No. 12340

Supreme Court of Illinois

New Kirk

vs.

Cone

71641 7

State of Illinois
County of Cook } ss

Pleas before the Honorable John W. Wilson Judge of the Cook County Court of Common Pleas within and for the County of Cook and State of Illinois at a regular Term of the 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 second Monday being the eighth day of September in the year of Our Lord One thousand eight hundred and fifty six, and of the Independence of the United States the Eighty first —

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Present the Hon John W. Wilson Judge
Daniel McAvoy Prosecuting Attorney
James S. Hoyt Coroner and acting
Sheriff of Cook County —
Attest Walter Kimball Clerk

[23HO-1]

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Be it remembered that heretofore to wit: on the twenty ninth day of August in the year of our Lord one thousand eight hundred and fifty five, came John E. Cone plaintiff by G.W.F. Cone his Attorney and filed in the office of the Clerk of the Cook County Court of Common Pleas his precipe for a Summons against Adamson D. Newkirk in a plea of Assumpsit - which said precipe is in the words and figures as follows to wit:

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State of Illinois
Cook County S.S } In. Cook County Court of Common Pleas

John E. Cone
vs } Assumpsit
Adamson D. Newkirk

To the Clerk of said Court.

Please issue a summons in the above entitled cause returnable to the next September Term of our said Court - Endorse on the writ damages Fifty Thousand Dollars

G. W. F. Cone
Plff Atty

And thereupon on the same day and year last aforesaid there issued out of the office of the Clerk of said Court the peoples writ of Summons which said Writ of Summons and the endorsement thereon is in the words and figures as follows to wit;

State of Illinois }
County of Cook } ss. The People of the State of Illinois.

To the Sheriff of said County— Greeting;

We command you that you Summon Adamson B. Newkirk 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 term thereof to be holden at the Court House in the City of Chicago in said County on the 2nd Monday of September next to answer unto John E. Cone in a plea of Trespass on the case upon promises to the damage of the said plaintiff as he says in the sum of Fifty Thousand Dollars—

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

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L. S.

Witness Walter Kimball Clerk of the said Court and the Seal thereof at the City of Chicago in said County this 29th day of August A. D. 1855

Walter Kimball Clerk

Served by reading to the Defendant Adamson B. Newkirk this Aug. 29th 1855

James Andrew Sheriff

And afterwards to wit: on the thirty first day of August in the year last aforesaid came the said plaintiff by his said attorney and filed in the Office of the Clerk of said Court his Declaration which said Declaration is in the words and figures as follows to wit:

State of Illinois }
Cook County ss. }

In the Cook County Court of Common Pleas of the September Term A. D. 1855

John E. Cone
vs
Adamson B. Newkirk

Assumpsit

John E. Cone plaintiff

in this suit by. S. W. D. Lowe his Attorney comes and complains against Adamson D. Newkirk Defendant in a plea of Trespass upon the case upon promises—

For that whereas the said defendant on the Sixteenth day of August A. D. One Thousand Eight Hundred and fifty five at the City of Chicago County of Cook and State of Illinois; was indebted unto said Plaintiff in the sum of Fifty Thousand Dollars, lawful money of the United States for the work and labor, Skill, care, diligence and attendance of the said Plaintiff by the said Plaintiff, before that time done performed and bestowed as the attorney and Solicitor of and for the said defendant and upon his retainer in and about the prosecuting defending and Soliciting of divers causes suits and business for the said defendant and for fees due and of right payable to the said Plaintiff in respect thereof—

And also for other, the work and labor Skill care diligence and attendance of the said plaintiff before that time, done performed and bestowed in and about the examining of the records of the public offices, Abstracting the title to lands and drawing, copying and engrossing of divers

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conveyances, deeds and writings for the said
defendant; and in and about other the busi-
ness of the said defendant, and for the said
defendant and at his special instance and
request—

And also for divers journies and other
attendance by the said Plaintiff before them
made performed and given in and about
the said business, and other the business of
the said defendant, and for the said defe-
ndant and at his like special instance and
request, and being so indebted; he the said
defendant in consideration thereof afterw-
ards to wit; on the day and year last afore-
said at Chicago aforesaid undertook and
then and there faithfully promised the
said Plaintiff to pay him the said last
mentioned sum of money when he the
said defendant should be thereunto after-
wards requested—

And whereas also afterwards to wit;
on the day and year last aforesaid at
Chicago aforesaid in consideration that
the said plaintiff at the like special
instance and request of the said defend-
ant had before that time done performed
bestowed and given other work and labor
skill, care, diligence and attendance

and
the attorney and solicitor for the said defendant and upon his retainer; in and about the prosecuting defending and soliciting of divers other causes, suits, and business for the said defendant; and had also at the
11 like special instance and request of the said defendant, before that time done performed and bestowed other his work and labor skill care, diligence and attendance; in and about the examining other public records and abstracting the title to other lands and drawing copying and engrossing of divers other conveyances deeds and writings for the said defendant, and in and about other the business of the said defendant and for the said defendant.

And had also at the like special instance and request of the said defendant before that time made performed and given divers other journies and attendances in and about other the business
12 of the said defendant; And for the said defendant, he the said defendant undertook, and then and there faithfully promised the said plaintiff to pay him so much money as he therefore reasonably deserved to have of the said defendant when he the said defendant

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should be thereunto afterwards requested.

And the said plaintiff avers that he therefor reasonably deserved to have of the said defendant the further sum of Fifty Thousand Dollars of like lawful money to wit; at Chicago aforesaid, whereof the said defendant afterwards to wit, on the day and year last aforesaid had notice.

13 3d And whereas also the said defendant afterwards to wit on the day and year last aforesaid at Chicago aforesaid was indebted to the said plaintiff in the further sum of Fifty Thousand Dollars of like lawful money of the United States for the work and labor skill care diligence and attendance of the said plaintiff by the said plaintiff before that time done performed and bestowed as the attorney of and for the said defendant and upon his retainer in and about the acquiring by purchase for and in the name of said defendant of the title to divers pieces and parcels of land

14 of great value to wit; of the value to said defendant of Two Hundred and fifty Thousand Dollars.

And also for divers journies and

other attendance by the said plaintiff before then
made performed and given in and about the
said business; and other the business of the said
defendant, and for the said defendant and
at his like special instance and request and
being so indebted he the said defendant
in consideration thereof, afterwards to wit on the
day and year last aforesaid undertook, and
then and there, faithfully promised the said
plaintiff to pay him the said last mention-
15 ed sum of money, when he the said defend-
ant should be thereunto afterwards requested.

And whereas afterwards to wit on the day
and year last aforesaid at Chicago aforesaid
in consideration that the said plaintiff at
the like special instance and request of the
said defendant had before that time done
performed bestowed and given other his
work and labor, skill, care diligence and
attendance the Attorney of and for the said
defendant and upon his retainer and about
the purchasing for said defendant other
large, and valuable pieces and parcels of
land of great value to said defendant to
16 wit: the value of Two Hundred and fifty Thou-
sand Dollars: And had also at the like
special instance and request of the said
defendant before that time made performed

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and given divers other Journies and attendance in and about other the business of the said defendant: and for the said defendant, the the said defendant undertook: and then and there faithfully promised the said plaintiff to pay him so much money as he therefor reasonably deserved to have of the said defendant: when by the said defendant should be thereunto afterwards requested.

And the said plaintiff avers that he therefor reasonably deserved to have of the said defendant the further sum of Fifty Thousand Dollars of like lawful money to wit: at Chicago aforesaid whereof the said defendant afterwards to wit on the day and year last aforesaid, there had Notice.

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And whereas also the said defendant afterwards to wit: on the day and year last aforesaid at Chicago aforesaid was indebted to the said plaintiff in the further sum of Fifty Thousand Dollars of like lawful money for the work and labor care and diligence of the said plaintiff by the said plaintiff before that time done performed and bestowed in and about the business of the said defendant: and for the said defendant and at his special instance and request: and being

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so indebted he the said defendant in consideration thereof afterwards to wit: on the day and year last aforesaid at Chicago aforesaid undertook and then and there faithfully promised the said plaintiff to pay him the said last mentioned sum of money when he the said defendant should be thereunto afterwards requested —

And whereas also afterwards to wit: on the day and year last aforesaid at Chicago aforesaid in consideration that the said plaintiff at the like special instance and request of the said defendant had before that time done performed and bestowed other his work and labor care and diligence in and about other the business of and for the said defendant he the said defendant undertook and then and there faithfully promised the said plaintiff to pay him so much money as he reasonably deserved to have of the said defendant when the said defendant should be thereunto afterwards requested —

And the said plaintiff avers that he therein reasonably deserved to have of the said defendant the further sum of fifty thousand Dollars of like lawful money to wit: at Chicago aforesaid, whereof the said defendant afterwards to wit: on the day and year last aforesaid there had notice —

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And whereas also the said defendant to wit; on the day and year last aforesaid at Chicago aforesaid was indebted to the said plaintiff in the further sum of fifty thousand Dollars of like lawful money for so much money by the said plaintiff before that time lent and advanced to the said defendant at his special instance and request— also for so much other money by the said plaintiff before that time paid laid out and expended, to and for the use of the said defendant at his like special instance and request— Also for so much other money by the said defendant before that time had and received to and for the use of the said plaintiff—

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And being so indebted he the said defendant to wit; on the day and —— last aforesaid at Chicago aforesaid undertook and then and there faithfully promised the said plaintiff to pay him the last mentioned sums of money when he the said defendant should be thereunto afterwards requested—

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Nevertheless the said defendant not regarding his said several promises and undertakings but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said plaintiff in this—

behalf hath not as yet paid the said several sum of money or any or either of them or any part thereof to the said plaintiff, although often requested so to do,) but the said defendant to pay him the said sum hath hitherto wholly neglected and refused and still doth neglect and refuse, to the damage of the said plaintiff of Fifty Thousand Dollars and therefore he brings his Suit &c.

G. W. D. Coe
Plaintiffs Attorney

Particulars of Plaintiffs demand

To Services as attorney from the Sixteenth (16) of March A.D. 1854 to the 15th day of August A.D. 1855 $2000.00

To Money advanced during the above Specified time $ 500.00

Items of Service

To Service in purchasing the W½ N E¼ Sec 18. T. 39. R. 14 $30.000.00

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To Services in purchasing lots in Block 64 Sch. Sec add to Chicago $3000.00

To Services in examining Records in Bankrupt cases at Springfield $1000.00

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To Services in the matter of Thibault Est. at St. Louis $2000.00

To Services in the matter of the Beaubien property at Detroit $2000.00

To Services in the matter of the Campbell Property in Will Co $500.00

To Journies to Wisconsin $1000.00

To Services in making General Examination of Public Records of York Co $2000.00

To Services in defending suit of Stahl Fuller Ads. Adams $500.00

To Services in prosecuting suit of Hendricks & Chapin $10000.00

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Total Amt $52,500.00

And afterwards to wit: on the tenth day of September in the year A.D. Eighteen hundred and fifty five comes the said Defendant by his said Attorneys, Barker Meech & Peck and filed in the office of the Clerk of said Court his affidavit of Merits, which said affidavit is in the words and figures as follows to wit:

John E. Cone
vs.
A. B. Newkirk

Cook County Court of Common Pleas
September Term A.D. 1855

State of Illinois
Cook County } ss.

Adamson B. Newkirk

26 the Defendant in the above entitled cause being duly sworn doth depose & say that he is advised by Counsel and that he verily believes that he has a good defence to the said above entitled Suit upon the merits and further deponent saith not.

A. B. Newkirk

Subscribed & Sworn to before me this 10th day of September 1855

Walter Kimball, Clerk

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And thereafter to wit: on the fifteenth day of September in the year A. D. 1855. the following proceedings were had in said Court and entered of Record to wit:

John. E. Cone
vs
Adamson B. Newkirk } Sept

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This day again comes the said Defendant by his said Attorney, and on his motion it is ordered that the Rule to plead in this cause be further extended to Tuesday morning next:

And afterwards to wit: on the Seventeenth day of September in the year last aforesaid came the said Defendant by his said attorneys and filed in the office of the Clerk of said Court his Pleas, which said Pleas are in the words and figures as follows to wit:

Cook County Court of
Common Pleas -
September Term Anno
Domini 1855

Adamson B. Newkirk
ads
John E. Cone

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And the said Defendant

by Barker. Meech & Peck his attorneys. comes and defends the wrong and injury when &c and saith that he did not undertake or promise in Manner and form as the said plaintiff hath above thereof complained against him. and of this he puts himself upon the Country &c

2 And for further plea in this behalf by leave of the Court here for this purpose first had and obtained according to the form of the Statute in such case Made and provided the said Defendant says that the said plaintiff ought not to have or Maintain his aforesaid action thereof against him because he says that the said plaintiff before and at the time of the commencement of this Suit to wit: at Cook County aforesaid was & still is indebted to the said Defendant in a large sum of Money to wit: the sum of Sixty Thousand Dollars of lawful Money of the United States for the work and labor, care, diligence and attendance of the said defendant as a physician by the said Defendant before that time done and performed and bestowed for the plaintiff and for the plaintiffs family and at the plaintiffs request and for other, work labor, care diligence and attendance of the said Defendant, by the

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said Defendant before that time done performed
and bestowed in and about the business of
the said Plaintiff and for the said plaintiff
and at his request and for divers Materials
Medicines and other necessary things by the
said defendant before that time found and
provided and used and applied in and about
the said work and labor and care for the
said plaintiff and at his like request and
for divers goods wares and Merchandises
31 + before that time sold and delivered by the
said Defendant to the said Plaintiff and at
his like request and for money by the said
defendant before that time lent and advanced
to and paid laid out and expended for
the said Plaintiff at his request and for
other Money by the said Plaintiff before
that time had and received to and for the
use of the said defendant and for other money
due and owing from the said Plaintiff to
the said Defendant for interest upon and for
the forbearance of divers large sums of money
due and owing from the said plaintiff to the
32 said defendant and by the said defendant for-
borne to the said plaintiff for divers long spaces
of time before then elapsed and for other money
due and owing from the Plaintiff to the said
Defendant upon an account stated between

them which said Sums of money so due and owing to the said defendant as aforesaid exceed the damages sustained by the said Plaintiff by reason of the said supposed promises and undertakings in the said Declaration mentioned and out of which said Sums of money so due and owing from the said Plaintiff to the said Defendant the said Defendant is ready & willing and hereby offers to set off and allow to said Plaintiff the full amount of the said Damages according to the form of the Statute in such case made and provided and this the said Defendant is ready to verify wherefore he prays Judgment if the said Plaintiff ought to have or maintain his aforesaid action thereof against him, and that Judgment may be rendered in favor of Defendant for the excess of the Amount so due and Owing to Defendant from said Plaintiff over and above the Damages according to the Statute in such case made and provided

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And for a further plea in this behalf 3
the said defendant by like leave of the Court
34 here for this purpose first had and obtained
according to the form of the Statute in such
case made and provided says that the said
Plaintiff ought not to have or maintain
his aforesaid action thereof against him

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because he says that on the 24th day of March
A.D. 1854 at Chicago in said Cook County
the said Plaintiffs and the said Defendant
made and entered into a certain agreement
with each other in substance as follows:

"Agreement between John E. Cone attor-
ney at the City of Chicago County of Cook
35 State of Illinois party of the first part
and A.B. Sterkirk Physician of the same
place party of the second part."

1st The party of the first part agrees to give
the party of the second part the full and
exclusive benefit of all information he now has
or may hereafter (during the continuance of
this agreement) acquire of and concerning
the title to real property in the county of
Cook aforesaid and for that purpose will
examine the Records in the office of said
County and enter in a Book to be furnished
by the party of the second part minutes or
30 abstracts of the title to such tract or tracts
of land situated in said County to which
there are adverse titles and interests as in the
opinion of the said party of the first part
and worth entering in said book for the pur-
poses and best interest of said party of the
second part: and to do such other professional
business as the said party of the second part

may require him the said party of the first part to do in and about his (the party of the second part) own business and not otherwise ~

2d The party of the second part agrees to pay the party of the first part the sum of five Hundred Dollars per annum for his services to be rendered as aforesaid in Monthly payments ~ To wit: Forty one Dollars and fifty seven cents in each and every month during the continuance of this agreement; also to pay for all disbursments made by party of first part in doing the business aforesaid as the same shall become necessary from time to time ~

3d It is mutually agreed that either party may cancel this agreement by giving the other party thirty days notice in writing ~

Witness our hands and seals at Chicago this 20th day of March 1874

John E. Gray (Seal)
A. B. Newkirk (Seal)

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Which said agreement was by the said plaintiff reduced to writing and was afterwards to wit: on the 20th day of March A.D. 1874. signed and sealed by both the said plaintiffs and the said Defendant and the

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said defendant says that any and all the care labor skill diligence, work & attendance journeying, by the said plaintiff in his said declaration alledged to have been done, performed and bestowed for the said defendant or in and about the busines of the said defendant were done performed and bestowed by said plaintiff for said Defendant under and by virtue of said aguement in writing, executed and sealed as aforesaid and whilst it was in full force and said defendant avers that the said aguement in writing executed by the said plaintiff and defendant as aforesaid and under seal, relates to and embraces all of care labor skill, diligence, work & services attendance and journeyings by plaintiff in his declaration in this suit alledged to have been by him done, performed and bestowed and made, and defendant avers that said aguement so executed under seal as aforesaid was subsisting and in full force when plaintiffs said suit was commenced and has never been vacated, annulled, set aside or in any way terminated, and this the said defendant is ready to verify, wherefore he prays Judgment if the said Plaintiff ought to have or maintain his aforesaid action thereof against him &c — — —

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And for further plea in this behalf the said Defendant by like leave of the Court here for this purpose first had and obtained according to the form of the Statute in such case made and provided, says that the said Plaintiff ought not to have or maintain his aforesaid action thereof against him because he says that on the 20th day of March A.D. 1854 at Chicago in said County of Cook the said plaintiff and the said Defendant entered into a written agreement executed and sealed by both said Plaintiff and said Defendant which said last mentioned agreement is as follows to wit:

"Agreement between John E. Cone attorney of the City of Chicago County of Cook State of Illinois party of the first part and A.B. Newkirk Physician of the same place of the second part" —

1st The party of the first part agrees to give the party of the second part the full and exclusive benefit of all information he now has or may hereafter during the continuance of this agreement acquire of and concerning the title to Real property in the County of Cook aforesaid and for that purpose will examine the Records in the offices of said County and enter in a Book to be furnished by the said

