself ready to do so)

The Rest excepts to the latter part of preceding enclosed in parenthesis

50th X Interrogatory. Did the said Complainant get some of said defendants friends to assist him in persuading said defendant to take said money in conformity with your counsel.

Answer - As to that I cannot say

51st X Interrogatory What do you mean by the efforts of

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94
the Complainant of which you were from time to time informed by him.

Answer. I mean applications by him to the defendant to receive the money and perhaps the application of others at his instance.

52^d X Interrogatory What others

Answer I do not know whether any others applied to said Gowgorki to receive the money or not.

53^d X Interrogatory - Why did you then state "and perhaps and the application of others"

Answer Because I advised said Day to get the assistance of some of the defendant's friends to persuade him to receive the money.

54th X Interrogatory Did you know from your own knowledge or from any statement made to you by the Complainant that he ever tendered in gold the amount due on said Contract prior to the 25 day of March 1852.

Answer I do not know it of my own knowledge and I do not know from any information derived from the Complainant either that the money offered by him to the defendant was in gold or was not.

55th X Interrogatory - Did you as counsel for the Complainant ever take the trouble to enquire what his alleged tender made by him had been made in gold or in bills.

Answer I do not recollect of ever having made the enquiry though I may have done so and

have received an answer to the inquiry but if I ever did so inquire I do not now recollect the fact nor the answer received.

56th Interrogatory - If such tender had been made in gold is it not probable that the Complainant would have mentioned the circumstance if he had made any statement respecting any tender.

Answer - If the Complainant had procured the gold for the express purpose of making a tender I should suppose he would have mentioned the Circumstance. But if his money had happened to be in gold he might have tendered it in that form without making any special mention of the Circumstance.

57th Interrogatory - When the Complainant brought the money to you to make the tender the 25th of March 1852 did he bring gold or bills

Answer - The money must have been in bills for I recollect assisting him to procure the gold

58th Interrogatory - From what you know of the business and means of the Complainant have you any doubt that if he made a tender of the Am^t in gold that he must have procured it for the purpose specially for such tender.

Answer - I should not conclude so from any knowledge I had of his business or means but from the fact of my assisting him to procure gold and the fact that payments are usually made in Bank bills I have very little doubt that the money offered by him was in bills and

not in gold.

59th X Interrogatory - Have you any knowledge whatever either from your own personal information or from any legal source of any waiver by the defendant of his right to gold at the time of the alleged tender to him by said Complainant

Answer - I have no personal knowledge that he waived his right to gold nor from any other source except conversations with the Complainant at the times before referred to and the conduct of the defendant on the 25th March before referred to.

60th X Interrogatory. Examine the tax receipts here produced and certified by the Master as having been produced in evidence on the part of the defendant and state whether you admit the same to be genuine.

Answer - I have examined said receipts and I admit their genuineness

Direct Examination resumed

1st Interrogatory

If any of your answers to the foregoing sixty Cross interrogatories require explanation or if you know of any additional facts connected with any of said answers and bearing on this case give such explanations and additional facts.

Answer - In case the parts excepted to of the answer to the 14th X Interrogatory should be ruled out in that connexion I would say that I know that from the time said Day first consulted me on the subject of said lot he was

prepared to make the payment falling due about that time. I should have furnished him the money myself if he had needed it but he did not require it.

In my answer to the 5th stating the words "the acts and" should be inserted before the word "conversations" at the court in order to express my meaning and the truth correctly.

• In regard to the subject of taxes & assessments as referred to in Exhibit B I wish to state that I received no instructions in arranging said Copy either from said James Smith or from the Complainant in regard to the subject of taxes or assessments. I used the blank employed simply and solely as a convenient form for introducing in to it the written portions given me by said Smith.

I used the particular form in question because it happened to be the only kind that I had in my desk at the time. I filled up the small blanks for the possessive pronouns and the date in the clause about taxes & assessments simply to make the contract read without hiatuses.