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party of the second part. minutes or abstracts of the title to such tract or tracts of land situated in said County, to which there are adverse titles and pleas to as in the opinion of the said party of the first part are worth entering in said Book for the purposes and best interest of said party of the second part and to do such other professional business as the said party of the second part may require him the said party of the first part to do in and about his (the party of the second parts) own business and not otherwise —

2nd The party of the second part agrees to pay the party of the first part the sum of five Hundred Dollars per annum for his services to be rendered as aforesaid in Monthly payments — To wit; Forty one Dollars and Sixty seven cents in each and every month during the continuance of this agreement. also to pay for all disbursements made by party of first part in doing the business aforesaid as the same shall become necessary from time to time —

3d It is mutually agreed that either party may cancel this agreement by giving the other party thirty days notice in writing —

In Witness our hands and seals at Chicago this 24th day of March 1854. John E. Cone [Seal]

A. B. Stewkirk [Seal]

And said defendant says that any and all the supposed, work, labor, care diligence skill, attendance and journeyings and services in said Declaration alleged to have ~~been~~ done, performed, bestowed and made by said plaintiff, were done performed, bestowed and made under and by virtue of said last mentioned contract and were within and embraced in the terms of said contract under seal last mentioned, and were done and performed and bestowed while said contract last mentioned was in full force and said defendant avers that said last mentioned contract when Plaintiff commenced suit was and still is in full force and said Defendant avers that he has paid said Plaintiff, upon said last mentioned contract more than the agreed price therein named and that he has advanced and paid to Plaintiff over and above all expenses which Plaintiff hath incurred in Defendants service since the commencement of said contract the sum of One hundred and Ninety Dollars and Eighty three cents and that at the date of the said last mentioned contract defendant owed the Plaintiff nothing and defendant avers that Plaintiff hath never performed any service or labor of any kind for him except under

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said contract last mentioned and that the services performed under said contract last mentioned are the same alledged and supposed in Plaintiffs said Declaration —

And this said defendant is ready to verify — wherefore he prays Judgment if said Plaintiff ought to have or maintain his aforesaid action thereof against him &c

Barker Mayo & Peck
Defendants Attys

Agreement between John E. Lyne attorney of the City of Chicago County of Cook State of Illinois party of the first part and A. B. Sunkirk Physician of the same place of the second part

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1st The party of the first part agrees to give the party of the second part the full and exclusive benefit of all information he now has or may hereafter (during the continuance of this agreement) acquire of and concerning the title to real property in the County aforesaid and for that purpose will examine the Records in the offices of said County and enter in a Book to be furnished by the said party of the second part minutes or abstracts of the title to such tracts of land situated

in said County, to which there are adverse titles and pretenses to, as in the opinion of the said party of the first part, are worth entering in said Book for the purposes and best interest of the said party of the second part, and to do such other professional business as the said party of the second part may require from the said party of the first part to do - pertaining and about his (the party of the second part's) own business and not otherwise.

2nd The party of the second part agrees to pay the party of the first part the sum of Two Hundred Dollars per annum for his services to be rendered as aforesaid in monthly payments of Forty One Dollars and Sixty Seven cents in each and every month during the continuance of this agreement. Also to pay all disbursements made by party of first part in doing the business aforesaid - as the same shall become necessary from time to time.

3d It is mutually agreed that either party may cancel this agreement by giving the other party thirty days notice in writing.

Witness our hands and seals at Chicago this 21st day of March 1854.

John E. Cone (Seal)
A. B. Hawkins (Seal)

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John E. Cone

D. A. B. Newkirk Dr

50 + 1857

Apl	17	D.	Acpt. rendered & audited on Article	148 00
"	23	D.	Cash	115 00
May	1	D.	Cash $21. $75. & $25	121 00
"	6	D.	Cash	10 00
"	11	D.	Cash	5 00
"	17	D.	Cash	31 00
"	21	D.	Cash	10 00
"	23	D.	Cash $2 & $5	7 00
"	25	D.	Cash	5 00
"	27	D.	Cash	8 00
June	1	D.	Cash	5 00
"	2	D.	Cash	36 00
57 "	5	D.	Cash	10 00
"	11	D.	Cash	25 00
"	11	D.	Cash	1 00
"	18	D.	Cash	2 50
"	19	D.	Cash	10 00
"	21	D.	Cash	26 00
"	24	D.	Cash $10 & $5	15 00
July	1	D.	Sugar & Tea	17 00
"	2	D.	Cash $25 & 1 Doz. Chickens $2.25	27 25
"	6	D.	Cash	2 25
"	8	D.	Cash	13 50
"	12	D.	Cash	57 00
"	17	D.	Cash	10 00

	"	19	"	cash	5 00
52	"	22	"	cash	7 00
	"	24	"	cash	3 00
	"	29	"	cash	16 00
	Augst	12	"	cash	15 00
	"	14	"	cash	9 00
	"	15	"	cash	1 00
	"	17	"	cash	5 00
	"	19	"	cash	7 00
	"	28	"	cash	6 00
	"	31	"	cash Jd Shuman	21 00
	Sept	4	"	cash	4 00
	"	7	"	cash	2 00
	"	11	"	cash	10 00
	"	18	"	cash $6. & $3	9 00
	"	19	"	cash $5. & $ 7.50	12 50
53	"	23	"	cash $ 5 & $ 1.00	6 00
	"	31	"	cash $5. & $5	10 00
	Oct	2	"	cash	21 00
	"	8	"	cash $3.50 & $ 10	13 50
	"	10	"	cash	5 25
	"	11	"	cash $2. & $11.08	14 08
	"	12	"	cash	25 00
	"	13	"	"cash" Hardware Bill shed & Shuman	25 25
	"	17	"	cash $5. & $2	7 00
	"	19	"	cash	1 00
54	"	21	"	cash Ad Wife	3 00
	"	24	"	Bill Goods of Fitch & Hughes	27 14

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"	"	"	cash	5 00
"	29	"	cash	6 00
Nov	1	"	cash	22 00
"	4	"	cash	11 00
"	8	"	cash	1 00
"	11	"	cash @ 9 & @ 6	15 00
"	13	"	cash	1 00
"	14	"	cash	2 00
"	18	"	cash	11 00
"	22	"	cash	2 00
"	24	"	cash	5 00
Dec	2	"	cash	6 00
"	8	"	cash	6 00
"	14	"	cash	10 00
"	15	"	cash for Wood & Cutting @ 6, 1/2 Wks @ 6	12 00
"	26	"	1 Ton Coal	10 00
"	29	"	cash	6 00
Jany	4	"	cash of Fitch & Hemp @ 23, cash @ 2	25 00
"	5	"	cash	6 00
"	6	"	Amt P for House Rent	21 00
"	12	"	cash @ 2 & @ 6	8 00
"	15	"	cash	6 00
"	16	"	cash	7 00
"	21	"	cash @ 7, @ 10 & @ 6	23 00
"	26	"	cash @ 7 & @ 21	28 00
"	31	"	Boots of Smigt @ 6 & cash @ 2	8 00
Feb	1	"	cash	7 00
"	8	"	cash	2 00

"	9	To	Cash	7	00
"	13	"	Cash	21	00
"	15	"	Cash $1. & 17 lb $4. & $5.	10	00
"	20	"	Cash	10	00
"	21	"	Cash	5	00
"	26	"	Cash $10. & $2.	12	00
57 "	27	"	Cash $2. $1. & $21.	24	00
March	4	"	Cash $18. & $6.	24	00
"	10	"	Cash	11	00
"	12	"	Cash $3. $5. & $7.	15	00
"	18	"	Cash for 1 load Wood	7	75
"	21	"	Cash $2. & ½ ton Coal $5.	7	00
"	24	"	Cash	7	00
"	28	"	½ Ton Coal	5	25
"	31	"	Cash $6. & $5.50	11	50
April	4	"	Cash $2. & 6 lb $7.	9	00
58 "	10	"	1½ Load Wood $6. Cash $1. & $21.	28	00
"	11	"	Cash $3. $4. & $4.25	11	25
"	14	"	Cash	7	00
"	17	"	Cash	2	00
"	21	"	Cash $6. & $3.	9	00
"	24	"	Cash $4. $21. & $6.	31	00
"	26	"	Cash	7	00
"	28	"	Cash	21	00
"	30	"	Cash	13	00
May	2	"	Cash $2. & $1.	3	00
"	4	"	Cash	8	00
[12340-16] "	7	"	Cash	5	00

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31

	11	To Cash $8. & $10.	18	00
	18	" Cash	10	00
	21	" Cash $2.50 & $14.	16	50
	30	" Cash	30	00
June	1	" Cash	4	00
"	2	" Cash of Wm Redhed	2	00
"	3	" Cash do	2	00
"	5	" Cash do	10	00
"	6	" Cash do	3	00
"	8	" Cash do	21	00
"	13	" Cash do	6	00
"	18	" Cash do	5	50
"	22	" Cash do	8	00
"	23	" Cash do	2	00
"	28	" Cash for Rent	21	00
July	2	" Cash $4. & $2.50	6	50
"	5	" Cash	8	00
"	12	" Wood $4.25 & Cash $8.	12	25
"	21	" Cash	8	00
"	24	" Cash	8	00
"	28	" Cash	11	00
"	31	" Cash	5	00
August	2	" Cash $8. $6. & $27.	41	00
"	8	" Bill of Clothing of Tilsworth	52	38
"	"	" Cash	5	00
"	10	" Cash	10	00
"	11	" Cash	10	00
			$ 1943.	00
"		Omission in posting page 281. $37.83	47	83
		do do 246 10.00		
			$ 1990.	83

For Money had & received	50.000 00
" goods rec'd & sold & delivered	50.000 00
" professional Services	
" Work, labor, Materials & Medicine	50.000 00
" Money lent & advanced	50.000 00
" Money paid laid out & expended	50.000 00
" Due as Stated	50.000 00

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34

And afterwards to wit on the twenty eighth day
62 of September in the year aforesaid John E. Cone
plaintiff by G. W. P. Cone his Attorney filed in the
Office of said Court his replication which is in the
words and figures as follows to wit.

State of Illinois } In the Cook County Court of Common
County of Cook } ss. Pleas of the September Term A.D. 1855.

John E. Cone
vs
Adamson B. Newkirk } Assumpsit

The said plaintiff as to the first
plea of the defendant whereof he puts himself upon
the Country, doth the like.

The plaintiff as to the second
62 plea of the defendant says that he the said plaintiff
by reason of anything by the defendant in that plea
alleged ought not to be barred from maintaining
his action thereof against him the said defendant;
because he says that he is not, nor was at the com-
-mencement of this suit indebted to the said defen-
-dant; nor did he the said plaintiff undertake and
promise in manner and form as the defendant hath
in his second plea alleged against him; And of
this he the said plaintiff puts himself upon the Country.

63

The plaintiff as to the third plea of the defendant says that he the said plaintiff by reason of anything by the defendant in that plea alleged ought not to be barred from maintaining
64 + his action thereof against him the said defendant, because he says that none of the care, labor, skill, diligence, work, attendance and journeyings by the said plaintiff done, performed and bestowed for the said defendant, and in his the said plaintiffs declaration mentioned were done performed nor bestowed, under nor + by virtue of the agreement
64 mentioned in said third plea as the defendant hath above thereof alleged, ~~Nor was the said agreement in said plea mentioned in force as the defendant hath above thereof alleged, nor does the said agreement relate to or "embrace" all or any of care labor skill diligence work services attendance + journeyings by the said plaintiff done performed and bestowed for said defendant as in his the said plaintiffs declaration mentioned as he the said defendant hath above thereof in his said third plea alleged~~

This plaintiff's motion and application and the application filed as answer Oct 25th 1865.

65 And of this the said plaintiff puts himself upon the Country.

The plaintiff as to the fourth plea of the defendant says that he the said plaintiff by reason of anything by the defendant in that plea alleged ought not to be barred from maintaining his action

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35

thereof against him the said defendant because
he says that the contract mentioned in the said
fourth plea and alleged to be in full force was
cancelled and annulled in accordance with a
stipulation therein contained, prior to the doing
performing and bestowing the work labor services
+ journeyings skill diligence and attendance in and
about the business of the said defendant and for
the said defendant as in his the said plaintiffs
declaration mentioned, and that the said defen-
-dant never has paid to the said plaintiff over
and above disbursements any money as he the said
defendant in his said fourth plea hath above
thereof alleged; but on the contrary thereof the
+ said plaintiff avers that whatever money he has received
from said defendant over and above disbursements
was paid by the said defendant in consideration of the
+ said plaintiff being retained generally by the said defen
-dant as his Attorney and Solicitor in certain important
and difficult land suits, and in consideration also
that the said plaintiff would give the said defendant
his undivided time and attention to the business afore-
-said. And that the said defendant has never paid
to the said plaintiff any money at any time as a compen-
-sation for the work, labor care skill diligence services journeys
and attendances, or for either of them as mentioned in the
plaintiffs declaration.

And this the said plaintiff is ready

68

to verify. Wherefore he prays judgment and his damages by him sustained on occasion of the non performance of the promises in his said declaration mentioned.

G. W. S. Cone
Pltff's Atty.

And afterwards, to wit, on the Seventeenth day of October in the year last aforesaid, the said Adamson B. Newkirk defendant, by his Attorneys aforesaid filed his rejoinder to the foregoing replication which is in the words and figures as follows, to wit.

State of Illinois }
County of Cook } ss. Cook County Court of Common Pleas
September Term A.D. 1855.

Adamson B. Newkirk
at
John E. Cone

69

And the said defendant as to the said replication of the said plaintiff to the said first plea of the said defendant by which the said plaintiff hath prayed may be inquired of by the Country, doth the like.

And the defendant as to the said replication of the said plaintiff to the said second plea of the said defendant by which the said plaintiff hath prayed may be inquired of by the Country, doth the like.

And the said defendant saith that the replication

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of the said plaintiff to the said third plea of the said
defendant and the matters therein contained in manner
79 & form as the same are above pleaded and set forth are
not sufficient in law for the said plaintiff to have or
maintain his aforesaid action thereof against the said
defendant & that he the said defendant is not bound
67 by law to answer the same & this the said defendant is
ready to verify Wherefore by reason of the insufficiency of
the said replication to the said third plea of said defen-
-dant in this behalf the said defendant prays judgment
if the said plaintiff ought to have or maintain his afore-
-said action thereof against him &c.

71 And the said defendant according to the form of
the Statute in such case made and provided states & shews
to the Court here the following causes of demurrer in law
to the said replication of the said plaintiff to the said
third plea of said defendant that is to say that the
said replication to the said third plea of said defendant
is double & multifarious in putting in issue two several &
distinct matters namely 1st whether the agreement or contract
78 mentioned in defendants third plea was at the commence-
72 -ment of said suit still in force, And also whether
any of the work care labor skill & diligence attendance
& journeyings by the said plaintiff in his said declaration
alleged to have been done bestowed & performed in & about
the business of said defendant & for the said defendant
were done performed & bestowed under & by virtue of or are
comprehended & embraced in the said Agreement or

contract so mentioned in said defendants said third
plea— And that the said replication to the said third
plea is repugnant & informal & double in this that in the
73 first part of the his said replication to the said third
plea of defendant the said plaintiff considers said con-
74 -tract or agreement so mentioned in said defendants third
plea as being in force & effect & denies that the skill work
& other services by him in his declaration alleged to
have been done for plaintiff were done under & by virtue
of said agreement mentioned in said third plea, & in the
last part of his said replication to said third plea of
defendant said plaintiff alleges said agreement or
contract so mentioned in said third plea not to have
74 been in force, but to have been annulled or cancelled
and also for that the said replication to the said third
plea of said defendant is in other respects uncertain
informal insufficient &c.

And the said defendant as to the said replica-
-tion of the said plaintiff to the said fourth plea of the
72 said defendant saith that the said plaintiff ought not
by reason of anything in that replication alleged to
have or maintain his aforesaid action thereof against
him because he saith that the said Contract mentioned
75 in the said fourth plea of said defendant and alleged
therein to be in full force was never cancelled and
annulled in accordance with a stipulation therein
contained prior to the performance of the services care
skill diligence & journeyings by the plaintiff in his decla-

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-ration alleged to have been by him done & performed for the defendant & about his business as is by plaintiff in his replication to said fourth plea of defendant alleged to have been done, And of this the said defendant puts himself upon the Country.

Defendant by
+ Shumway & Waite &
Baker, Meech & Peck his Attys.

And afterwards, to wit, On the seventeenth day of October A.D 1855 the said plaintiff John E. Cone filed his Surrejoinder to the foregoing rejoinder, which is in the words and figures as follows, to wit.

State of Illinois
County of Cook } ss. In Cook County Court of Common Pleas September Term A.D. 1855.

John E. Cone
vs
Adamson B. Newkirk.

The said plaintiff in his own proper person comes and says that as to the special demurrer of said defendant to the replication of said plaintiff to the third plea of said defendant, that the said replication (anything specified in said demurrer to the contrary thereof notwithstanding) and the matters therein set forth in form as aforesaid are sufficient in law for

the said plaintiff to have and maintain his aforesaid action thereof against the said defendant.

And the said plaintiff as to the rejoinder of said defendant to the replication of said plaintiff to the fourth plea of said defendant and which the said defendant hath prayed may be inquired of by the Country, doth the like.

John E. Cone, plaintiff

And afterwards, to wit, on the twenty seventh day of October in the year aforesaid, said day being one of the days of the September Term in the year aforesaid, the following among other proceedings were had in said Court and entered of record, to wit.

John E. Cone
vs
Adamson B. Newkirk
} Aff^t

This day come the said parties by their said Attorneys, and the Court after argument heard on said defendants demurrer to plaintiffs replication to defendants pleas herein, being now fully advised in the premises sustains said demurrer, And leave is given said plaintiff to reply double to defendants pleas.

And afterwards, to wit, on the twenty ninth day of October in the year aforesaid the said Adamson B.

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Newkirk defendant by his Attorneys aforesaid, filed his rejoinder to the plaintiffs amended replication, which is as follows, to wit.

State of Illinois }
Cook County } ss. Cook County Court of Common Pleas
Sept Term A.D. 1855

Adamson B. Newkirk
vs
John E. Cone

78 And the said defendant as to the said amended replication of the said plaintiff to the said third plea of the said defendant & which the said plaintiff hath prayed may be inquired of by the Country, doth the like.

Defendant by
Barker, Meech & Peck &
Shumway & Waite his Attorneys

And thereafter, to wit On the fifth day of March in the year of our Lord one thousand eight hundred and fifty six, said day being one of the days of the February term 80 of said Court in the year aforesaid, the following among other proceedings were had in said Court, and entered of record, to wit.

John E. Cone
vs
Adamson B. Newkirk } Aff.

And now [redacted] comes the said

77 plaintiff by J. W. S. Cone his Attorney, and the said defendant by Barker, Meech & Peck his Attorneys, and issue being joined herein, it is ordered that a Jury come, And thereupon comes a jury of good and lawful men, to wit: W. B. Wightman, S. E. Bowen, John Casey, George R. Bills, A. J. Willard, W. N. L. Wilbur, E. Williston, Thomas Mile, William Sawyer, William Coleman, Thomas Barrett and Levi Chipman, who were duly elected, tried and sworn well and truly to try the issue joined as aforesaid, and after hearing a part of the testimony adduced, the further hearing of this cause is postponed until tomorrow morning, to which time the jury are permitted to separate by agreement of parties.

78 And afterwards, to wit, on the Sixth day of March in the year aforesaid, said day being one of the days of the February Term of said Court in the year aforesaid, the following among other proceedings were had in said Court and entered of record, to wit:

John E. Cone

vs Aff

Adamson B. Newkirk

And now again come the said parties by their said Attorneys, and the jury empannelled in this cause also come, and after hearing the testimony adduced On motion of said plaintiff it is Ordered that a Juror be withdrawn from the panne

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herein, and that this cause be continued to next term,
that said plaintiff pay all the costs accrued in this
cause within sixty days from this day, & in default
thereof that this cause be stricken from the docket.

And thereafter to wit on the tenth day of September
in the year aforesaid, the said Adamson B. Newkirk defen-
dant by Wiggins & Waite his Attorneys filed in the Clerks Office
of said Court his amended plea which is in the words and figures
following, to wit:

Cook County Court of Common Pleas
September Term A.D. 1856.

Adamson B. Newkirk
ads
John E. Cone

And the said defendant by
Wiggins & Waite his Attorneys comes & defends the wrong &
injury, when &c. and saith that he did not undertake or
promise in manner and form as the said plaintiff hath
above thereof complained against him, and of this he puts
himself upon the Country &c.

And for further plea in this behalf by leave of
the Court here for this purpose first had and obtained
according to the form of the Statute in such case made
& provided, the said defendant says that the said plaintiff
ought not to have or maintain his aforesaid action
thereof against him because he says that the said plaintiff

before and at the time of the commencement of this
suit, to wit, at Cook County aforesaid, was & still is in-
85 debted to the said defendant in a large sum of money,
to wit, the sum of sixty thousand dollars of lawful
money of the United States for the work & labor, care,
diligence, & attendance of the said defendant as a
84 physician by the said defendant before that time
done & performed & bestowed for the plaintiff & for the
plaintiffs family & at the plaintiffs request & for the work,
labor, care, diligence and attendance of the said defend-
ant by the said defendant before that time done, performed
and bestowed in and about the business of the said
86 plaintiff and for the said plaintiff and at his request,
& for divers materials, medicines & other necessary things
by the said defendant before that time found & provided
& used & applied in & about the said work & labor, & care for
the said plaintiff and at his like request & for divers
goods, wares & merchandise before that time sold &
delivered by the said defendant to the said plaintiff &
84 at his like request & for money by the said defendant
before that time lent & advanced to & paid, laid out &
87 paid & expended for the said plaintiff at his request &
for other money by the said plaintiff before that time
had & received to & for the use of the said defendant
and for other money due & owing from the said plaintiff
to the said defendant for interest upon and for the
forbearance of divers large sums of money due & owing
from the said plaintiff to the said defendant, and by

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the said defendant forbore to the said plaintiff for divers long spaces of time before then elapsed, and for other money due & owing from the said plaintiff to the said defendant, upon an account stated between them
88 which said sums of money so due & owing to the said defendant as aforesaid exceed the damages sustained by the said plaintiff by reason of the said supposed promises & undertakings in the said declaration mentioned and out of which said sums of money so due & owing from the said plaintiff to the said defendant the said defendant is ready & willing & hereby offers to set off & allow to said plaintiff the full amount of the said damages according to the form of the Statute in such case made & provided, & this the said defendant is
89 ready to verify. Wherefore he prays judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against him, and that judgment may be rendered in favor of defendant for the excess of the amount so due & owing to defendant from said plaintiff over & above the damages according to the Statute in such case made & provided.

And for further plea in this behalf the said defendant by like leave of the Court here for this purpose first had & obtained according to the form of the Statute
90 in such case made & provided says that the said plaintiff ought not to have or maintain his aforesaid action thereof against him because he says that on the 20th day of March A.D. 1854 at Chicago in said Cook County,

the said plaintiff and the said defendant made & entered
into a certain agreement with each other in substance as
follows, " Agreement between John E. Cone Attorney
" of the City of Chicago, County of Cook, State of Illinois,
" party of the first part, and A. B. Newkirk, Physician
" of the same place, party of the second part.
" The party of the first part agrees to give the party of
" the second part the full & exclusive benefit of all infor-
" -mation he now has or may hereafter (during the continu-
" -ance of this agreement) acquire of and concerning the
" title to real property in the County of Cook aforesaid,
" and for that purpose will examine the records in the
" Office of said County, and enter in a book to be furnished
" by the said party of the second part minutes or abstracts
" of the title to such tract or tracts of land situated in
" said County to which there are adverse titles and interests
" as in the opinion of the said party of the first part are
" worth entering in said book for the purposes and best
" interest of said party of the second part, and to do
" such other professional business as the said party of
" the second part may require him the said party of the
" first part to do in and about his (the party of the second
" part) own business & not otherwise.
" The party of the second agrees to pay the party of the
" first part the sum of five hundred dollars per annum
" for his services to be rendered as aforesaid in monthly
" payments, to wit, forty one dollars & sixty seven cents in
" each and every month during the continuance of this

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"Agreement, also to pay for all disbursements made by the
87 "party of the first —— in doing the business aforesaid as
"the same shall become necessary from time to time.

3 "It is mutually agreed that either party may cancel
"this agreement by giving the other party thirty days notice
"in writing.

"Witness our hands & seals at Chicago this 20th day
"of March 1854 John C. Cone (Seal)
A.B. Newkirk (Seal)

94 Which said Agreement was by the said plaintiff
reduced to writing, & was afterwards, to wit, on the 20th day
of March A.D. 1854 signed & sealed by both the said
plaintiff & the said defendant, and the said defendant
says that any and all the care labor, skill, diligence,
work, attendance, journeyings by the said plaintiff in
his said declaration alleged to have been done, performed
and bestowed for the said defendant or in and about
the business of the said defendant were done, performed
& bestowed by said plaintiff for said defendant under
95 & by virtue of said Agreement in writing executed & sealed
as aforesaid & whilst it was in full force, & said defendant
avers that the said agreement in writing executed by
the said plaintiff & defendant as aforesaid and under
seal, relates to and embraces all of care, labor, skill,
diligence, work, services, attendance & journeyings by
plaintiff in his declaration in this suit alleged to
have been by him done, performed & bestowed & made,

& defendant avers that said Agreement so executed
under seal as aforesaid was subsisting & in full force
when plaintiff's said suit was commenced and has
96 never been vacated, annulled, set aside, or in any way
terminated, and this the said defendant is ready to verify.
Wherefore he prays judgment if the said plaintiff
ought to have or maintain his aforesaid action thereof
against him &c.

And for further plea in this behalf the said
defendant by like leave of the Court here for this purpose
first had & obtained according to the form of the
Statute in such case made & provided says that the
said plaintiff ought not to have or maintain his
aforesaid action thereof against him, because he says
97 that on the 20th day of March A.D. 1854 at Chicago in
said County of Cook, the said plaintiff & the said
defendant entered into a written agreement executed
& sealed by both said plaintiff & said defendant
which said last mentioned agreement is as follows, to wit

" Agreement between John E. Cone, Attorney of the
"City of Chicago County of Cook, State of Illinois, party
"of the first part and A.B. Newkirk, Physician, of
"the same place of the second part.

" 1st " The party of the first part agrees to give the
"party of the second part, the full and exclusive benefit
98 "of all information he now has or may hereafter (during
"the continuance of this agreement) acquire of and
"concerning the title to real property in the County of

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"Cook aforesaid, and for that purpose will examine
"the records in the Offices of said County, and enter
"in a book to be furnished by the said party of the
"second part, minutes or abstracts of the title to such
"tract or tracts of land situated in said County, to
"which there are adverse titles and interests as in the
"opinion of the said party of the first part are worth
99 "entering in said book for the purposes and best
"interest of the said party of the second part, and to do
"such other professional business as the said party
"of the second part may require him the party of the
"first part to do in and about his (the party of the
"second parts) own business and not otherwise.

"2d" The party of the second part agrees to pay the
"party of the first part the sum of five hundred
"dollars per annum for his services to be rendered as
"as aforesaid, in monthly payments, to wit, forty one
100 "dollars and sixty seven cents in each & every month
"during the continuance of this agreement, also to pay
"for all disbursments made by party of the first part
"in doing the business aforesaid as the same shall become
"necessary from time to time.

"3d" It is mutually agreed that either party may
"cancel this agreement by giving the other party thirty
"days notice in writing.

"Witness our hands and seals at Chicago, this 20th
"day of March A.D. 1854 John E. Cone (Seal)
A.B. Newkirk (Seal)

And said defendant says that any and
all the supposed work, labor, care, diligence, skill,
100 + attendance & journeyings & services in said declaration
alleged to have been done, performed, bestowed & made
by said plaintiff were done, performed, bestowed &
made under & by virtue of said last mentioned contract
& were within & embraced in the terms of said contract
under seal last mentioned & were done & performed
& bestowed while said contract last mentioned was
in full force, & said defendant avers that said last
mentioned contract when plaintiff commenced suit,
was & still is in full force, and said defendant avers
that he has paid said plaintiff upon said last
101 × mentioned contract more than the agreed price
therein named, & that he has advanced, & paid to
plaintiff over & above all expenses which plaintiff
hath incurred in defendants service since the
commencement of said contract the sum of nineteen
hundred & ninety dollars & eighty three cents, &
that at the date of the said last mentioned contract
defendant owed the plaintiff nothing, & defendant
avers that plaintiff hath never performed any service
or labor of any kind for him except under said
Contract last mentioned & that the services performed
102 + under said contract last mentioned are the same
alleged & supposed in plaintiffs said declaration,
And this said defendant is ready to verify, wherefore
he prays judgment if said plaintiff ought to have

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or maintain his aforesaid action thereof against him.

Wiggins & Waite

Defendants Atty's.

Agreement

Between John E. Cone, Attorney of the City of Chicago, County of Cook, State of Illinois, party of the first part and A.B. Newkirk, Physician of the same place of the second part.

1st The party of the first part agrees to give the party of the second part the full and exclusive benefit of all information he now has or may hereafter (during the continuance of this Agreement) acquire of and concerning the title to real property in the County of Cook aforesaid, and for that purpose will examine the records in the Offices of said County, and enter in a book to be furnished by the said party of the second part, Minutes or abstracts of the title to such tract or tracts of land situated in said County, to which there are adverse titles and interests as in the opinion of the said party of the first part are worth entering in said book for the purposes and best interests of the said party of the second part, and to do such other professional business as the said party of the second part may require him the said party of the first part to do for and about his (the party of the second part) own business and not otherwise.

2d The party of the second part agrees to pay the party of the first part the sum of Five hundred dollars

per annum for his services to be rendered as afore-
-said, in monthly payments, to wit, forty one dollars
& sixty seven cents in each and every month during
the continuance of this agreement, also to pay all
disbursments made by party of the first part in
doing the business aforesaid, as the same shall
become necessary from time to time.

3 It is mutually agreed that either party may
cancel this agreement by giving the other party
thirty days notice in writing.

106 Witness our hands and seals at Chicago
this 20th day of March A.D. 1854.

John E. Cone (Seal)
A.B. Newkirk (Seal)

John E. Cone

1854 To A. B. Newkirk Dr

April	17	To	accpt rendered & credited on article	$	148 00
"	23	"	Cash $100.00 & $15.00		115 00
May	1	"	Cash $21.00 $75.00 & $25.00		121 00
"	6	"	Cash		10 00
"	11	"	Cash		5 00
"	17	"	Cash		31 00
"	20	"	Cash		10 00
107 "	23	"	Cash $2.00 & $5.00		7 00
"	25	"	Cash		5 00
"	27	"	Cash		8 00

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June	1st	To	Cash		5 00
"	2	"	Cash		36 00
"	5	"	Cash		10 00
"	10	"	Cash		25 00
"	11	"	Cash		1 00
"	18	"	Cash		2 50
"	19	"	Cash		10 00
"	20	"	Cash		26 00
"	24	"	Cash $10.00 & $5.00		15 00
July	1st	"	Sugar & Fish		17 00
108 "	2	"	Cash $25.00 & 1 doz Chickens $2.25		27 25
"	6	"	Cash		2 25
"	8	"	Cash		13 50
"	12	"	Cash		57 00
"	17	"	Cash		10 00
"	19	"	Cash		5 00
"	22	"	Cash		7 00
"	24	"	Cash		3 00
"	29	"	Cash		16 00
August	12	"	Cash		10 00
	14	"	Cash		9 00
	15	"	Cash		1 00
	17	"	Cash	773.50	5 00
	18	"	Cash		7 00
	28	"	Cash		4 00
109	30	"	Cash p^{r} Thomas		21 00
Sept	4th	"	Cash		4 00
	7	"	Cash		2 00

"	11	20	Cash	10 00
"	18	"	Cash $6.00 & $3.00	9 00
"	19	"	Cash $5.00 & $7.50	12 50
"	23	"	Cash $5.00 & $1.00	6 00
"	31	"	Cash $5.00 & $5.00	10 00
Oct	2	"	Cash	21 00
"	8	"	Cash $3.50 & $10.00	13 50
"	10	"	Cash	5 25
140 "	11	"	Cash & $3.00 & $11.08	14 08
"	12	"	Cash	25 00
"	13	"	Hardware bill of Shad & Sherman	25 25
"	17	"	Cash $5.00 & $2.00	7 00
"	19	"	Cash	1 00
"	21	"	Cash f. Wife	3 00
"	24	"	Bill of Goods of Fitch & Newes	27 04
"	"	"	Cash	5 00
"	29	"	Cash	6 00
Nov.	1st	"	Cash	22 00
"	4	"	Cash	11 00
"	8	"	Cash	1 00
161 "	11	"	Cash $9.00 & $6.00	15 00
"	13	"	Cash	1 00
"	14	"	Cash	2 00
"	18	"	Cash	11 00
"	22	"	Cash	2 00
"	24	"	Cash	5 00
Dec	2	"	Cash	6 00
[12340-28] "	8	"	Cash	6 00

	"	14	20	Cash	10 00
	"	15	"	Cash	12 00
	"	24	"	1 Ton Coal	10 00
	"	29	"	Cash $1134.12	6 00
	Jan	4	"	Carpt of Fitch & Howes $23.00 Cash $2.	25 00
	"	5	"	Cash	6 00
112	"	6	"	Amt paid for House rent	21 00
	"	12	"	Cash $2.00 & $6.00	8 00
	"	15	"	Cash	6 00
	"	16	"	Cash	7 00
	"	20	"	Cash $7.00 $10.00 & $6.00	23 00
	"	26	"	Cash $7.00 & $21.00	28 00
	"	31	"	Boots & Spring $6.00 & Cash $2.00	8 00
	Feb.	1st	"	Cash	7 00
	"	8	"	Cash	2 00
	"	9	"	Cash	7 00
	"	13	"	Cash	21 00
113	"	15	"	Cash $1.00 & 17th Cash $4.00 & $5.00	10 00
	"	20	"	Cash	10 00
	"	21	"	Cash	5 00
	"	26	"	Cash $10.00 & $2.00	12 00
	"	27	"	Cash $2.00 $1.00 & $21.00	24 00
	March	4	"	Cash $18.00 & $6.00	24 00
	"	10	"	Cash	11 00
	"	12	"	Cash $3.00 $5.00 & $7.00	15 00
114	"	18	"	Cash for 1 load of Wood	7 75
	"	21	"	Cash $2.00 & ½ ton Coal $5.00	7 00
	"	24	"	Cash	7 00

"	28	To	½ ton Coal	5	25
"	31	"	Cash $6.00 & $5.50	11	50
April	4	"	Cash $2.00 & 6 do $7.00	9	00
"	10	"	1 Load of Wood $6.00 & Cash $1.00 & $21.00	28	00
"	11	"	Cash $3.00 $4.00 & $4.25	11	25
"	14	"	Cash	7	00
115	"	17	"	Cash	2	00
"	21	"	Cash $6.00 & $3.00	9	00
"	24	"	Cash $4.00 $21.00 & $6.00	31	00
"	26	"	Cash	7	00
"	28	"	Cash	21	00
"	30	"	Cash $15 90.87	13	00
May	2	"	Cash $2.00 & $1.00	3	00
"	4	"	Cash	8	00
"	7	"	Cash	5	00
"	11	"	Cash $8.00 & $10.00	18	00
"	18	"	Cash	10	00
116	"	21	"	Cash $2.50 & $14.00	16	50
"	30	"	Cash	30	00
June	1	"	Cash	4	00
	2	"	Cash of W. Redhead	2	00
	3	"	Cash do	2	00
	5	"	Cash do	10	00
	6	"	Cash do	3	00
	8	"	Cash do	21	00
	13	"	Cash do	6	00
	18	"	Cash do	5	50
	22	"	Cash do	8	00
	23	"	Cash do	2	00

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117	"	28	To Cash for Rent &		21 00
	July	2	" Cash $4.00 & $2.50		6 50
		5	" Cash		8 00
		12	" Wood $4.25 & Cash $8.00		12 25
		20	" Cash		8 00
		24	" Cash		8 00
		28	" Cash		11 00
		30	" Cash		5 00
	August	2	" Cash $8.00 $6.00 & $27.00		41 00
		8	" Bill of Clothing of Tittsworth		52 38
		"	" Cash		5 00
		10	" Cash		10 00
		11	" Cash		10 00
				$	1943.00
			Omission in posting page 281 $37.83		
118			do " 246 10.00		47 83
				$	1990 83

For Services had & received	50 000, 00
" Goods had sold & delivered	50 000, 00
Professional Services	50 000, 00
Work, Labor & Materials	50 000, 00
Money lent & advanced	50 000. 00
Money paid laid out & expended	50 000. 00
due Acct Stated	50 000. 00

And afterwards, to wit on the twelfth day of September in the year of our Lord One thousand eight hundred and fifty six, John E. Cone plaintiff filed in
117 the Clerks Office of said Court his replication to the defendants Amended plea which is in the words and figures as follows, to wit.