I further state however that it is usual to insert in such contracts a clause that the purchaser shall pay the taxes & assessments. but this is not universal. As to what the provisions of the contract between Complainant and defendant were on this subject I have no knowledge whatever and no means of judging except the fact that said defendant seems to have paid such taxes and assessments of his own accord and never to

98 71
have demanded repayment of the same being
known.

I further state that neither at the
conversations on the 25th March 1852. nor
that on 22^d day of February 1854 did said Gougoski
say or intimate that anything was due to him
on account of taxes or assessments paid by him
nor did he at either of said conversations say
or intimate that he had paid any taxes or
assessments nor was the subject of taxes or
assessments mentioned or referred to at all in either
of said conversations nor did said Gougoski
in either of said conversations say or in any way
intimate that the sum tendered were insufficient
in amount for any cause whatever but on the con-
trary in the conversation referred on the 25th March
1852. when I offered to said Gougoski fifty cents
as interest in addition to the sum of Ninety dollars
he said that he wanted no interest.

I further state that had said Gougoski
at any time informed me or said Complainant
that anything was his due on $\frac{1}{2}$ of taxes or assess-
ments paid by him. I should have at any time
have refunded the same to him and I always have
and still am ready on the part of Complt. to refund
to said Gougoski any sum he may have paid on
said lot whether paid at complainant's request
or not or whether by the Court he was to pay
the same or not.

Cross Examination resumed

6th Interrogatory - State whether you are the attorney
of the Complainant in this suit

Answer

I am

62^d X Interrogatory - State whether you are interested in any way directly or indirectly in the event of this suit.

Answer I am not.

63^d X Interrogatory - State whether the amount of compensation which you are to charge or receive for your services will in any manner depend upon or be affected by your success or failure in this suit.

Answer - The compensation which I am to receive will not in any manner be affected by the event of this suit.

64th X Interrogatory - Is there any and if so what agreement between you and the said Complainant respecting the amount ^{that} you shall charge in case of success or failure.

Answer - There is no agreement ^{whether} ^{to} charge or receive a different compensation in case of success from that to be charged or received in case of failure.

XX 65th X Interrogatory - Did you aid the Complainant in raising the sum of \$1080.00 to make the last tender of which you have testified and what if any part of said amount did you furnish for said purpose.

XX Answer - I did aid him in raising said sum I loaned him the whole of it which he has since repaid me in full.

66th X Interrogatory - Have you felt manifested and expressed a strong interest and bias in favor of the Complainant in reference to the matter

201 73
in controversy

Answer — I have not to my knowledge felt manifested or expressed any stronger interest in this cause than is usual for Attorneys & solicitors to feel manifest or express in cases under their charge. I am not conscious of any unfavorable bias against the defendant in this cause in giving my testimony in this cause.

67th X Interrogatory — Are you not now conscious of feeling a warm and zealous interest for the success of the Complainant in this suit

Answer — I am conscious of feeling an interest in the success of the Complainant but not warmer or more zealous than I feel in any other suit under my charge.

68th X Interrogatory — Did you or not write out and present to the Master the whole of the answer to the first direct interrogatory before said interrogatory had been written down and was such answer prepared and presented by you before said interrogatory was written

Answer — I wrote out my testimony on the direct examination at my office before the interrogatory had been written down. I did this simply as a matter of convenience and to save time on the examination

69th X Interrogatory — Have you or not refused to omit from said statement before it should be incorporated into this report the statements therein contained respecting the acts and conversations of the Complainant done and said in the absence of the defendant

Objected to —

Answer — I believe I have declined to modify my

testimony in regard to the acts and conversations as therein stated for the reasons that I regarded the testimony as given as both true in fact and proper

70th X Interrogatory - Do you not know as a lawyer that the statements made by the Complainant to you in the absence of the defendant are not and cannot in any event be legal testimony in this Cause.

Objected to.

Answer - As a general rule the statements of a party to a suit cannot be evidence in his own favor when made in the absence of the other party. But there are some statements of a party under some circumstances which have the character of verbal acts or form a part of the res gestae and are in my opinion competent testimony.

71st X Interrogatory - Will you state whether in your judgment a conversation of a party with his attorney in the course of a consultation with respect to a matter in controversy is proper evidence to be introduced to affect the rights of the defendant in such controversy.