In Cook County Court of Common Pleas
of the September Term A.D. 1856

State of Illinois }
County of Cook } ss.

John E. Cone
vs
Adamson B. Newkirk } Actⁿ

R. 1st P. The said plaintiff as to the first amended plea of the defendant whereof he puts himself upon the Country, doth the like.

R. 2 Pl. The said plaintiff as to the second amended plea of the defendant says that he the said
120 plaintiff by reason of any thing by the defendant in that plea alleged ought not to be barred from maintaining his action thereof against him the said defendant, because he says that he was not indebted to the said defendant at the commencement of this suit, nor did he the said plaintiff undertake and promise in manner and form as the defendant hath in his second amended plea alleged against him, and of

And the defendant doth the like &

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59

this he puts himself upon the Country, and said defendant doth the like

121 R. to 3 Pl. The plaintiff as to the third amended plea of the defendant, says that he the said plaintiff by reason of anything by the defendant in that plea alleged, ought not to be barred from maintaining his action thereof against him the said defendant because he says that none of the care, labor, skill, dilligence, work, attendance and journeyings by the said plaintiff done performed and bestowed for the said defendant, and in his the said plaintiffs declaration mentioned were done performed nor bestowed under nor by virtue of the Agreement mentioned in said amended
122 + plea as the said defendant hath above thereof alleged. And of this the said plaintiff puts himself upon the Country. And the said defendant doth the like.

R. to 4 Pl. The plaintiff as to the fourth amended plea of the defendant says that he the said plaintiff by reason of anything by the defendant in that plea alleged ought not to be barred from maintaining his action thereof against him the said defendant, because he says that none of the work, labor, care, diligence, skill, attendance, journeyings and services by the said
123 + plaintiff done, performed and bestowed for the said defendant and in his the said plaintiffs declaration mentioned were done, performed nor bestowed while the contract mentioned in said fourth amended plea was in force, as the said defendant hath above thereof

alleged. And of this the said plaintiff puts himself upon the Country. And the said defendant doth the like.

John E. Cone
in pro. per. plaintiff

And thereafter, to wit, On the twelfth day of September in the year aforesaid the said Adamson B. Newkirk defendant by Wiggins & Waite his Attorneys
124 filed in the Office of the Clerk of said Court his demurrer to said plaintiff's fourth replication, which is as follows, to wit.

Adamson B. Newkirk
at
John E. Cone

And now comes the defendant and says that the plaintiff ought not to have and maintain his said action by any thing in said fourth replication contained, because he says that said fourth replication and the matters and things therein contained in manner & form as pleaded is not sufficient in law and that he the said defendant is not bound by law to answer the same, and this
125 he is ready to verify - wherefore he prays judgment if the said plaintiff ought to have and maintain in said action against him - And he assigns the

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following special causes of demurrer.

1st Said replication is bad for want of certainty.

2nd Said replication is double

3d It does not answer the plea

4th The replication does not deny that the Contract was in full force at the time this action was commenced.

5th It does not state that said Contract has ever been terminated.

6th It does not state how & when said Contract in said plea mentioned was terminated.

Wiggins & Waite.
Defendants Atty's.

And afterwards, to wit, on the thirteenth day of September in the year aforesaid, John E. Cone plaintiff filed in the Office of the Clerk of said Court his joinder in demurrer to fourth replication, as follows, to wit.

John E. Cone
vs
Adamson B. Newkirk

The said plaintiff comes and says, that as to the demurrer of said defendant to the fourth replication of said plaintiff, that the said replication (any thing specified in said demurrer to the contrary notwithstanding) and the matter therein set forth in form as aforesaid is sufficient in law for

127 + said plaintiff to have and maintain his aforesaid action thereof against the said defendant.

Wherefore he prays judgt &c

John E. Cone
in pro. per. Plff.

And afterwards to wit, on the thirteenth day of September in the year aforesaid, John E. Cone plaintiff filed his motion to strike from the files the Amended pleas of said defendant Newkirk, and asks leave of said Court to withdraw from the files his replication to said defendants amended pleas, as follows to wit.

Cook County Court of Common Pleas.
Sept Term 1851

John E. Cone
vs
Adamson B. Newkirk

128 + And now comes the said plaintiff and asks leave of the Court to withdraw from the files the replications filed to the amended pleas of said defendant,

And moves the Court to strike from the files the said amended pleas of said defendant for the following among other reasons, to wit.

1st Said pleas were filed after issue joined in said Cause, and without an order of the Court granting leave to amend, or file amended pleas in said Cause.

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2nd Said pleas are Literal Copies of the Original
129 + pleas, upon all of which issues are joined.
3d Said pleas were not filed within the time required
by law and by the rules of this Honorable Court,
and no time had been asked for or granted in which
to file the same.
4th That the Attorneys of the said defendant
had taken all the papers filed in said cause from
the Office of the Clerk of this Court and kept the
same in their possession until the morning of the
day in which the said Cause was reached in its
order on the docket - and after the day in this
130 + term when pleas should have been filed.
5th That from the foregoing facts stated as
grounds of this Motion it sufficiently appears
that the filing of said "Amended pleas" was for the
express purpose of delaying the trial of said cause.
And for other good and sufficient reasons
in law and fact to entitle the said plaintiff to the
benefit of this his said motion.

Chicago Sept. 13th 1856.

John C. Cone
Plaintiff in pro. per.

And afterwards, to wit, on the fifteenth day of
September in the year aforesaid, filed in said
Court his Amended replication to said defendants
131 + Amended plea, which is as follows, to wit,

Cook County Court of Common Pleas.
of Sept. Term 1856.

John E. Cone
vs
Adamson B. Newkirk

And the said plaintiff by leave of the Court here for this purpose first had and obtained according to the form of the Statute in such case made and provided, says that he the said plaintiff by reason of any thing by the defendant in his fourth amended plea alleged, ought not to be barred from maintaining his action thereof against him the said defendant; because he says, that after the making the Contract mentioned
132 + in said plea, and prior to the doing, performing and bestowing the work, labor, care, diligence, skill, attendances, journeyings and services in the said plaintiffs declaration mentioned, to wit, on or about the first day of April A.D. One thousand eight hundred and fifty four, at the City of Chicago in said County, the said Contract in said plea mentioned was by the mutual consent of the said parties thereto then and there cancelled and annulled. And this the said plaintiff is ready to verify. Wherefore he prays judgment and his damages by him sustained on occasion of the
133 + non-performance of the promises in his said declaration mentioned.

John E. Cone, Plf.

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65

And afterwards, to wit, On the fifteenth day of September in the year aforesaid, said day being one of the days of the September term in the year aforesaid, the following among other proceedings were had in said Court and entered of record, to wit.

John E. Cone
vs
Adamson B. Newkirk } Apt.

This day come the said parties by their Attorneys, and said plaintiff enters his motion herein to strike the amended pleas of said defendant from the files, which motion is over-ruled by the Court — And the Court after hearing the argument of Counsel on said defendants demurrer to said plaintiffs fourth Replication, being now fully advised thereon sustains said demurrer. And leave is thereupon given said plaintiff to file several Replications to defendants fourth amended plea.

134

And afterwards, to wit, on the sixteenth day of September in the year aforesaid, the said Adamson B. Newkirk, defendant, by his Attorneys aforesaid, filed in said Court his demurrer to the plaintiffs Amended replication to the defendants fourth amended plea, which is as follows, to wit.

Adamson B. Newkirk
vs
John C. Cone

135 And now comes the said defendant and saith that the replication of the defendant to the fourth amended plea, and the matters & things therein contained in manner & form as pleaded are not sufficient in law to be answered unto or for the plaintiff to have & maintain his said action against him; and that he the said defendant is not bound by law to answer the same; and this the said defendant is ready to verify: Wherefore by reason of the insufficiency of the said replication in this behalf, the
136 said defendant prays judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against him &c.

And the defendant assigns the following grounds of demurrer.

1st That said replication does not shew how said contract was terminated

2nd That it is bad for want of certainty

3d It does not say in what way the parties consented to its termination whether by writing or by parol

4th Because it does not shew it was terminated by writing

5th That it does not state when said contract was terminated.

For these & other causes he demurs &c.

Wiggins & Waite
Defendants attys.

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67 137

And thereafter, to wit, on the seventeenth day of September in the year aforesaid, the said Adamson B. Newkirk defendant by his attorneys aforesaid, filed in said Court his rejoinder to the plaintiffs Amended replication to defendants fourth plea, which is as follows, to wit,

Adamson B. Newkirk.

ats

John C. Cone

And now comes the defendant and for rejoinder to the plaintiffs amended replication to the defendants fourth plea, says that the plaintiff ought not to maintain his said action by anything in said replication contained, because he says that said Contract was not by mutual consent cancelled and annulled, in manner & form as the plaintiff has in said replication alleged, & of this he puts himself upon the Country & the plaintiff does the like.

Wiggins & Waite
Defendants Attys.

And afterwards, to wit, on the Seventeenth day of September in the year aforesaid, said day being one of the days of the September Term of said Court in the year aforesaid, the following among other proceedings were had in said Court and entered of record, to wit.

John C. Cone
vs
Adamson B. Newkirk } Apt

And now comes the said
139 parties by their Attorneys, and on motion of said
defendant it is ordered that the plaintiffs second
& third Replications to defendants fourth amended
pleas be stricken from the files, And said defend-
-ant withdraws his demurrer to plaintiffs Replications
to defendants fourth amended plea.

And afterwards, to wit, on the third day of
October in the year aforesaid, said day being one of
the days of the September Term of said Court in the year
aforesaid, the following among other procedings were
had in said Court and entered of record, to wit.

John C. Cone
vs
Adamson B. Newkirk } Apt.

And now at this day again come
140 + the said parties by their Attorneys, and issue being
joined herein it is Ordered that a Jury come, and
thereupon come a Jury of good ~~men~~ and lawful
men, to wit.

C. A. Warner, W. H. Pierce, P. A. Barker,
Ira Headstrom, M. M. Gillespie, John Fout, W. S.
Nichols, Wm Fleming, P. G. Mitchell, Hugh Smith

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Peter Dox. & N. McMurray who were duly elected tried and sworn well and truly to try the issue joined as aforesaid, and after hearing a part of the evidence, the further hearing of this cause is postponed until tomorrow morning to which time
141 + the jury are permitted to separate by agreement of said parties.

And afterwards, to wit, on the fourth day of October in the year aforesaid, said day being one of the days of the September Term of said Court aforesaid, the following among other proceedings were had in said Court, and entered of record, to wit.

John E. Cone
vs
Adamson B. Newkirk } Apt

And now again come the parties aforesaid by their said Attorneys, and the jury empannelled in this cause on yesterday also come, And after hearing a part of the evidence adduced by agreement of said parties the further
142 + hearing of this cause is postponed until Monday morning next, to which time the jury are permitted to separate by consent of parties.

And afterwards, to wit, on the sixth day of October in the year aforesaid, said day being

one of the days of the September Term of said Court, the following among other proceedings were had in said Court and entered of record, to wit.

John E. Leone
vs
Adamson B. Newkirk } Aff.

This day again come the said parties by their Attorneys aforesaid, and the jury empannelled in this Cause also come, and after hearing the testimony and a part of the argument of Counsel by agreement of said parties, the further hearing of this cause is post-poned until tomorrow morning.

143

And afterwards, to wit, on the Seventh day of October in the year aforesaid, said day being one of the days of the September Term of said Court, the following among other proceedings were had in said Court, and entered of Record, to wit.

John E. Leone
vs
Adamson B. Newkirk } Aff.

And now at this day again come the parties aforesaid by their said Attorneys, and the jury empannelled in this cause also came, and after hearing the Argument of Counsel and

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71.

instructions of the Court, retire to consider of their verdict, and by agreement of parties it is ordered that when the jury shall have agreed upon a verdict they may reduce the same to writing, sign & seal it and afterwards be permitted to separate, And to meet the Court tomorrow morning.

And afterwards, to wit, on the Eighth day of October in the year aforesaid, said day being one of the days of the September Term of said Court, the following among other proceedings were had in said Court, and entered of record, to wit,

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John E. Cone
vs
Adamson B. Newkirk } a/ assumpsit

And now again come the said parties by their Attorneys, and the jury empannelled in this cause also come into Court and say we the Jury find the issues for the plaintiff, and we assess his damages to the sum of eighteen thousand two hundred and fifty dollars. And thereupon the said defendant by his said Attorneys enters his motion herein for a new trial in this cause.

And afterwards, to wit, On the eighth day of October in the year aforesaid, Adamson B. Newkirk defendant by his Attorneys filed in said Court his motion for a new trial, which is as follows, to wit.

State of Illinois }
Cook County } ss.

Cook County Court of Common Pleas
Sept T. 1856

John E. Cone
vs
Adamson B. Newkirk

A verdict having been returned by the jury in said action in favor of the plaintiff the defendant now moves the said Court for a new trial and here assigns to the Court as reasons and causes in support of said Motion the following, to wit.

1st Because said verdict is contrary to law.

2. Because said verdict is contrary to evidence.

3. Because said verdict is contrary to the instructions of the Court given to the jury before they retired to consider said case.

4. Because said verdict is for excessive damages.

5. Because upon the evidence under the instructions of the Court, the plaintiff was not entitled to recover anything.

Wiggins & Waite
Attys for Defendant.

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And afterwards, to wit, On the first day of November in the year aforesaid, said day being one of the days of the November vacation Term of said Court, the following among other proceedings were had in said Court, and entered of record, to wit

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John E. Cone

vs

Adamson B. Newkirk } Apt.

And now again come the parties aforesaid by their Attorneys aforesaid, and after hearing the Argument of Counsel on said defendants motion for a new trial in this cause the Court being now fully advised in the premises overruled said motion.

Therefore it is considered that the said plaintiff do have and recover of the said defendant his damages of Eighteen thousand two hundred and fifty dollars in form aforesaid by the jury assessed and also his costs and charges by him about his suit in this behalf expended and have execution therefor.

$18.250.

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And thereupon said defendant enters his exceptions herein and prays an appeal to the Supreme Court of this State, which is allowed upon said defendants filing his appeal bond herein with the usual conditions in the sum of Twenty two thousand dollars with security to be approved by the Judge of this Court, said bond to be filed within thirty days from this day, and sixty days time is given said defendant to prepare and file his bill of exceptions herein.

And thereafter, to wit, On the twenty ninth day
150 + of November in the year aforesaid, the said Adamson
B. Newkirk defendant, filed in the office of the Clerk
of said Court his appeal Bond, which is as follows,
to wit.

Know all men by these presents that we
Adamson B. Newkirk principal & Joseph N. Baker
& Charles A. Spring, John H. Wiggins sureties are
held and firmly bound unto John E. Cone in the
penal sum of Twenty two thousand dollars for the
payment of which well and truly to be made, and we
do by these presents jointly and severally bind ourselves,
151 our heirs, executors + and administrators,
Sealed with our seals and dated this eleventh day
of November A.D. 1856.

The condition of the above Obligation is such,
that whereas the said Adamson B. Newkirk has
prayed an appeal which has been allowed to him,
from a certain judgment rendered against him in
favor of said John E. Cone in the Cook County
Court of Common Pleas, within & for the County of
Cook & State of Illinois rendered at the September
Term of said Court for the year of our Lord Eighteen
hundred and fifty six, for the sum of Eighteen
152 + thousand two hundred & fifty dollars damages, togeth
-er with costs of suit, to the Supreme Court within
& for the State of Illinois.

Now if the said Adamson B.

Newkirk shall pay said judgment, costs and interest and damages in case the said judgment shall be affirmed, and shall duly prosecute his said appeal, then this Obligation to be null and void, otherwise to be in full force & virtue in law.

A. B. Newkirk (Seal)
Joseph N. Barker (Seal)
C. A. Spring (Seal)
John N. Wiggins (Seal)

Approved this 29th Novr. 1856.
John M. Wilson Judge &c.

153 And afterwards, to wit, On the twenty fourth day of December in the year aforesaid, the parties filed in the Office of the Clerk of said Court a Stipulation for extending the time of filing bill of exceptions, which is as follows, to wit.

The State of Illinois }
Cook County Ss. }

Cook County, Court of Common Pleas

John E. Cone
vs
Adamson B. Newkirk }

By agreement the time for making & filing the bill of exceptions in this case is extended fifteen days from the first day of January A.D. 1857

the bill of exceptions when made and agreed upon
154 to be filed as of the September Term A.D. 1856.
Dated Dec. 24. 1856.

N. F. Waite Defendants Atty.
J. E. Cone Plff.

And afterwards, to wit, on the twelfth day of January in the year of our Lord one thousand eight hundred and fifty-seven, Adamson B. Newkirk defendant filed in the Office of the Clerk of said Court his bill of exceptions, as follows, to wit.

State of Illinois, }
Cook County, } ss.

Cook County Court of Common Pleas,
Sept Term A.D. 1856.

John E. Cone
vs
Adamson B. Newkirk

Be it remembered that at
155 the day and place within mentioned, before the Hon. John M. Wilson Judge of the said Cook County Court of Common Pleas, comes as well the said Cone by his Attorney Isaac N. Arnold Esqr. as the said Adamson B. Newkirk by his Attorneys Wiggins & Waite and the Jurors of the Jury within mentioned being called came, and being sworn to try the several

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issues within joined.

The plaintiffs Counsel then called as a witness George W. D. Cone who testified as follows, to wit.

"I know the Plaintiff & Defendant, Plaintiff
156 is my brother; he is a lawyer. Was admitted to the practice 9 or 10 years ago in Wisconsin. I know of his doing business for defendant. He began about March 20th 1854. Previous to that time he had been examining the records of Cook County for about 6 months. Know of his examining the title to part of Section 18. 39. 14. It took him about two weeks to make the abstract."

Here the defendants Counsel objected to the introduction of any testimony in relation to any services performed by the plaintiff for the defendant prior to April 1854, because all these services were
157 x covered by the written Contract between the parties under seal mentioned in the pleadings and which plaintiff alleged was mutually cancelled on the first of April 1854, but the Court over-ruled the objection and admitted the testimony to which decision of the Court in over-ruling the objection aforesaid the defendant by his Counsel then and there except.

"My brother furnished the abstract and advised defendant to buy Original title about two weeks after the 20th of March 1854."

Here the defendants

Counsel objected to said testimony for the reason stated as the ground of the first objection which the Court over-ruled, to which ruling the defendant

158 + then and there excepted.

"In April 1854 he made a journey to Danville & after that he went to Wisconsin, after he returned from Wisconsin he exhibited a deed which he delivered to defendant. The suit against Chapron was not brought immediatlly after my brothers return from Wisconsin. It was thought best to make further examination and get deed from other parties before bringing suit. Efforts were made to procure deeds and deed procured"

"There were three deeds procured. After the deeds were obtained, it was six weeks or two months before suit was brought in the case of Newkirk vs Chapron.

159 + The plaintiff here introduced the record in the action Adamson B. Newkirk vs Rozilla Chaperon.

State of Illinois }
County of Cook } ss Cook County Court of Common Pleas.
of June Term A.D. 1854.

Adamson B. Newkirk }
vs } Ejectment
Rosella Chaprow }

Filed 5 June 54

Adamson B. Newkirk (by John E. Cone, his legally authorized Attorney,) Complains of Rosella Chaprow of a plea of Trespass and Ejectment,

[1840-40]

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that said plaintiff heretofore, to wit, On the twen-
-tieth day of May in the year of our Lord Eighteen
hundred and fifty four, at the County of Cook and
State of Illinois aforesaid, was possessed of the
160 + following described piece or parcel of Land in
the County and State aforesaid, being part and
parcel of the West half of the North East quarter of
Section Eighteen, Township thirty nine North, of
Range fourteen East of the third principal Merid-
-ian, Bounded and described as follows, to wit;

Beginning at the North East corner of the
said West half of the North East quarter of Section
eighteen, Township thirty-nine North, of Range four-
-teen East of the third principal Meridian, run-
-ning thence West five chains and three links, from
thence South seventeen chains and twenty eight
links, from thence East five chains and three links,
161 + from thence North seventeen chains and twenty eight
links to the place of beginning, containing eight
Acres and sixty nine hundredths of an Acre.

Which said described premises the said plaintiff
claims in fee simple, and being so possessed thereof,
the said Rosella Chapron afterwards to wit: on
the twenty second day of May in the year of our
Lord eighteen hundred and fifty four in the
County aforesaid entered into the possession of
the said premises, and from thence hitherto ——

unlawfully withholds from the Plaintiff the possession thereof; to the damage of the said plaintiff
162 + of five dollars, and therefore he brings suit.

by John E. Cone
Plaintiffs Attorney 54 Clark St.
Chicago

Mrs Rosella Chapron

Madam

You will please take notice that a Declaration in Ejectment of which the foregoing is a true copy will be filed on the first day of the next Term of the Cook County Court of Common Pleas to be holden at the Court House in the City of Chicago in said County on Monday the fifth day of June next with the Clerk of said Court, and upon filing the same a rule will then be entered
163 + by the said Court requiring you to appear and plead to said declaration within twenty days after the entry of said rule, and that if you neglect to appear and plead to said declaration a Judgment by default will be entered against you and the said plaintiff will recover possession of the said premises in said declaration described.

Dated at Chicago this 23d day of May 1854.

Adamson B. Newkirk
by John E. Cone, Attorney.

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State of Illinois }
County of Cook } ss. John E. Cone being duly sworn deposes and says that he served a declaration and notice of which
164 + the foregoing is a true copy upon the said Rosella Chapron by reading the same to her and explaining the purport thereof and delivering a Copy to her, on the twenty third day of May A.D. 1854.

John E. Cone

Sworn to before me this
27th day of May 1854

J. A. Norsington Justice of the peace

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July 6 54

Adamson B. Newkirk
vs
Rosella Chaprow
} Ejectment

And now comes the said plaintiff by J. E. Cone his Attorney and files herein his declaration and notice in ejectment. And it appearing to the Court that the said defendant has
165 been duly served with a copy of the declaration of said plaintiff against him and notice thereunto attached according to the Statute in such case made and provided, And on motion of said plaintiffs Attorney it is ordered that the said defendant plead to said plaintiffs declaration in twenty days, or in default thereof that Judgment be entered in this Cause for want of a plea.

Aug 18 54

State of Illinois
Cook County
} In Cook County Court of Common Pleas.

Rosella Chaprow
ads
Adamson B. Newkirk
} Ejectment

And the said Rosella Chaprow by George Manierre her Attorney, comes and defends
166 the force and injury, when &c. and says that she is not

guilty of the said supposed trespass and ejectment above laid to her charge, or of any part thereof, in manner and form as the said Adamson B. Newkirk hath above thereof complained against her, and of this the said Rosella Chapron puts herself upon the Country &c.

George Manierre
Atty for Deft.

On the fifth day of October A.D 1854 the following proceedings were had in said Cause and entered of record to wit:

Oct 5. 54

Adamson B. Newkirk
vs
Rosella Chapron
} Ejectment

And now upon this day
167 + comes the said plaintiff by J.E. Cone his Attorney, and the said defendant by George Manierre her attorney also comes and issue being joined herein, it is ordered that a jury come, And thereupon come a jury of good and lawful men, to wit.

A. Bent, Martin Brannan, John McGovern, William Carrigan, Jacob Miller, William Townsend, A.W. Johnson, H. McBride, H.H. Bloss, William Wilson, Edward Davlin & J.P. Knott, who being duly elected, tried and sworn well and truly to try the issue
168 + joined as aforesaid, after hearing the testimony adduced, the hour of adjournment having arrived the further hearing of this cause is postponed until tomorrow morning And by agreement of said parties, the Jury are permitted to seperate.

[12340-42]
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84

Friday Oct 6 52

Adamson B. Newkirk
vs
Rosella Chapron
} Ejectment

And now again come the said parties by their said attorneys and the Jury empannelled in this Cause on yesterday also come, and after hearing the argument of Counsel and instructions of the Court retire to consider of their verdict, And afterwards come into Court and say, we the Jury find the defendant not guilty, as charged in said plaintiffs declaration.

469

Therefore it is considered that the said defendant do have and recover of the said plaintiff her costs and charges by her about her defence in this behalf expended, and have execution therefor.

The Narr in that case was drawn by my brother. The case was tried in October 1854 by Mr Blackwell and my brother for defendant (Newkirk) and Arnold and Judge Manierre for Chaprow. I did not hear argument in Supreme Court. Know of my brother preparing brief - it was printed.

I was in United States Court at trial of Wright vs Allen. Cone was for plaintiff and Arnold and Manierre for defendant. The Argument took about two days. Judge Manierre & Arnold prepared an argument which was printed for a re-hearing in the Supreme Court to which my brother replied. I know my brother started to Mt Vernon - I heard my brother state to Dr Newkirk that he was going to Mt Vernon. The property is located on the South side of Madison Street beyond Bullshead - I do not know on what account, case of Wright vs Allen, was tried. I do not know who caused the suit to be tried - I do not know
170 at whose instance it was commenced. I believe Mr
171 + Wright was principal party in interest. Wright and Newkirk were both present at the trial. I heard frequent conversation between plaintiff & defendant in relation to bankrupt cases or matters. My brother went to Springfield divers times to make examinations in bankrupt cases - I know my brother went to St Louis on Thiebault matters. I think he went to St Louis the 2d time. He then went to Detroit and Ohio.

I know there were other lands - There was considerable

of lands in Country embraced in the examination
172 + we were making – He went to Wisconsin several
times, he tried for 2 or 3 months to effect a purchase
of Wright but did not succeed I could not
say how many times he went to Wisconsen, all these journeys to Wisconsin were
not in relation to Section 18. but to purchase other
lands of Wright similarly situated.

I knew about the Walhula case at the suit of
Adams, defendant employed my brother to defend,
defendant was the landlord of the defendant in that
suit, My brother tried that case – It was decided
173 + in favor of the defendant.

My brother employed his whole time for about
17 months from the 20 of March 1854 to the middle
of August 1855 – This does not include the examin-
-ation of records. My brother commenced exam-
-ining records April 1853 & continued till he was
employed by the Dr. during the 17 months he devoted
himself exclusively to the Dr business. I was in
the Office of my brother from May 1854 to Aug
1855

X E. From the 20th of March 54 onward my
brother had his Office on Clark Street with Dr Newkirk,
174 + previously his Office was in the building adjoining
Newkirks. He went into Dr Newkirks Office soon
after he commenced business for the Dr. – I did not
go into my brothers Office at the same time. My
business was making abstracts, for 6 months previous

had been looking up land titles; having my Office with my brother, Employed for myself - My brother not employed for any one. His business was hunting up defective titles. Dont know what his object was in hunting up defective titles. He was also abstracting, Mostly hunting up defective titles - Dont know his object, but it was either to buy them, or sell his information;

175

He had made the discovery of the defective title in the West half of the North-East quarter of said Section 18; dont know whether he had offered it for sale to anyone, or had offered to buy it - Dont know what he had had to do with it. Dont know of his offering to sell it. He had offered to prosecute a suit for it and divide, before he went in with Newkirk. He said a certain person had offered to furnish him with money to do so, but they could not agree - My brother had also discovered the Wright matter before he had made any arrangement with Newkirk. Dont know of his offering to sell the Wright matter. My brother believed he had discovered the defective title; but did not discover the real defect till afterwards. My brother had other professional business before coming into the Dr Office - He had none afterwards unless he might have assisted me. He might have had some other business. I know of persons requesting him to do business but he declined on account of his engagement

176

with Dr Newkirk, had not many offers.

177- I commenced partnership with my brother in Feby 1855. Had nothing to do with the busines on hand; There were written Articles of Copartnership. they were in Court on the last trial, have not seen them since. We held ourselves out to do a general law busines. I did all the busines that was done. My brother gave himself up to the old busines, which was Dr Newkirks. He did not do any general busines till August 1855.

I had an interest in all the busines except old cases. In these my brother alone was interested.

178- Nearly all my brothers visits to Wisconsin related to the Wright which failed. My brother claims all benefit of the suit in the United States Court for the Wright property. I know from his statements that he claims all the benefit of that suit to the exclusion of the Dr. My brothers services entirely confined to land titles. He did no other busines that I know of for the Dr. Barker & Meech did the Dr other busines.

Here plaintiff offered to read the following deed. (The defendant objected to the reading of the deed in evidence, which objection was overruled,

179 to which ruling of the Court the defendant then & there excepted, & deed read.

Know all men by these presents, That we Ebenezer Jackson and Hannah D Jackson his

wife of Middletown in the County of Middlesex and State of Connecticut for divers good causes and con-sideration thereunto moving, especially for One dollar recei^d to our full satisfaction of A.B. Newkirk of Chicago in the County ——— and State of Illinois, have remised, released, and forever quit-claimed, and do by these presents for ourselves and our heirs &c justly and abso-lutely remise, release and forever quit claim unto the said A. B. Newkirk and to his heirs and assigns forever, All such right and title as we the said Ebenezer Jackson and Hannah L. Jackson his wife, and each of us have or ought to have in or to

180 + The West

half (½) of Section eighteen (18) Town thirty nine (39) Range fourteen (14) East of the third (3^d) principal Meridian, in the County of Cook and State of Illinois including all dower and right of dower in and to the premises

To have and to hold the premises and appurte-nances thereof unto him the said A. B. Newkirk and his heirs and assigns, to the only use and behoof of the said A. B. Newkirk and his heirs and assigns forever; so that neither we the said Ebenezer Jackson and Hannah L. Jackson his wife nor either of us,

181 + nor our heirs or any other person or persons for us, or in our names and behalf, and every of them, shall by these presents be excluded & forever barred.

(1250-45)

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In witness whereof we have hereunto set our hands and seals this 18th day of May in the year of our Lord One thousand eight hundred and fifty four

Signed E. Jackson (Seal)
H. S. Jackson (Seal)

The instrument acknowledged before Jonathan Barnes, Notary Public, May 18th 1854, Recorded May 25th 1854

State of Connecticut Middlesex County, ss.
Middletown,

On this 18th day of May A.D. 1854, per-
182 -sonally appeared Ebenezer Jackson and Hannah
S. Jackson his wife, the signers and sealers of the
foregoing instrument, and acknowledged the same
to be their free act and deed before me, Jonathan
Barnes, a Notary Public in and for the said State,
duly commissioned and sworn, dwelling in said
Middletown, and authorized by law to take the
acknowledgment of deeds, And the said Hannah
S. Jackson, wife of the said Ebenezer Jackson, on an
examination separate and apart from her said hus-
-band, having had the contents of the said deed fully
made known to her by me, acknowledged that she
183 executed the said deed and relinquished her dower
in and to the lands and tenements therein mentioned
voluntarily, freely and without any compulsion of her said

husband. And I further certify that said Ebenezer Jackson and Hannah L. Jackson his wife are known to me to be the real persons whose names are subscribed to the said deed, and that they severally acknowledged that they executed the same as aforesaid.

In witness whereof I have hereunto set my hand and Notarial Seal of Office this 18th day of May A.D. 1854.

Seal

Jonathan Barnes
Notary Public

184 4

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David S. Lee.

I Know the West half of the North East quarter of Section 18. T39 Range 14 East. & lies a little over ¼ of a mile from Bulls Head.

I claim to own property in the West half of the North East quarter of said Section 18. On an average said 80 Acres is worth twenty five hundred dollars per Acre.

The portion of it called the Chaperon lot is worth about Five thousand dollars per Acre to day.

I state this from general knowledge – I Knew of the litigation in the Case of Newkirk vs Chaperon.

185 I have never been present at any of said trials, was present at a trial in Judge Drummonds (U.S. Court.)

Cross Examined

Do you claim or set up a good and valid title to any portion of said 80 acre tract.

Objected to by plaintiff's Atty & objection sustained, to which ruling of the Court the defendant then & there excepted.

Have you any paper title to any portion of said tract if so produce them:

Objected to by plaintiff & objection sustained, to which ruling of the Court the defendant then & there excepted.

Have you been in possession of any portion
186 + of this land for more than seven years prior to the date of the deed from Jackson and paid all the taxes thereon during that time:

Objected to by plaintiff and objection sustained, to which ruling of the Court the defendant then and there excepted.

Charles A. Fowler.

Heard of case in the Supreme Court of Newkirk or Chaperon. Had a conversation with the plaintiff in Dr Newkirks presence - shortly after seeing a Notice in the news paper that the judgment below had been reversed - after seeing the Notice went to Cone's Office, saw Cone -
187 + asked him if it was true he had succeeded - he said he had, had beaten them. I had a conversation with Cone about trial at Ottawa,

$1234-47

and Counsel employed - he spoke of the decision below, & his certainty of ultimate success. He then introduced me to Dr Newkirk, I said to Cone, you will make One hundred thousand dollars out of this, No he said, not as much as that, but the Dr thinks I have made for him two hundred thousand dollars - no further conversation - I think Dr Newkirk made some remark about about winning the case. There was something said to others in the Office.

188 * The conversation was not addressed by me to Dr Newkirk. Heard a conversation at another time at D. C. Beattie Esqr Office between Owen & Dr Newkirk, it was about the same time, they were talking when I came into the Office, so far as I heard it related to plaintiffs attainments as a real estate lawyer - Dr said he doubted if there was another lawyer in the City who could have conducted the case any more skilfully - that Cone would get a fine reputation out of it, that Cone would make something very handsome, and would

189 get a good business. That he would be liberally paid, and his reputation would give him business, no sum mentioned. During one of the conversations something was said about the labor Cone had bestowed on the case.

I think he said Cone had labored about the

case a year and a half. Have stated all the
conversation so far as I recollect.

While Cone had his Office with Dr Newkirk,
in the winter of 1853-54 or Spring of 1854,
applied to Cone to make an abstract, he replied
he could not, as he was busy for Dr Newkirk.

Cross examined

190 Wanted the abstract made at once,
Mr Cone remarked he was engaged for Dr Newkirk.

I went to see Mr Cone in relation to an abstract
of the property of the Michigan Southern Telegraph
Co. - Cone said he had made an arrangement
with Dr Newkirk that would make them both
rich with Dr Newkirk - Office small and do not
know whether Dr Newkirk heard what was said -
It was in the Spring or winter of 1854, it was in thawing
weather - Could not tell when it was within a month -
In the last Conversation introduced to Dr Newkirk - think
191 + I was introduced when I went for the abstract - Dr Newkirk
was reading a book - Conversation addressed entirely to
Cone - It was in the Spring or Winter of 1854, freezing
weather nights and thawing days -

Re-examined.

Think I was introduced to Dr after the Conversation
was on Clark Street

[12340-18]

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George Manierre.

I was Counsel in the case of Newkirk vs Chaperon- for defence Associated with Mr Arnold.

The plaintiff then asked the witness this question "Go on & give the history of the case" question objected to by defendants Atty's & objection over-ruled, and excepted to.

192 + The first I knew of the case was employed by D. S. Lee for Mr Chaperon- It was in the Summer of 1854- the suit was then pending in this Court- Mr Lee was very much surprized- I proceeded to examine title could find no clue to the defect. Mr Cone at the September Term of this Court- told me he was Attorney for the plaintiff in the suit and had the management of it- said to him it must be tried at once- he said he wished it put off because of negociations in Wisconsin for other lands of the same

193 + kind. I said it must be tried at once- Asked him what the defect was. He refused to tell unless I would agree not to inform my client- this I refused to do- On the trial Mr Blackwell and Mr Cone appeared for Dr Newkirk- it was a jury trial & was decided for defendant- In about two months another suit was commenced in the United States Circuit Court- it was the case of Wright vs Allen- title of the land the same as the other case- Lee was the party as he had sold to Allen- The suit was only for a small piece

194 + but effected. One hundred and forty acres Mr Lee owned.