Answer - I certainly do not consider the statements of a party made under such circumstances as competent evidence of the facts stated by him but the fact of a consultation upon a given subject may raise a presumption of the existence of some material fact in the cause.

72^d X Interrogatory - Have you not in your testimony stated what passed between you and your client in said consultation about the matter in controversy in this suit and insisted on retaining the same as a portion of your evidence.

Answer - I have stated in my testimony that my client called upon me and informed me of

103 75
certain facts and I have insisted upon retaining
my testimony in that regard for the reason
that I regarded the fact of his calling upon me
and consulting me in the manner I have testi-
fied as furnishing presumptive proof of a ma-
terial fact in this cause,

Sworn to & Subscribed before me
this 24th day of November
1854

JH Redzie

George Marston
Master in Chancery

For the Defendant

O.O. Sylvester Lane being called on the part of the de-
fendant and being also duly sworn deposes & says

1st Interrogatory — Please state whether the defendant was
in the City of Chicago from and after the ^{19th} 21st of
February 1853 and if so, how long after that per-
iod and how do you know the fact?

Answer — I believe the defendant was in the City from
and after the time mentioned and continued with
me in my employ after that time until the
month of April following. He continued in the
City until the first of May 1853 to my knowledge.

2^d Interrogatory — State whether you heard any conversation
between the complainant and defendant with refer-
ence to a sale of the premises in question from the
defendant to the Complainant and if so what
was said in said conversation when did it take
place; state fully. (Objected to by Complots)

Answer - I heard some conversation between the parties in my office after the papers relating to the agreement between them in regard to said premises had been left with me and were lost: but I did not take much heed to what was said until the defendant asked me if I would sign Capt Day's notes for \$1500.00. It was Gougoski that asked me this and ^{not} Day. Day was sitting in the office at the time. My answer to Gougoski was No.

(Answer objected to so far as relate to defendant's declarative)

3^d Interrogatory State what if anything was said at said time by the defendant to the Complainant in relation to procuring your endorsement on Day's note or in relation to selling the property to him for \$1500. provided he could get your endorsement (Objected to)

Answer - I do not recollect anything that was said between ^{them} only that Gougoski asked me that question which I recollect well.

4th Interrogatory - State whether from what you saw or heard at that time you can state whether the parties were or were not in negotiation for the purchase and sale of said premises (Objected to)

Answer - I cannot say what they were talking about but from the defendants asking me that question I drew the conclusion that they were negotiating about that property. (Answer Objected to)

5th Interrogatory. State whether or not the parties prior to said conversation had been frequently together discussing the subject matter of the purchase and sale of said premises. (Objected to)

Answer - I believe all the forenoon of the day of the

104 77
Conversation referred to they were mostly in my ^{Office} but what they were discussing I cannot tell. any more than that they were talking about the lot but what terms I cannot say

6th Interrogatory - Did you in the course of the said conversation hear the said Complainant claim that he had made any previous purchase of said premises

Answer - It appears to me that he claimed that he had bought the lot before

Cross Examined by Counsel

1st X Interrogatory State what you recollect in regard to the delivery of the papers by James Smith in to your Office and for what purpose.

(Objected to)

Answer - I recollect that James Smith came into my Office and delivered to Mr Wilcox my bookkeeper a paper folded up in the form of a deed or agreement and gave it to me and said "here is Grogoski's agreement to Day and asked me to get his name to something on the agreement about which he had spoken to me before.

2^d X Interrogatory - State whether it was in the hearing of Capt Day that said Grogoski asked you if you would sign Day's notes for \$1500.00

Answer - Well I could not tell I was employed at the desk but whether he heard it or not I could not tell

3^d X Interrogatory - In the conversations that took place in your Office between the parties before referred to by you do you know whether they were negotiating for the sale and purchase of the premises in question or were wrangling about a previous sale and loss of the papers.

Answer - I do not know except as already stated

Sworn to & subscribed before
me this 24th ~~November~~ ^{December} 1854
George Manierre
Master in Chancery

S. Lind

00. Sylvester Lind being again recalled testified further
as follows:

1st Interrogatory - Do you know of any efforts having been
made by said Day in the winter of 1853 or by any
one in his behalf to find Gougoskie and make
to him the payments due on the lot in question
and if so at what time as nearly as you can recoll-
ect what amount was offered in what kind of
money - State all you know on the subject.

Answer - I believe that Day and Mr Kedzie came
one day and offered me money for Gougoskie I think
this was in the latter part of February 1853 They called
for defendant and asked for him and not find-
ing him offered me money to apply in payment
on what Day called his lot But I was not
authorised to receive it and declined accepting
it. I do not recollect the amount offered to be
paid but they offered to pay it gold. They came
after me into yard where I was.

Sworn to & subscribed before me
this 25th day of Nov 1854
George Manierre
Master in Chancery

S. Lind

John A. Kedzie being again recalled on the part
of the Complainant and again duly sworn deposes

1st Interrogatory - What ~~if any~~ if anything do

106.79
you know in relation to an effort made by said
Pay in the winter of 1853 to make to said Gougoski
the payments then due on said lot and the time
and place of making the same and why have you
not mentioned the same before

Answer. — In the latter part of February 1853 I think about
the 20th of that month I went with said Pay to
the office of S. Lind in whose employ said Gou-
goski then was with one hundred eighty dollars
in gold to make the payments then due and en-
quired for said Gougoski. We could not find him
and I then offered the money to said Lind for
Gougoski who declined receiving it. I did not men-
tion it before because not having seen said Gougoski
I made no memorandum of the circumstances as
I did of the two before mentioned tenders and it
had entirely passed out of my mind until mentio-
ned by Mr. Lind in his last preceding examination
whose testimony recalled it distinctly.

Sworn to & subscribed before me
the 25th day of November 1854
George Maness
Master in Chancery

John H. Kedzie .

The defendant thereupon produced in evi-
dence divers receipts for taxes and assessments
paid by him on the property in question levied or as-
sessed by City County & State thereon for the years 1851
1852 and 1853 amounting in all to the sum of \$33.80
And by agreement the said receipts are not required
to be appended to this report. but the parties reserve
the right to use them at the hearing if competent
and for the purpose of identification of the

said Master have written my name and official designation on the back of each of said receipts

The Complainant objected to the competency of said receipts as evidence but admitted that they were genuine.

Masters Certificate

Office of Master in Chancery
Chicago December 20th 1884

I, George Manierre master in Chancery of Cook County in the state of Illinois. do hereby certify that in pursuance of the order of reference in the said cause proceed to take the foregoing depositions of the several witnesses produced before me on the part of the Complainant and defendant at the days and times above stated in the fiat attached to each deposition and upon the several interrogatories then and there propounded to them; that previous to their examination the said witnesses were by me severally sworn according to law to testify and the truth to speak touching the matters in issue in said cause that the several interrogatories propounded to said witnesses and each of them together with their respective answers thereto were by me reduced to writing in the presence of the several witnesses and that after the depositions of each witness was completed the same was carefully read over to him and by him subscribed in my presence

All of which is respectfully submitted

Masters fee \$37.50
Paid by Kedzie

} George Manierre
Master in Chancery

108 81
Cook County Court of
Common Pleas

Elijah Day
vs
Albert Gougoski

Exhibit A
Geo. W.
Master

State of Illinois }
Cook County } ss

Elijah Day the above named Complainant being duly sworn says that he delivered his copy of the duplicate agreement to him from the defendant in this suit to James Smith some two or three weeks after the execution of the same for the purpose of having a memorandum made upon the same as stated in the bill of Complaint in this cause and signed as therein stated and has never since seen said copy that he has repeatedly enquired for the same from S. Lind to whom this deponent was informed that the same had been delivered and also from said Smith Also that said Lind has made full ^{and} diligent search at his office at his house among his papers and at all places where he kept his papers or any of them for said copy but without success and that said copy is not now in the possession or power of this deponent and that ^{he} does not know where the same is or what has become of it unless the same has been destroyed or concealed by said defendant Gougoski.