The trial occupied some three days - Cone appeared alone, he argued it upwards of a day - The case was never decided by Judge Drummond - It was at the April Term A.D. 1855 of the United States Court -

In May Mr Cone put himself in communication with me to open the suit in this Court - he moved for a new trial - framed a bill of exceptions - It had been the subject of repeated interims - In the winter I prepared a bill of exceptions which I submitted to Mr Cone - he kept it some time and returned it with some material alterations - I was not satisfied with his changes or he with mine - Finally in May we agreed upon a bill of exceptions - The one shown to me is what we agreed upon - It is in Cone's hand writing with amendments by me - On it the case went to the Supreme Court - That Court Set the last of June (1855)

I went to Ottawa with my associate Mr Arnold in July - I found Mr Cone there - He had been there sometime - I found him at the Hotel where I stopped, on good terms with bar & Court - Said he had found new points - I told him I hoped he would find more - The case was No 130 on the docket - The case was called. Mr Cone made two points - 1st the Legislature had no constitutional power to extend the lines of the Municipal Court beyond the Corporate limits of the City of Chicago: He argued this point elaborately. The Supreme Court declined to hear me on it. The other point was the one tried here. It required an examination into

[1234-49]

97

197 + the construction of Statutes. Cone was the only Counsel,
with the exception that Judge Morris had been tele-
-graphed for- he arrived after the argument partly
concluded- He set by & was one of Dr Newkirks Counsel,
Cone remained at Ottawa till after the decision
of the case- I immediately returned to Chicago-
After I heard of the decision in the case I made up
my mind to abandon the profession- During con-
-versation with Cone- I required from him a knowl-
-edge of how the defect in the title was discovered-
A notice in ejectment was first given to Mrs Chaperon
198 + in June or July- this was abandoned- subsequently
another notice was given. At the time the first
suit was commenced the defect on which the title
turned- was not discovered- The plaintiffs counsel
then asked the following question- "Assuming that
Cone discovered the defect in the title, and com-
-municated it to Dr Newkirk, who under Cone's ad-
-vice, bought up the title, and on the title thus acqui-
-red suit was brought, and taking into consideration the
value of the property- and the services rendered by Cone,
what would be a fair value of his services? Objected to
199 + by defendant, Objection over-ruled- To which ruling
of the Court the defendant then and there excepted.

Answer. This question is double, Mr Cone furnishing
the brain and Dr Newkirk the money- if considered
a partnership, one furnishing money, the other brain-
I do not see why they should not divide- Regarding

it as a mere professional undertaking - I should
think a lawyer who had taken hold of this suit
and carried it on as a mere professional service,
as they ordinarily arise - would think $4000. a
liberal and adequate compensation. - In this I
include all services to as late as August or Septem-
200 -ber 1855, being a period of a year & a half - Mr
Cone seemed to give all his time to this suit, -
probably four thousand dollars a moderate
compensation & a more eminent Counsel would
charge more - I regard this not to be a mere
professional service but a mixture of busines &
profession. - On the former trial I said one
fifth of the property recovered - but I think I
was mistaken - since on reflection taking it as a
mere business operation I should think an equal
division of the property would be right. - You must
not understand me as saying that this — profession
201 + service or that it was not. I do not undertake to
decide the character of the service - Should think $4000
a generous fee for this suit.

The value of the Eighty Acres at the time of the
decision in my opinion was not less than $2000 an
acre - perhaps it might be worth less, perhaps more,
never on the ground since this controversy - do not
know who is now in possession of the land.

100

Nicholas P. Iglehart.

Am a real estate dealer, know the eighty acre lot of land in question, it was worth in the Summer of A.D. 1855 $2000 an
202 + acre - Dr Newkirk claimed in conversation with me to be in possession, and has offered me land in that 80 for sale.

Ezekiel R. Hooper.

I am a lawyer, have been in practice in the City of Chicago about two years - have had some knowledge of the suit of Newkirk vs Chaperow. Never heard of the case till after the decision in the Com Pleas - Done came to my Office and stated the grounds of Judge Wilson's decision, said an appeal had or would be taken to the Supreme Court - I was told I should be
206 employed in the case. + Dr Newkirk came to see me in reference to the case three or four times. I took it for granted I was to be employed as his counsel - Abandoned the idea afterwards - I never was employed by Dr Newkirk, never charged him any thing. He never paid me any thing.
Dr Newkirk stated (defendants counsel objected to witness giving evidence of what Dr said, on the ground that his communications were confidential, the relation of attorney and client existing. - Objection overruled, to which ruling of the Court the defendant then and

there excepted.

Do not recollect the particulars of the
204 + conversation- No point spoken of except the validity
of the execution ipsued by the Municipal Court.
Only point relied on, The Dr deemed it the turning
point of the Case- The point was that there had
existed in Chicago as Dr stated it, a municipal
Court, in which a judgment had been obtained,-
this Court the Legislature had abolished- but
allowed the Clerk of the Court a certain number
of days to make up records; before the expiration
of the time, the execution had ipsued,- under
which the property had been sold

The point was the validity of the execution which
it was contended was ipsued without authority.

205 + I have heard none of the testimony except G. W.
J. Cone & D. S. Lee;

I have some idea of the labor in the case, as
derived from Dr Newkirk, the value of the services
would depend very much upon circumstances,

If a client had brought the discovery to me,
and I had performed the services which I under-
stand Mr Cone has performed, I should think
$10.000 a proper charge. If I had made the dis-
covery and transferred it to Dr Newkirk I should
206 + think one third of the property recovered a fair
contingent fee.

[1240-53]

101

x Examined.

It is hard in this City to tell what is an ordinary fee for professional services, there is no uniformity of fees. Do not know what other Attornies charge. My opinion is only based upon what I should charge - I have never made such charges as I have stated or had such a case, Know the questions involved in this case - If Dr Newkirk had brought to me his case with all the outstanding titles bought up I should have charged him $2000.

207 + In preparing and bringing it before the Jury in this case occupying as it did One day my charge would been $1000. - This would have included all preparations - For preparing the bill of exceptions fifty dollars - For arguing the case before the Supreme Court & preparing briefs $1000. if it had been argued the same day of my arrival, & $100 for every day I had to remain waiting there. Consider a lawyers time when he has to leave his office to go away from home as worth $100 per day -

I argued a case before Judge J. M. Wilson involving $100,000, I charged $200. making the

208 + discovery of the defects in the title is not professional services

Re-examined

The only standard is what I consider the value of my services, There are a set of men

who hunt up defects in titles - that properly belongs to land jobbers, not professional men.

Re x Examined.

A contingent fee depends entirely upon agreement. I spoke of $10.000 fees for all the labor in the case - My estimate of $10.000 is based upon the fact that a lawyers full years services is worth $10.000 that is devoting all his time to one case

209

Reuben Taylor.

Reside near the 80 acre lot spoken of - Value of the Mrs Chaperon property in August '55 $500. an acre Value of the whole 80 acres three thousand dollars never worth less than $25.000-

Archibald Mc Allister.

Am a lawyer, have been in practice 12 years - Heard the statement of G. W. J. Cone and Judge Maniere in this case. The case like no other, peculiar in all its features, peculiar in being an enterprise, - I should say if Dr Newkirk acquired a good title of 8 acres worth five thousand

210

dollars - with chances as to residue putting it at two thousand dollars per acre, he ought to have for the discovery, putting it through and succeeding Twenty thousand dollars.

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Cross Examined.

Have always been in the habit of sharing the fortunes and misfortunes of my clients, a certain fee, to take this suit and conduct it- with abstract submitted to you aside from all other considerations would be not to exceed $5000, but worth that sum- A lawyer works according to the responsibility he feels- A fair fee for trying a case before a jury including the preparing the case
210 + would be $1000.- To prepare the bill of exceptions, carrying the case — the Supreme Court, taking the usual chances there of getting the case on, worth $3000.- Would take a case involving $5000 for $250. If not successful fees would be much less. Never could separate myself from the misfortunes of my clients- Base my opinion upon the ordinary labor, care and anxiety bestowed upon the case, and that Mr Cone had devoted an entire year to the case- Never had such a case myself, had a case involving $7000. for which I cannot charge over $500. if successful.

212 + E. S. Williams.

Am a lawyer, been in practice 10 years,- Some knowledge of this case, was in Court when the case was argued in this Court, and also in the United States Circuit Court. Have not heard all of the testimony on the part of Mr Cone,

Only part of Mr Manierre's. In my opinion the value of profisional services depends upon the ultimate result and the benefit to the Client.

Plaintiff asked the following question

From what you know of the litigation and the value of the property effected, what would be a fair value of the services rendered,

213 × Objected to by defendant, objection overruled to which ruling of the Court the defendant then and there excepted.

Answer. Should think from $20.000 to $25.000 a moderate compensation.

× Examined.

Fair compensation for this case for services in it alone would be in this Court, and in Supreme Court from $8.000. to $10.000 a very good fee.

I should charge my clients one fourth of the profits, services of that character are generally very high.

It is not once in an age that a man has just

214 + such a case as this- A man pretty often has cases involving greater amount, and more intricate cases- When the title is just in the condition this was in, a lawyer would consider it in a speculation light- Charges depend upon the nature of my clients cases- Would charge because my client was making a speculation out of my services- Would think a fair compensation in looking up the law & trying the case below would be $1500. or $2000.

[12340-53]

preparing brief and arguing case in Ottawa $2500.
to $3000. – There is no reason why Dr Newkirk
215 + should be charged more than any other man –
My opinion is based somewhat upon my charges
& other circumstances – Never had such a case or
made such charges in my life – My opinion is
based upon facts as I have heard them detailed
by witnesses & the amount involved & what I know
of the case. – The hypothesis of $20 to 25000 is
based upon & depends upon the finding & selling to
Dr Newkirk of the title – I should appropriate the
greater part of the $20.000 or $2500 to the finding
of the defect in the title & informing Dr Newkirk.

216 + Here G. W. D. Cone was recalled.
Know of my brother finding
the situation of the title of some lots in the School
Section Addition to Chicago, by examining the
records – several of them – think they were Lots 5. 7. 14.
15. 16. 17. 18 or 19 & 20 in Block 64. – Knew that an
examination was made & my brother advised the
Dr to buy the title – Dr Newkirk took possession
afterwards – Adam vs Walhuller brought an action
of ejectment in reference to the property – Its value
at that time was $20.000 – according to the Dr esti-
217 – mate + I considered it worth $17.000 – He paid $500
a lot according to my present impression – might be
more – might be less – Dr Newkirk took possession

by running fence around - Suit brought to settle title - Discovery of the five lots first made by me in Aug. 1854, might have been before - I made an abstract and communicated it to my brother -

James N. Rees.

Knows Lots in Block 64, think in Feby 1855, Six lots worth $10,000 - 5 lots proportionably the same sum.

E. S. Williams, Recalled

The plaintiff asks this question,

218 + Assuming that Cone discovers the defect to six lots worth $10,000 - and tries the title to one - which settles the title to the six, - how much in your opinion is Mr Cone's professional services worth?

Question objected & objection overruled & put to witness, to which ruling of the Court the defendant then and there excepted.

Answer. They ought to go into partnership, one third to Cone, two thirds to Dr Newkirk, That is not a regular professional case - The fees in case of Adams vs Wahlheim should be $2500 -

× Ex.

In a case where a party possessed a good

219 + title - called upon a lawyer to prosecute it, where

E 12340-54

the property involved was worth $2000- $250- a good fee. A fee of 1/3 includes the finding and is the case put by plaintiffs Atty. when Cone found the difficulty- told it to Dr Newkirk who by his advice purchased the title and brought suit.

Here plaintiff Counsel said I think we will rest, & defendants Counsel said are you through, to which plaintiffs Counsel replied you may go on & put in proof of the Contract or we will proceed - The Counsel for the defendant then
220 + moved to exclude all the testimony from the Jury, which motion was overruled by the Court,- The defendant by his Counsel then and there excepted to said ruling of the Court.

The plaintiff then recalled G. W. I. Cone to prove that a few days after the said written Contract was executed the plaintiff gave a written notice to the defendant of the termination of said written Contract according to the stipulation therein contained, to which evidence the defendant objected on the ground of variance between the proof offered and the replication, which objection the Court
221 + overruled and admitted the testimony, to which ruling of the Court the defendant then and there excepted.

The defendant then moved the Court to confine

the plaintiffs evidence to the amended pleas and replications which motion the Court overruled, to which ruling of the Court the defendant then and there excepted.

The defendant then moved the Court to strike from the files of the Court the Original pleas and replications in said action, which motion the Court overruled, to which ruling of the Court the defendant then and there excepted.

The defendant then moved the Court to compel
222 + the plaintiff to elect to try said action upon one of said sets of pleadings and which of them, which motion the Court over ruled, to which ruling of the Court the defendant then and there excepted.

And thereupon said G. W. I. Cone testified as follows to wit.

A few days after the Contract was made between my brother & Dr Newkirk, my brother set down and wrote a notice to Dr Newkirk terminating the contract, & enclosed it in a letter
223 + to Dr Newkirk: This was on Saturday, Monday second day after the notice was sent, Dr Newkirk sent for me to his office- I was at the Recorders Office- I went to Dr Newkirks office, he went on to say that he & my brother had entered into a Contract- read the Contract to me- Dr Newkirk then took out of his pocket my brothers notice & read it

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109

to me - Made a proposition to me to carry to my
brother - Dr Newkirk said that although he had
made a contract with my brother he did not intend
to be bound by it - that he intended any how
224 + to pay that sum - and if they succeeded fair
compensation - To say to my brother if he would go
on with our busines - he would furnish money to
a reasonable amount for his expenses & if he succ-
-eded my brother should have what was right -
I communicated this proposition to my brother -
this was about 10 O'clock we conversed about it. -
That day or the next my brother went to see Dr
Newkirk, After seeing him went directly into the
Office of Dr Newkirk - I had another conversa-
-tion with Dr Newkirk - four or five weeks afterwards -
225 + Dr Newkirk said he had agreed to furnish my
brother what money he needed, & had already fur-
-nished him with $700 - or $800. had agreed to get
him a law library - that he had either agreed
or intended to furnish my brother money to pay
off his indebtedness - and had told him if they were
successful in the matter they had in litigation
they would not either of them have to practice their
professions any more - would be independent -
After my brother gave this notice - never heard
226 + Dr Newkirk say my brother was working under
a salary - Heard him say a few days after my

brother had flared up & would not go on - that he then told him if he would go on & finish - he would advance him money as he needed it - pay off his indebtedness - had furnished him with $700 already - That there was no arrangement between him & my brother by which he was to pay him any sum - but that he would do what was right - In August 1855 went to see Dr Newkirk for my brother - Some one was present either Seymour
227 + or William, one or both of them were in the Dr Office - Took a power of Attorney out of my pocket and handed it to the Dr he smiled and said "he & my brother could settle - He said he had agreed with my brother in the first place to pay him $500 a year - and Cone (my brother) should go into the examination of land titles - My brother to have 1/3 of his time to business - My brother to examine records only - find defective titles, advise him in reference to buying them up - I think he
228 + said my brother was to have 1/3 or 2/3 of his time - cannot say which - That my brother went in under this agreement of $500 a year - flared up & would not go on - I think before we commenced conversation the persons in the Office went out - Dr Newkirk said he had told my brother that he would furnish him with whatever money was necessary - would get him a law library and pay

[12346-56]

off my brothers indebtedness - that no price was
agreed upon - if they were unsuccessful in that
229 + suit when they got through he the Dr was to lose
what money he had paid my brother - my brother
to lose his time & not to have any more - If they
succeeded my brother to deduct or pay to Dr
Newkirk from what he was to have - what Dr
Newkirk had paid him including cost of law
library if Cone took it - Am not positive that
the Dr was to have what he had advanced to pay
off Cone's debts - I told him my brother said he
was to have a share if they succeeded - he said
that was not so - that he was only to pay my
230 + brother what was right.

Cross examined.

By two contracts I mean the written
one & the new one - Not present when the written
one was executed - Knew when it was executed -
I think before he went into Dr Newkirks Office -
a few days before could not tell exactly - from
6 to ten days - before he moved his things into the
Dr Office - Was in the Dr employ making abstracts
before he moved into the office - Whatever he did
before he went into the Office was done under the
231 + written Contract - Do not know whether he had or
had not done any work for the Dr which he was not

said for - Could not say whether he had moved
his Office into the Dr when notice — given -
I think it was before he moved into the Dr Office -
My brother read the notice to me at Mr Cranes
where we boarded - He had before that time
made several examinations for the Dr of records -
He may have gone on several journeys - Might
232 + have gone to Danville before then - Dr Newkirk
read notice to me - My brother stopped work-
-ing when the Notice was given - Refused to go
on or do any more work immediatly upon giving
the notice. Notice put into the Post Office on
Saturday - I did not see it put into the Office -
I refused to put it into the office - I saw Dr
Newkirk on Monday following the Saturday
after notice put into the Office. A day or two
afterwards my brother said Dr Newkirk and
he had made a new arrangement. I think
he did not go into the Office of Dr Newkirk
233 + till after the new contract - In May I think
4 or 5 weeks after the 2nd Contract, Dr said he
had advanced money - In one conversation after
the first contract Dr said he had advanced
$700 or $800. said he had advanced money from
time to time - They had moved I think into
the Metropolitan building - Notice to terminate
contract according to its terms - Written I think

on Saturday not on Sunday- Fix the time
from recollection & from conversation afterward
with my brother- It was in the evening by
candle light- He wished me to mail the letter-
234. I refused to go- He in a pet went himself-
Not mailed on Sunday. My brother did noth-
-ing between the cancelling of the old & the
making of the new contract. All the services
were rendered under the new contract. It was
I think never reduced to writing.

New agreement was that my brother was to
go on & perform services for the Dr examine
titles for defects, advise the Dr what to buy,
prosecute suits for the recovery of the property
the Dr purchased- and he was to advise the
235 Dr to purchase the better title so that he could
recover,- during the time the Dr to pay him money
enough to support his family and buy a law
library- pay off his debts- if they did not
succeed Dr to lose what he had advanced,
and Cone to lose his services- if they succeeded
Dr Newkirk to pay Cone what was fair-
In case they succeeded my brother to have
a fair compensation, otherwise nothing.

The notice I heard read, Could not state
the words- Can state the substance-

Dr Newkirk you are hereby notified, that

236 + the contract of such a date is hereby cancel-
-led according to the provisions therein contained.

Re examined.

Library was purchased - at the time
my brother quit the Office the Dr took the Library -
He was to advise the Dr to buy the better title of course.

Here the defendant moved the Court to exclude
all the testimony of G. W. I. Cone tending to show a ter-
-mination of said written Contract as testified to by him
because it did not support the issue made by the
pleadings, which motion the Court over-ruled, to which
237 + ruling of the Court the defendant then and there excepted.
The plaintiff then offered the following Notice in
evidence.

Chicago Aug 15. 1856.

J. E. Cone Esqr

Please take notice that I hereby revoke
all power of Attorney or Authority to act for me
heretofore given & that I shall not recognize any
acts of yours as my attorney after the date.