Sworn to & subscribed before me
this 12th day of April 1854

George Mancino
Master in Chancery

Elijah Day

Cook County Court of
Common Pleas

Elijah Day
vs
Albert Gougoski

Exhibit C

To Albert Gougoski the above named
- & defendant

Sir

You are hereby notified to
produce forthwith to be used in evidence before George
Maine Esq. Master in Chancery said Elijah Day
Copy of the agreement from you to him for the sale
of lot seven in Block four. Orleans addition to
Chicago dated in or about the month of February 1854
if the same is in your possession or power and if
the same is not in your possession or power then
you are hereby notified in like manner to produce
as aforesaid to be used as aforesaid your Copy
of the aforesaid agreement or parol evidence of
the contents of said agreement will be given at
the hearing of this cause

You are likewise hereby notified to pro-
duce before said Master as aforesaid your
copy of the pretended Lease from you to said
Day for the premises aforesaid or your Copy of any
writing or agreement executed by you and said
Day in reference to said premises to be used as
aforesaid upon the conditions aforesaid.

April 12th 1854

J. H. Kedzie

Solr for Complt

Delivered a copy of the above to Geo. W. Day Esq. Solr

110 83
for kept on the morning of the 13th of April 1854
before taking any testimony

Exhibit. B.

Articles of Agreement made and concluded the
(say from the 20th to the 28th) day of February in
the year One thousand Eight Hundred and fifty
One. Between Albert Grogoski of the City of
Chicago County of Cook and State of Illinois
of the first part. and Elijah Ray of the same
place of the second part.

Witnesseth that the party of the first part
at the request of the party of the second part
and in consideration of the money ^{to be} paid and
the covenants as herein expressed to be performed
by the party of the second part (the prompt
performance of which payments and covenants
being a condition precedent and time being the
essence of said condition) hereby agree to sell to
the said party of the second part all that cer-
tain lot and parcel of land situate in Chicago
County of Cook and State of Illinois known
and designated as Lot Seven (7) in Block four
(4) in Duncan's Addition to the City of Chicago
together with the building situated thereon with
the privileges and appurtenances thereto belonging
And the said party of the second part in
consideration of the premises hereby agrees to
pay the party of the first part his or their ex-
ecutors administrators or assigns in Chicago
the sum of Eleven Hundred and seventy dol-
lars as follows viz. Ninety dollars on the de-
livery these articles of agreement Ninety dol

lars in one year Ninety dollars in two years and
One hundred dollars in three years from the
date hereof. And also that he will well and
faithfully in due season pay or cause to be paid
all ordinary taxes assessed for revenue purposes
upon said premises or any part thereof subse-
quent to the year 1851. And also all other assess-
ments which now are or may be hereafter char-
ged or assessed upon or against said premises
or any part thereof. But in case the said party
of the second part fail to pay any or all such
taxes or assessments upon said premises or
appurtenances or any part thereof whenever
and as soon as the same shall become due and
payable and the party of the first shall pay from
time to time or ^{at} any time any or all such taxes
or assessments or cause the same to be paid the
amount of any and all such payments so made
by the party of the first part shall immediately
thereupon become an additional consideration
and payment to be made by the party of the second
part hereto for the premises herein agreed to be convey-
ed

And the said party of the first part further cove-
nants and agrees with the said party of the seco-
nd part that upon the faithful performance by the
said party of the second part of his undertaking
in his behalf and of the payment of principal
and interest of the sum above mentioned in the
manner specified by the said party of the first
part shall and will with without delay well and
faithfully execute acknowledge and deliver in
person or by attorney duly authorized to the

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party of the second part his heirs or assigns a deed of conveyance of all the right title and interest of the party of the first part of in and to the above described premises with the appurtenances with full covenants of warranty.

And it is mutually covenanted and agreed by and between the parties hereto that in case default shall be made in any of the payments of principal or interest at the time or any of the times above specified for the payment thereof and for - days thereafter this agreement and all the preceding provisions hereof shall be null and void and no longer binding at the option of said party of the first part his representatives ^{and all the payments which shall then have been made thereon & in part} and assigns the covenants and liability of said party of the second part shall continue and remain obligatory upon the said party of the second part and may be enforced and the said consideration money and every part thereof with the annual interest as above specified be collected by proper proceedings in law or equity from the said party of the second part his heirs executors administrators or assigns.

And it is further mutually covenanted and Agreed - by and between the parties hereto that in case of default in the payments stipulated to be made by the said party of the second part or any part thereof and the election of the party of the first part his representatives or assigns to consider the foregoing contract of sale at an end and prior payments forfeited the said party of the second part his heirs representatives or assigns who may have

* It is hereby absolutely forever forfeited to the said party of the first part or at the election of the said party of the first part his representatives or assigns

possession or the right of possession of said premises at the time of such default or at any time thereafter shall be considered and are hereby agreed and declared to be in law and equity the tenant or tenants at will of said party of the first part his representatives and assigns on a rent equal to an interest of ten per cent per annum on the whole amount of the purchase money above specified payable quarter yearly from the day of such default in payment of principal or interest. And after such default in payment and election to consider the above contract of sale as void the said party of the first part his representatives and assigns shall and may have and exercise all the powers rights and remedies provided by law or equity to collect such rent or to remove such tenant or tenants the same as if the relation of landlord and tenant hereby declared were created by an original absolute lease for that purpose on a special rent payable quarterly on a tenure at will. And that in such case the said tenant or tenants shall and will pay or cause to be paid all taxes assessments ordinary and extraordinary which may be laid or assessed on such premises or any part thereof during the continuance of such tenancy and will not commit or suffer any waste or damage to said premises or the appurtenances but will keep and deliver up on the termination of such tenancy the said premises and appurtenances in as good order and repair (ordinary wear and decay and unavoidable injury by the elements excepted) as they were

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in at the commencement of such tenancy.
In witness whereof the party of the first part
and the party of the second part in his own
proper person have hereunto respectively set
their hands and seals on the day and year
first above written

Signed sealed and delivered in } Albert Gonszski Seal
presence of } Elijah Day Seal

And afterwards to wit on the twenty second day
of February in the year of our Lord Eighteen hun-
dred & fifty five said day being one of the days
of the February Term of said Court the following
proceedings were had in said Cause and enter-
ed of Record to wit

Elijah Day Compt }
vs } Bill In Chancery
Albert Gonszski Deft }

This cause having been brought
to hearing upon the pleadings and proofs therein and
Counsel for the respective parties having been and due
deliberation being thereupon had. and it now appear-
ing to this Court that the parties in this suit did
on or about the twenty Eighth day of February A D
1851 enter into an agreement in writing under
seal in and by which the defendant agreed to
sell and convey unto the Complainant his heirs
and assigns by a good and sufficient deed of
conveyance the land and premises in the Com-
plainants bill of Complaint particularly described

on receiving therefor the sum of Nine hundred dollars and interest at the times and in the manner in said bill of Complaint specified. That the Complainant under and by virtue of the said agreement and immediately after the time of the making of the same entered into possession of said premises and has ever since ^{there} continued in possession of the same. That the Complainant at the time of the making of such Agreement paid to the defendant the sum of Ninety dollars being the interest for one year in advance on such purchase money and has been at all times ready and willing to perform such agreement on his part. That the defendant has wrongfully refused to convey the said premises unto said Complainant. Although the Complainant has often requested the defendant to convey the same and has tendered to him the said purchase money and interest at the times the same fell due according to the terms of said agreement.

And it also appearing to this Court that the Complainant at the time of the commencement of this suit did bring into Court and deposit with the Clerk thereof for the use of the defendant whenever he should be entitled to receive the same the sum of Ten hundred and eighty Dollars (\$1080.) being the said purchase money and all of the interest thereon remaining unpaid.