Yours &c. "A. B. Newkirk"

The plaintiff here rested his case and thereupon
the defendant moved the Court to exclude all the
testimony introduced from the jury, on the ground
that the evidence shew that all the services rendered
238 + by the plaintiff for the defendant for which this
12340-58

suit was brought were rendered and performed under and by virtue of a Contract which was illegal and void, which motion the Court over-ruled, to which ruling of the Court the defendant then and there excepted.

Defence.

The following agreement was then read.

Agreement between John C. Cone Attorney, of the City of Chicago, County of Cook, State of Illinois, party of the first part, and A. B. Newkirk Physician of the same place of the second part.

1st The party of the first part agrees to give the party
239 + of the second part the full and exclusive benefit of all information he now has or may have after (during the continuance of this Agreement,) acquire of and concerning the title to real property in the County of Cook aforesaid, and for that purpose will examine the records in the Offices of said County, and enter in a book to be furnished by the said party of the second part, minutes or abstracts of the title to such tract or tracts of land situated in said County, to which there are
240 + adverse titles and interests as in the opinion of the said party of the first part are worth entering in said Book for the purposes and best interest of said party of the second part, and to do such other professional business as the said party of the second part may require him the said party of the first part to do in

and about his (the party of the second part) own business and not otherwise.

2° The party of the second part agrees to pay the party of the first part the sum of Five hundred dollars per Annum for his services to be rendered as aforesaid, in monthly payments, to wit, forty one dollars and sixty seven cents in each and every month during the continuance of this Agreement: Also to pay for all disbursements made by party of first part in doing the business aforesaid, as the same shall become necessary from time to time.

241 +

3° It is mutually agreed that either party may cancel this Agreement by giving the other party thirty days notice in writing.

Witness our hands and seals at Chicago the 20th day of March 1854.

John E. Cone (Seal)
A. B. Newkirk (Seal)

Received Chicago Apl. 17th 1854 of A B Newkirk on the within Article of Agreement One hundred and forty eight dollars ($148.)

242 +

John E. Cone

Recd Chicago Sept 29th 1854 of A B Newkirk on the within Contract Three hundred and fifty two dollars.

John E. Cone

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P. O'Donnell. direct.

Live in Chicago, know the parties to the suit, I have known Cone 3 years this Spring, I have had frequent conversations with Cone in winter or Spring of 1855. Cone stated to me that he was doing better, that he had been in low circumstances; I have been $3000 worse than nothing; Cone said he
243 + had been and was now $3000 worse than nothing; he said he was working for a man at $500- and had some of his time to himself; he said he would make a handsome little salary, make a living, was doing pretty well, it was in Spring of 1855.

Cross Ex.

Pliff and I have been intimate, have conversed frequently, I did not know that Pliff was in the employ of Newkirk, I found Pliff in office with Newkirk, I was in Office of Cone & Newkirk on Clark St. I think. I do not know when case of Newkirk
244 + vs Chaperon was tried. Pliff lived in house with me 185 the house is on Corner of Pine & Legg sts. I moved out of that house to No 4 Superior St.- I think it was in 54. - I do not know where Pliff. resided when conversation took place- I was then living in house I now use for shop. I do not. I put up the little house in 54. I was in small house at conversation- the conversation above stated, I cannot state whether

it was in 54 or 55. I do not know whether you was
245 + boarding or keeping house - you were living on West
side. I do not know whether it was at time you were
coming from Cemetery, that was last Spring, at that
time he said he felt better that you was under a
small salary & other business would make a hand-
some salary, you said you had part of your time
to yourself & would do well, You did not state that
you had any other business of importance, that by this
I could in time make a great Splurge, that this
would enable you to get a start, this was last Spring
246 + I think it was in March 1855, I am not sure that
the conversation spoken of in direct examination
was at the time you were coming from Cemetery or not.
This testimony was read by agreement being his testimony on
the former trial.

M. O'Donnell called on the stand.

Since my former
testimony I have been able to fix the time when the
conversation mentioned in my former testimony
took place. The conversation took place about April
12th 1855. The reason why I know it, was that on the
18th day of March 1854 I shipped as a seaman &
247 + was not at home till the fall of 1854 & I fix the time
from the date of an entry I made while at work for
Dr Reynolds which was after I returned home, I
was to work on his job when I had the conversation
with plaintiff.

[123410-60]

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A. B. Seymour.

I reside in the city of Chicago, Abstract records, know the parties, Have known Cone 6 or 7 years, Was present & heard a conversation between the plaintiff & the defendant in August 1855, at Dr Newkirks office, plaintiff had his office at the same place, Cone went into Dr
248 + Newkirks Office in March or April 1854, Dr Newkirks Office removed to Metropolitan buildings, Conversation about the middle of August A.D. 1855 Myself, John & G. W. I. Cone & Dr Newkirk present, When I first went there only Dr & G. W. I. Cone, plaintiff came in afterwards, Asked defendant when they should settle their business, Dr Newkirk said he was ready any time but as John Cone was not in a very good humor he preferred to wait till he John got in a better humor; said
249 + each party would select a man and they select another - and they settle for them - Mr Cone said he preferred to settle his own business. Dr replied as Cone was not in good humor - would not settle till Cone got over his pet - then would be ready to settle at any time - Mr John Cone said he did not care for what he had done - but what he should do hereafter - before he did any more. Dr said he had agreed with the plaintiff Cone for $500 a year and had Articles with him to that effect,

250 + and during the time had paid him $2043. Cone
said that was so, some other things said about
there having been a written contract that Cone
was to work for $500 a year.- Saw Cone fre-
-quently during the Spring & Summer of 1854.
I asked Cone when he first went into the Dr Office,
what he was doing - he said he was getting about
enough to live on - was getting $500 a year from
Dr Newkirk.- Frequently met Cone, had repeated
conversations with him - It was in the Summer
251 + of 1854 when he told me in reference to his salary.
The conversation between John Cone and Dr
Newkirk in Aug 1855, and the day after I heard
one between G. W. D. Cone & Dr Newkirk - when
I went into the Office, Redhead and Dr Newkirk
& G. W. D. Cone present, think before Conversation
Redhead went out, (plaintiff counsel objected to
witness repeating any thing that was said by Cone,
the same being admissions made for the sake of
settlement) objection over-ruled; This Conversation
252 + was about the same as the day previous. G. W. D.
Cone asked the Dr if he had ever agreed to give
John Cone over $500 a year - The Dr said he
had not; he said if John Cone would give him
a list of his debts he would pay them; that he
would when they got through do what he thought
fair - that he always expected to do so though

[1230-61]

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he had never told John so - He said that a day
or two ago he told John if he would go on & close
252 + up the busineſs right he would give him over
and above all he had paid him, what he thought
right & reasonable; that he had told John to
to bring him a list of his indebtedneſs but he
had never done it. This conversation between
G. W. I. Cone and Dr Newkirk, conversation not
very long - I might have got up & gone out before
Conversation ended - think not. This conversation
about the middle of August 1855. - G. W. I. Cone
said John often got into a pet, and was several
days getting over it - he Dr had better wait till
254 + John got over his pet. Could not swear positive
that I was present when the conversation commenced.

Cross Examined

Both G. W. I. Cone & Dr Newkirk
present when I first went into the Office - I think
it was in the afternoon, could not be positive,
think between 3 & 4 in the afternoon - I could
not swear to all that was said in that Conversation
- other things might have been said - In my
examination in chief stated all that occurred
to me, something said about a Contract, did not
255 + think of it when I first gave the Conversation.
At the first conversation something was said about

a Contract for some land to be got from Wright, they talked of making a contract, that Cone hunt up defective titles & make abstracts, Dr was to buy them and was to litigate them and have one third; that they were ready to buy, but had not yet bought any- Dr said he had acted up to his part and Cone had no reason to complain on that score, there might have been more stated. A memorandum of the conversation was made by Dr Newkirk,
256 + written by him at my suggestion- a few days after the conversation Dr Newkirk wished me to recollect the conversation- I gave the memorandum to the Dr this morning, I kept it till this case was tried before when I handed it to the Dr. Read it before the former trial did not read it again till the present term- read it once or twice during the present term, read it to day- Dr Newkirk has been present when I read it, only once however.- Have never studied it only read it over- Think the paper
257 + was handed to me before the present trial, Dr Newkirk said to Cone when he asked him to settle, you are in a pet, you select one man & I another & let them select another- Cone said to the Dr that he had agreed to sign a new Contract, but had never done it- Dr said that Cone knew the reason why he did not sign it, that it did not exclude the Wright matter.— The contract was to give Cone

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one third of all nett profits on matters acquired after date of Wright contract – The memorandum
258 was made at my request, Dr Newkirk said he wished me to recollect the conversation, I read it
✓ over after it was made and it was true.

Re-Examined.

The Dr said the contract did not exclude the Wright matter; that if Cone would draw up a contract he would sign it, it would not include the old matter or the Wright contract, only included new matter

The memorandum was made a day or two after the conversation, I read it over after it was made and it stated all the conversation I then recollected – This was not the original paper, the
259 first copy did not contain the conversations exactly as I recollected them – this was written from the other.

Joseph N. Barker.

Am an Atty at law in this City – Know when the suit of Newkirk vs Chaperon was tried below & when Argued in the Supreme Court. Present at a conversation in Dr Newkirks Office after the trial of this suit in the common Pleas. Conversation commenced between the Dr.

& myself, Cone was present & heard it, I asked
Dr Newkirk who was to take Blackwells place in
the case, the Dr did not answer, Cone did, Cone
261½ + said he did not see any use of the Dr employing
other Counsel when he had me employed by the
year, and that he Cone understood the case better
than any one else. - This was in the summer of 1854.
I spoke of his Cones salary & said it was very small
for an Attorney to take, he said he had no business
when he made the arrangement - Could get some
other business perhaps & by the means work into
business. The salary was mentioned at $500. a year -
Frequently met Cone - He remained in Dr Newkirks
261 + office till in August 1855. Dr Newkirk married
my sister, I did all of Dr Newkirks law business
except his land law suits. Never heard of any
other contract between Cone & the Dr, or any trouble
between them till after August 1855, Mr Blackwell
& Cone tried the case in the Com Pleas for Dr Newkirk
Mr Cone suggested Blackwell and Beckwith & Dr
Newkirk went to employ him.

Cross examined.

They were talking of taking the case
to the Supreme Court when this conversation occurred
they were then engaged in preparing the papers for
13348-63
262 + the Supreme Court. - It was sometime after the case
125

was tried in the Com Pleas. The conversation occurred two or three months after the trial in the Com Pleas: Had been in the Dr employ as his lawyer ever since he resided in Chicago- Am now doing his busines- Am not Attorney in this case- Mr Cone made closing Argument in the Com Pleas- Mr Blackwell stated he had made no preparation- He had been employed sometime before, been electioneering- Am very sure the con-
-versation at Dr Newkirks Office, Cannot say which
263 + office- Recollect it was in the Office for the reason that I did not talk elsewhere about it- Knew nothing of Cones employment except from Cone himself- Knew the amount involved, Dr claimed to be interested in the whole 80 Acre tract.

Re Examined.

I do not know who negociated for the Jackson deed- Gurdon S. Hubbard delivered it to Dr Newkirk- think it was the Jackson deed, not the Layton deed- It was the deed used on the trial.

Re Examined.

264 + I saw G. S. Hubbard deliver the deed to Dr Newkirk- have no personal knowledg of the previous negociations.

George Manierre.

Was counsel for defendant in the case of Newkirk vs Chaperon; this Chaperon has been in possession 3 or 4 years

Hon B. S. Morris.

Am an Attorney at law, have been 20 years in practice in this City. - Know parties - Knew of the suit Newkirk vs Chaperon - I was frequently consulted by Dr Newkirk & Cone during the progress of the suit below. - Was employed by Dr Newkirk to assist Cone in the Supreme Court, Cone was to telegraph me when the suit would
265 come on & I would go down, did not render him any assistance in making brief, assisted in drawing the bill of exceptions, made such suggestions and alterations in it as would fairly present the questions - afterwards Cone copied it over. Attended the Supreme Court, when I reached Ottawa Mr Cone had made the opening speech, Manierre replied, Dr Newkirk notified me to go down, had received dispatch from Cone - Cone commenced his speech the day we got there, finished
266 that night, next Morning Manierre commenced his & closed after dinner. Arnold was not there but left a brief, I took notes of Manierre's speech to reply - Dr Newkirk came to me & said if I

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thought there was no danger, he wished I would let Cone reply, as he desired to.- I said I had no objections if he did not say all that was necessary I would ask leave of the Court to add a few additional words, which I did.

The Supreme Court did not wish to hear from me & I made a reply in writing & filed it, and Manierre replied to it. Cone & Newkirk had
267 + both a conversation with me about the Jackson deed, they both seemed to be in fault, I directed them to write to his Cousin & find to whom the land was patented.- I gave Cone a letter to VanHorn to assist him in finding out- they wrote & found patent to have issued to Jackson, I had done business for Jackson & directed them to go to Gordon E. Hubbard & get deed through him - Am familiar with the case.- The suggestion was from me that they should get Jackson deed. For an Atty fees who tried the case below,
268 + when no contract was made I would think $500 a very liberal fee & $500 in the Supreme Court. There was but one question involved, Many Attys would make the bill of exceptions in the Case in a Couple of hours, half a day at most, A[illegible]signment of errors, preparing the brief and arguing the case not laborious- I am now & always have been an Atty in that case, was in

in it from the beginning. Both Cone & the
Dr consulted with me frequently from the first
in regard to the case. Mr Cone read the brief
269 + once or twice to me as he prepared it, I told
him there was no doubt about the case - should
think it was 300 miles to St. Louis & 240 or 250 to
Springfield, should think $20. a day a good
compensation for going to St. Louis & Springfield
including travelling expenses. — Never made ab-
-stracts - An Atty. would charge from $10 to $20
a day for making abstracts. — Dont know any
thing about suit of Adams vs Walhallu - from
statement of services rendered should think $100.
a good fee for trying the case.

270 + Defendant put in evidence the following
record, and prayed that the said suit therein
mentioned was now pending in the Cook County
Court of Com. Pleas

United States of America }
State of Illinois } ss.
County of Cook }

Cook Co. Court of Common Pleas
of the Term of June in the
year Eighteen hundred and fifty
six ——

Filed June 2nd 56

[18340-LS]

Daniel S. Lee plaintiff in this suit by Arnold, Sawed & Day his Attorneys, complains of Adamson B. Newkirk Defendant in this suit in a plea of Trespass and Ejectment, for that whereas the said
271 + plaintiff heretofore to-wit on the twenty seventh day of May in the year of our Lord Eighteen hundred and fifty six was possessed of a certain parcel or lot of land situate in the County of Cook in said State, to wit:

Eighteen and one eighth (18⅛) Acres, bounded and described as follows; Beginning at the North West corner of the West one half (W½) North East one quarter (NE¼) Section Eighteen (18) Township thirty-nine (39) North, Range fourteen (14) and running thence South one hundred and Sixty (160) rods, to the South
272 + West corner thereof, thence East fourteen (14) rods and seven (7) links, thence North fifty (50) rods, thence East six (6) rods, thence North One hundred & ten (110) rods, thence West twenty (20) rods and four (4) links to the place of beginning, in which the said plaintiff claims an estate in fee simple.

And the said plaintiff being so possessed thereof the said defendant afterwards, to wit, on the twenty seventh day of May last aforesaid, entered into the premises aforesaid, and ejected the said Plaintiff therefrom, and kept out and unlawfully
273 + withholds from the said Plaintiff the possession of said premises to the damage of the said Plaintiff

of Five hundred dollars, and therefore he brings suit.

Arnold Sarnd & Say
Plaintiffs Attorneys.

Notice.

To Adamson B. Newkirk the above named defendant:
Sir

You will please take notice that on the 2d day of June A.D. 1856 which will be the first day of the term of June of the Cook County Court of Common Pleas for the year Eighteen hundred and fifty six at the Court Room of said Court in said County a
274 + declaration in Ejectment of which the foregoing declaration is a Copy, will be filed with the Clerk of said Court, and that upon the filing the same, a rule will be entered, requiring you to appear and plead to the same within twenty days after the entry of said rule, and in default of such appearance and plea a judgment by default will be entered against you, and the said plaintiff will recover possession of the said premises.

Chicago May 30th A.D. 1856.

Arnold, Sarnd & Say,
Plaintiffs Attorneys

United States of America,
State of Illinois,
275 + County of Cook. } ss.
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Cook Co Court of Common Pleas,
June Term, A.D. 1856

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Daniel S. See
vs
Adamson B. Newkirk } Ejectment.

E. M. Chamberlain on oath makes affidavit that he served a copy of the above declaration, and of the above affidavit and notice accompanying the same in the above entitled cause, by delivering a copy of the same to Adamson B. Newkirk on the thirtieth day of May A.D. 1854.

E. M. Chamberlain

Subscribed and sworn this
2d day of June 1854, before me.

Walter Kimball Clerk
of Cook County Ct. of Com Pleas.

2d June 54

Daniel S. See
vs
Adamson B. Newkirk } Ejectment

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And now upon this day comes the said plaintiff by Arnold Sarnet Day his Attorneys and files herein his declaration and notice in Ejectment, and it appearing to the Court that the said defendant has been duly served with a copy of said plaintiffs declaration herein against him and notice thereto attached in accordance

with the Statute in such case made and provided, And on motion of said plaintiffs Attorneys it is ordered that the said defendant plead to said plaintiffs declaration in this cause in twenty days, or in default thereof that judgment be entered against him for want of a plea.

277 ✕

Plea

June 20 56

State of Illinois }
County of Cook } Cook County Court of Common Pleas
of the June Term 1856

Daniel S. Lee
vs
Adamson B. Newkirk }

And the said Adamson B. Newkirk by his Attorneys, Baker, Hyatt & Peck comes and defends the force and injury, when &c and says that he is not guilty of the said supposed trespass and ejectment above laid to his charge, or any part thereof in manner and form as the said Daniel S. Lee hath above thereof complained against him, and of this the said Adamson B. Newkirk puts himself upon the country.

278 ✕ Baker, Hyatt & Peck, Deft's Attorneys

& Plaintiff doth the like &c.

Arnold Larned & Day.

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Defendant put in evidence the order of the Supreme Court remanding the case of Newkirk vs Chaperon for trial

At a Supreme Court, began and held at Ottawas on Monday the 11th day of June in the year of our Lord One thousand eight hundred and fifty five within and for the third Grand Division of the State of Illinois.

Present the Honorable Walter B. Scates, Chief Justice
" " " John D. Caton Associate Justice
" " " O. C. Skinner " "

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Saturday August 4. 1855

Adamson B. Newkirk vs Rosella Chaperon } Appealed from Cook County Court of Common Pleas.