Therefore on motion of Wm. H. Farrell of counsel for the Complainant it is ordered adjudged and decreed that the Defendant do specifically perform on his part the said

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agreement so made and entered into as aforesaid
and that he execute acknowledge and deliver to
the Complainant within twenty days from the
service on him of a certified copy of this decree
a good and sufficient deed of conveyance to be
approved by George Manierre one of the Masters
of this Court residing in the City of Chicago in case
the parties differ respecting the said of all and sin-
gular the premises mentioned in said agreement
and which are described as follows viz All that
Certain piece or parcel of land situate in the County
of Cook and State of Illinois and known as lot
number seven (7) in Block number four (4)
in Duncan's Addition to the City of Chicago with
the buildings situate thereon: That the Costs of
this suit be paid by the Clerk of this Court out of
the moneys so deposited with him by the Complain-
ant as aforesaid and that the balance of such
moneys be paid to the defendant on his delivering
to the Complainant such deed so executed and
acknowledged as aforesaid and not before.

And it is further ordered and decreed
that either of the parties is to be at liberty to apply
to this Court as occasion may require.

And afterwards to wit on the ninth day of March
in the year Eighteen hundred and fifty five Said day
being one of the days of the February Term of said
Court the following proceedings were had in said Cause
and entered of Record to wit.

Elijah Day }
vs } Bill

In Chancery

Albert Gungoriski }

And now at this day comes the said defendant by Arno Voss his solicitor and enters his exceptions herein to the opinion and Judgement of the Court in entering the decree in this Cause and prays an appeal to the supreme Court of the State of Illinois which is allowed on said defendant filing his appeal bond in the usual conditions with security to be approved by the Court in the sum of Five hundred dollars and that upon said defendant's filing said bond the order requiring him to execute a deed to the Complainant for the premises described in said decree entered herein be vacated and set aside until the further order of the Court in the premises

And afterwards to wit on the seveneenth day of March in the year Eighteen hundred fifty five the said defendant filed in said Cause his appeal Bond which said Bond is in words and figures as follows to wit.

Know all men by these presents that we Albert Gungoriski as principal and John Pfund of Chicago Illinois as surety are held and firmly bound unto Elyah Day in the sum of Five hundred Dollars

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lawful money of the United States to be paid to
the said Elijah Ray his executors administrators
or assigns for which payment well and truly
to be made we binds ourselves our heirs executors
and Administrators jointly and severally by
these presents sealed with our seals dated this
13th day of March A D 1855.

The Condition of the
above obligation is such that whereas the said
Elijah Ray heretofore sued ^{and} prosecuted out of
the Cook County Court of Common Pleas on
the Chancery-side thereof his certain writ of
summons against the said Albert Gowoski
upon filing ^{and exhibiting in said Court} his Certain Bill of Complaint gain-
-st the said Albert Gowoski which said writ
was served upon the said Albert Gowoski
and the said Bill of Complaint by him an-
-swered unto and whereas heretofore to wit
at the February Term of said Court A D
1855. the said Cause was heard before the Hon
John M. Wilson Judge of said Court upon
the said Bill of Complaint, Answer Exhibits
and testimony wherein. and a final decree
rendered therein against the said Albert
Gowoski and in favor of the said Complain-
-ant Elijah Ray in accordance with the prayer
in said Bill of Complaint requiring the said

Albert Gougoski within twenty days from the service of a certified Copy of said decree to make and deliver unto said Elijah Day his heirs and assigns a good and sufficient deed of conveyance in the law in fee simple of a certain lot of land in said Bill of Complaint and decree mentioned & described and whereas the said Albert Gougoski conceiving himself aggrieved by said decree has appealed therefrom to the supreme Court of the State of Illinois.

Now therefore if the above bounden Albert Gougoski shall prosecute his said appeal with due diligence in said Supreme Court and shall also pay all costs interest and damages to the said Elijah Day or any other person or persons entitled thereto in case that the said decree appealed from shall be affirmed then this obligation shall be void otherwise to be and remain in full force.

A. Gougoski (Seal)
John Pfund (Seal)

Signed & sealed
in presence of
A. Voss

February 16th 1853 - Approved John M. Wilson
Judge of the Cook County Court of Civil Pleas

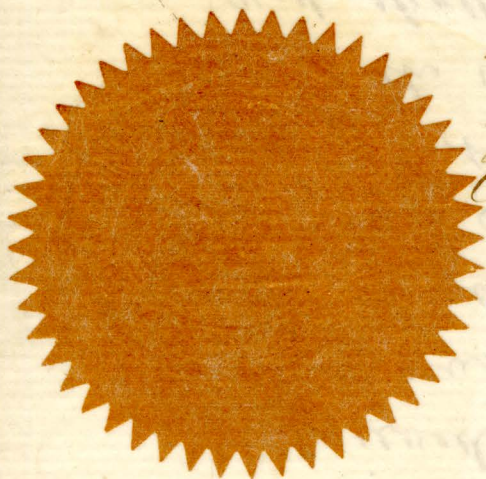
120.
State of Illinois &
County of Cook & SS

I Walter Churchill Clerk of the Cook
County Court of Common Pleas within & for the
County and State aforesaid do hereby Certify that
the foregoing is a full true and correct copy
and Transcript of all the original papers, -
Orders and Decree entered of Record in said
Court and now on file in my office in the
Case of Elijah Hay Complainant and
Albert Tonggick Defendant in Chancery.

In Testimony whereof I have
hereunto Set my Hand & the Seal
of said Court at Chicago in said
County this 9th day of June 1855

Walter Churchill

Clerk



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Albert Douglass

Elijah Lay

85

Transcript

Filed June 13, 1855
C. Ireland Clk.

12206

1855

Fees Transcribed & filed
Paid by Albert Douglass
J. C. C.

12206-85

This Indenture, Made this *Twenty Second* day of *February* in the
year of our Lord ONE THOUSAND EIGHT HUNDRED AND *Fiftyfour* BETWEEN *Albert*
Songaskie of Cook County Illinois of the first part
and Elijah Way of the same place party

of the second part,
WITNESSETH, That the said part of the first part, for and in consideration of the sum of *Eleven Hundred*
and Seventy dollars, lawful money of the United States of America, to *him*
in hand paid by the said part of the second part, at or before the ensealing and delivery of these Presents, the receipt whereof is hereby
acknowledged, ha / aliened, remised, released, conveyed and confirmed, and by these Presents do *is* alien, remise, release, convey and confirm
unto the said part *y* of the second part, and *his* heirs and assigns forever, ALL *the following described*
premises to wit Lot Number Seven (7) in Block
Number Four (4) in Vincennes Addition to the City
of Chicago with the buildings situated thereon

Exhibit A

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining; and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and also, all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said part *y* of the first part, of, in or to the above described Premises, and every part and parcel thereof, with the appurtenances: To HAVE AND TO HOLD all and singular the above mentioned and described Premises, together with the appurtenances, unto the said part *y* of the second part, *his* heirs and assigns forever.

AND the said *Robert Gargaskie* for *himself* heirs, executors and administrators, do *as* hereby covenant, promise and agree, to and with the said part *y* of the second part, heirs and assigns, that *he* has not made, done, committed, executed, or suffered any act or acts, thing or things whatsoever, whereby, or by means whereof, the above mentioned and described Premises, or any part or parcel thereof, now are, or at any time hereafter shall or may be impeached, charged, or encumbered, in any manner or way whatsoever.

In Witness Whereof, The said part *y* of the first part has hereunto set *his* hand and seal the day and year first above written.

SIGNED, SEALED AND DELIVERED, }
IN PRESENCE OF }



STATE OF ILLINOIS, }
COUNTY, } ss. *S*

in and for said County, do hereby certify, That

personally known to me as the same person whose name subscribed to the above Deed,
appeared before me this day in person, and acknowledged that he signed, sealed and delivered the said

instrument of writing as free and voluntary act, and for the uses and purposes therein set forth.

And the said wife of the said
having been by me examined separate and apart and out of hearing of her husband, and the contents and meaning of said instrument of writing having been by me fully made known and explained to her, acknowledged that she had freely and voluntarily executed the same, and relinquished her dower to the lands and tenements therein mentioned, without compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and seal, this

day of

A. D. 18