On this day came again the said parties, and the Court having diligently examined and inspected as well the record and proceedings aforesaid as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, are of opinion that in the Record and proceedings aforesaid and in the rendition of the Judgment aforesaid there

{1234-68}

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is manifest error.

Therefore it is considered by the
Court that for that error and others in the Record
280 and proceedings aforesaid the judgment of
Cook County Court of Common Pleas in this
behalf rendered be reversed, annulled, set aside
and wholly for nothing esteemed, And that
this Cause be remanded to the Cook County Court
of Common Pleas for such other and further
proceedings as to Law and Justice shall apper-
-tain. And it is further considered by the
Court that the said Appellant recover of and
from the said Appellee his costs by him in this
behalf expended and that he have execution
therefor.

I Lorenzo Leland Clerk of the
Supreme Court of the State of Illinois
381 do hereby certify that the foregoing is a Copy of
the Opinion and of the final order of the said
Supreme Court in the above entitled Cause, of
Record in my Office.

In testimony whereof I have set my hand
and affixed the Seal of the said Supreme
Court, at Ottawa this 11th day of September
in the year of our Lord one thousand
eight hundred and fifty six.

L. S.

(signed) L. Leland
Clerk of Supreme Court.
By J. B. Rice Deputy.

Note. Copy of opinion not given this is merely copy of order gave or final order.

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Chicago Aug 15th 1855.

" J. E. Cone Esqr

" Sir, Please take notice that I
" hereby revoke all power of Attorney or Authority
" to act for me heretofore given, And that I
" shall not recognize any acts of yours as my
" Attorney after this date.

Yours &c

(Signed) A. B. Newkirk

James W. Chickering.

Am an Atty at Law, have been in practice from 8 to 20 years, practised in this City for 8 years.- In an action of ejectment for property worth from $3000 to $5000 an Acre, to commence the suit, prosecute in the Court below, carry it to the Supreme Court, procure a reversal of the Judgment as an Attorney, worth $1000.; $1000 a low fee $1500 a reasonable one $2000 a very liberal one. If the labor was divided it would make some difference- Have heard none of the testimony

383

[12348-69]

137

in the case - My estimate is based on ordinary ejectment suits - Have not considered the finding - considered it in the view of trying the suit.

Robert Hervey.

Am an Atty. Have been in practice 19 years - Knew what questions were
284 involved in the suit of Newkirk vs Chaperon & how much property involved - think there was 8 acres involved in that suit worth $5000 an acre - should think making brief & trying case before Supreme Court worth $500 to $750.

N. C. Kelly.

Have been in the practice of law five years in this City. Was Attorney for the plaintiff in the case of Walheiter ads Adams. The case took an hour to try, worth from $50. to $75. fee to try the case. Adams only claimed title to the Lot for which suit was brought - I
285 brought the Action expecting to succeed - Wolheiter's title was tax title of 1850.

William Redhead.

Reside with Dr Newkirk, know plaintiff, they occupied Office together,

Cone went into Dr Office about the 17th or 18th
day of March 1854 = Remember his paying
Cone some money about the Middle of April
1854 - remember that the Dr had at the time
a medical book in his hands & footed up the
amount of money he had loaned to Cone before
he came into the Office - Medical bill & money
loaned Amounted to about $100.; Dr Newkirk
286 ↓ asked Cone if he should deduct it from the
first six months Salary; Cone thought he
could pay best out of the 2nd Six months Salary,
this was all I recollect, - Dr Newkirk very fre-
-quently paid Cone money - was in the Office
most every day. - Heard Cone say on Sunday
12th of August 1855 that he had had of Dr
Newkirk in the neighborhood of $2000, cannot
state whether more or less than $2000.

X Examined.

Know it was the 16th or 18th
March 1854 when Cone moved into Dr Newkirks Office -
287 + Know it from recollection, my memory has not
been refreshed by Dr Newkirk - Held a conversa-
-tion with Dr Newkirk last week about this case -
never had any conversation about it prior to
last week. - Cone said Dr had the money char-
-ged to him - could not say positive whether

140

he said it was charged to him "he had had it"
I paid him a good deal of money, have
paid him $5. to $25. 00 at a time

Benjamin F. Crow.

Cone went into my family
to board in 1854 or 1855 – He said he was
working for Dr Newkirk at $500 a year.
288 × It was I think in the year 1854, think
March or April 1854, conversation with him
when he told me his salary – it was in the
summer or fall – we had frequent conversations
together – perhaps it might have been in the
Spring –

× Examined.

Could not say when he
left off boarding at my house, could tell by
my books if they were here

This was all the testimony in the case

The Court then gave the following instruc-
-tions for the plaintiff (to the giving of each
& every of such instructions the defendant then
& there excepted.)

289 +

The contract of March 20th 1854 might be terminated by a new Contract between parties or by mutual consent, or by giving notice as provided in the Contract, & if the jury believe from the evidence that said Contract was terminated & annulled, in either of these ways that the services were not rendered under such Contract, then so far as such contract is concerned plaintiff is entitled to recover.

Given

But if jury believe from the evidence that the defect in said title was discovered after said contract was terminated then the matter may be considered by jury in determining amount of Plaintiffs damages.

Given

294 +

2d

If the jury find that the Plaintiff is entitled to recover, in determining the amount of the recovery, the jury may consider the extent of the services, their value, the amount of property involved, & all the circumstances of the case as proved by the evidence.

Given

But if the jury believe from the evidence the defect on which the suit of Newkirk vs Chapron turned was discovered after said Contract was terminated by plaintiff and the defendant had the benefit of such discovery then jury are to consider that in determining their verdict.

Given

141 291 +

(1240-71)

142

If the jury believe from the evidence that the work & labor for which the action is brought was not done under the contract set up in defendants pleas, but was done under an agreement or promise on part of defendant to pay the plaintiff what was right or reasonable without regard to any participation in the profits arising from services performed then the plaintiff is entitled to recover such sum as from all the evidence in the case the jury believe the plaintiffs services were reasonably worth.

Given

The Court then gave the following instructions for the defence.

292 1st If the jury believe from the evidence that the Contract set forth in the defendants third and fourth plea was in force at the time the services sued for in this case were performed, the Contract is broad enough to cover all professional services rendered by the Plaintiff for defendant and the plaintiff cannot recover in this case.

Given

2d If the jury find from the evidence that the contract between the plaintiff and the defendant of the 20th March 1854 was in force at the time the

293 plaintiff rendered the services sued for in this case, the plaintiff cannot recover in this action.

Given

3d If the Jury find that the contract of March 20th 1854 was cancelled at any time, then they must exclude from their consideration all services rendered by the plaintiff for the defendant up to the time such contract was terminated.

Given

4th If the jury find from the testimony that the contract between plaintiff & defendant dated March 20. 1854 was at any time terminated, & further find that the plaintiff had discovered the defects in the title to the West half of the N.E. ¼ of Sec 18. Town 37

294 N. Range 14 East of 3d P.M. before the termination of said Contract they will not allow plaintiff in their verdict,

Given

any compensation whatever for that discovery & giving such information to the said defendant.

5th That all information and discoveries of defective title which the plaintiff possessed at the time of the making of the contract in writing between the plaintiff and defendant, & all information and discovery of defective titles which the plaintiff made during the continuance of the Contract the property of the defendant and it is immaterial whether such knowledge was communicated to the defendant before or after the termination of the contract in writing as the plaintiff cannot recover for the same in this action.

Granted

295 +

6th If the jury find from the testimony that the contract between plaintiff & defendant dated March 20th 1854 was at any time terminated & further find that the plaintiff had discovered & disclosed to the defendant the defects in the title to the West half of the North East quarter of Section Eighteen Township thirty nine North, Range fourteen East of 3d P.M. before the said termination of said Contract, then plaintiff cannot recover in this form of action for any such discovery & information

Granted

290 + 7th If the jury find that the services rendered in this case, or any part of them was rendered under an Agreement by which the plaintiff was to be paid by defendant

such sums of money as he should need for his support from time to time to a reasonable amount and should be furnished by defendant with a law library, and plaintiff was to devote his time to defendants busines in hunting up for defendant defective titles in which neither plaintiff or defendant had any interest, and buy up the same and bring actions for the recovery of the same, and in the end that if the defendant succeeded that the plaintiff was to have a fair compensation for his services, or what was right- and if defendant did not succeed then defendant was to lose the money advanced to the plaintiff & the plaintiff to lose his services, Such Agreement is contrary to law, and the plaintiff cannot recover in this case for such portion of the value of the services rendered as were to be paid for when the defendant succeeded.

.297

Given

8th

The Jury are to decide this question upon the facts proved, under the law given them by the Court- and are not to consider any facts or statements made by the plaintiff in his opening Argument which has not been proven by evidence offered on the trial of the case.

298

Given

7th

The Jury will not allow the plaintiff any compensation for any services rendered in relation to the Wright suit in the United States Court or for any services in going to Wisconsin to procure titles from Wright of that property.

Given

12348-73

145

146

16th If the Jury find that the Contract of March 20th 1854 was cancelled as testified to by G. W. S. Cone, then they must deduct from such sum as the plaintiff is entitled to recover, the amount which the defendant has paid the plaintiff, if the payment was made on account of services proved in this suit.

299 + Given

11th That the receipts or indorsements of the plaintiff dated April 17th 1854 for One hundred and forty eight dollars, And September 29th 1854 for three hundred and fifty two dollars made by the plaintiff on the back of the within Contract of March 20th 1854 and not explained by the plaintiff are binding and conclusive upon the plaintiff as to the times when such moneys were received, the amounts recei. and the purpose for which such sums of money were received.

300 Given

The Court then and there refused although thereto requested by the defendant to give the following instructions for the defence, to the refusal to give each, every and all of them the defendant then and there excepted.

8 That the contract of the 20th of March A.D 1854 could only be terminated by giving notice in writing, and it then continued in force for thirty days after such notice was given.

Refused

301 +

9th If the jury believe from the evidence that the plaintiff & defendant agreed with each other, by which agreement between said plaintiff & said defendant said plaintiff was to examine the Records of deeds in Cook County or elsewhere for defective titles in which neither plaintiff or defendant were interested & the plaintiff was to assist the defendant in buying up the better or paramount title & then prosecuting actions on the titles so acquired, such agreement is contrary to the Statutes of the State of Illinois & the plaintiff cannot recover for any services which he may have rendered for defendant under said agreement.

Refused

302 -

10th If the jury believe that the services for which this suit is brought or any part of them were rendered by plaintiff under the agreement testified to by G. W. S. Cone, such agreement is void in law & the plaintiff cannot recover for any services which he may have rendered under said agreement.

Refused

11th If the jury believe from the evidence in this case, that the agreement between the plaintiff and defendant was that the plaintiff was to have some profit or share out of the property in dispute, contingent upon the ultimate recovery of the defendant, and that the plaintiff in consideration of such

Refused

303

[12340-74]

147

148

agreement rendered the services for which this action is brought, such agreement is void in law & this plaintiff cannot recover for such service.

13. That if the Jury believe from the evidence that the suit of Newkirk vs Chapron after the reversal of the judgment in the Supreme Court, was remanded to this Court for further proceedings such order shows that the case was not finally disposed of, or the question of title settled.

Refused

304 +

15. That the endorsement of April 17, 1854 and September 29th 1854 made by the plaintiff upon the written Contract of March 20, 1854 are competent evidence for the jury to consider and has a tendency to show that such written contract was in force at the time said endorsements were made.

Refused

The jury having returned a verdict for the plaintiff, the defendant then and there moved the Court for a new trial, but the Court over-ruled the motion, to which ruling of the Court the defen-
-dant then and there excepted to each and all which
305 + rulings and decisions of the Court during the trial of said Cone, the defendant in due time excepted and asked the Court to have his exceptions signed and sealed and made a part of the record in said action, which is done.

Jany 10th 1857.

John M. Wilson (Seal)

State of Illinois }
Cook County } SS.

I Walter Kimball Clerk of the Cook County Court of Common Pleas within & for the County & State aforesaid do Hereby Certify that the foregoing is a full true and correct Transcript of all the Original Papers filed in the Case of John C. Cone Plaintiff

[12340-75]

149

tiff and Adamson B Hankins defend
ant, And also true Copies of all Orders
& Proceedings had in said Cause and
entered of Record in said Court, as
the same appears on the Original files
& Records now in my office.

In Testimony whereof I have
hereunto set my hand & the
Seal of said Court this 15th
day of April A.D 1857

Walter Kimball
Clerk

In Supreme Court
Adams ad Blenkirk
vs
John E Cone

Appeal from
Oak Co.

And now comes the plaintiff in
Error says that there is manifest
Error in the records and proceedings
aforesaid in this;

I. The Court below admitted improper evidence during the trial of the cause on the part of the ~~plaintiff~~ defendant in
II Error

II. The Court below admitted improper evidence, on the part of the plaintiff in Error;

III. The Court erred in their decisions of law during the progress of the trial.

IV. The Court erred in giving each one of the instructions asked for by the plaintiff below

V The Court erred in refusing each of the instructions asked for by the defendant below.

VI. The Court erred in refusing to grant the new trial asked for by the defendant

VII. The Court below decided against evidence.

$12340-76

8. The Court erred in rejecting each of the depositions made by the plaintiff in error to the evidence of the defendant in error below.

9. The Court below erred in permitting the introduction of any testimony of deeds executed by the defendant in error to the plaintiff in error prior to April 1850.

10. The Court in admitting in evidence the deeds from Thomas Jackson to plaintiff in error.

11. The Court below erred in sustaining the defendants in error objections to each of the plaintiffs in error questions to R. S. Lee, & in not permitting each of said questions to be put to the witness and to answer.

[12340-77]

12. The said Coke sworn in perpetuam
the following question to be asked
& answered for the defendant Sir Thos
George Mannin - So ord and giv the
history of the case."

13. The said sd in pursuance of the
the following question to be asked
and answered by Geo. Mannin
a witness for the defendant in
Chan. "Assuming that Coke disarmed
the defendt in the title and
commenced it to Mackrell who
under Coke's order, brought up the
title, & on the title thus acquired
had been brought and taking into
consideration the value of the
property and the terms & undertaking
by Coke that would be a fair
value & his services".

[12340-78]

14 The Court below erred in overruling
each of
Plaintiffs exceptions to the
questions asked George Mannin on
cross on the part of the defen-
dant on cross-examining the same
to be asked & answered.

15. The Court below erred in overruling
the Plaintiff's exception to
the following question asked of
E. S. Williams a witness offered on
the part of the defendant on cross,
and in permitting the same to
be answered. viz; From what
you know of the litigation and
the value of the property offered
what would be a fair value of
the rents rendered"?

[1-346-79]

13. The court below erred in overruling the plaintiff's objection to the following question propounded to E. S. Williams a witness on the part of the defendant in error permitting the same to be answered; to wit,

Assuming that one, disconnected the defendant's tools, mettle flowers, and put the bells to one, which settles the 1st to six, how much in yard pieces of Merrimack cambric will make

14. The Court below erred in overruling each & every of the objections made by the plaintiff in error to each & every of the questions propounded by defendant in error to E. S. Williams

[12340-80]

a witness & permitted by leave in the body of the cause

18 The Court below erred below erred in
permitting G.W. Deane to prove a
written notice of the Examination
of the defendant, the same not being
X admissible on the grounds of being not
known to the pleadings
19 The Court below erred in refusing
to strike from the files the original
plea and application.
20 The Court below erred in refusing
to compell the plea defendant
when to stick on which set of
pleading it was rested by the
Court.
20 The Court below erred in refusing
to exclude all the testimony G.W. Deane
tending to show a termination

[12346-81]

of the written contract, the same not appearing the issue made

21 The Court also erred in refusing to exclude from the jury all the testimony introduced on the ground that the written memorandum of the contract was not signed by the defendant either by the plaintiff or his agent duly authorized and appointed by him for that purpose which was alleged & said

22. The Court erred in giving the first instruction asked for by the ~~plaintiff~~ defendant in error,

23 The Court also erred in giving the second instruction asked for by the defendant in error,

21348-83

24. The Court below erred in giving the third instruction asked for by the defendant in error.

25. The Court below erred in giving the fourteenth instruction asked for by the defendant in error.

26. The Court below erred in giving the fifth instruction asked for by the defendant in error.

27 The Court erred in ~~giving~~ refusing to give the ~~sixth~~ fifth instruction asked for by the ~~defendant~~ plaintiff in error.

28 The Court below erred in ~~giving~~ refusing to give the ~~seventh~~ fourteenth instruction asked for by the ~~defendant~~ plaintiff in error.

29. The Court below erred in ~~giving~~ refusing to give the ~~eighth~~ fourteenth instruction asked for by the plaintiff in error.

(12340-83)

V 34

That the circuit & chancery courts do not dispose of all the issues in the case. That the judgment below does not dispose of all the issues in the case. That there are issues in the case undisposed of & the Circuit in entering judgment without disposing of them.

{1234-84}

30. The Court below erred in refusing to give the fifteenth instruction to the jury asked for by the plaintiff in error.

31 The Court below erred in refusing to give the sixteenth instruction to the jury asked for by the ~~defendant~~ plaintiff in error.

32. The Court below erred in refusing the seventeenth instruction asked for by the plaintiff in error to the jury.

33 The Court erred in refusing each & every of the instructions asked for by the plaintiff in error other than the Court below refused to give.

34. The Court below erred in ~~refusing~~

giving each party of the instructions which they gave to the Respondents in error.

For these and other causes the plaintiff in error asks that said judgment may be reversed and he entitled to all the relief to which he is entitled in the premises.

Shumway Watson & Dorr
for Plaintiff in Error
Attys.

In Response bond

Adamson B Starkish

&

John E Cone

Assignment of

Errors.

Summary Writ of Error

Clerk to Atty

194

194.

Filed April 20th 1857

1857

1234

R & S.

Supreme Court
April Term A D 1857.

134. John E Cone } Appellee
ads
A B Newkirk } Appellant

Appeal from Cook County
Court of Common Pleas.

Brief.

I. In answer to the first assignment of Error We say- that objection was only made to two facts- being given in Evidence- Which were the following- 1st Of Service prior to 1st April 1854- 2ed of the plaintiff below giving notice to defendant of termination of Contract set up in the Plea- and that those fact were in issue ie- The Nar. being general- Evidence of service at any time prior to Commencement of Suit was proper- That proof of Notice was proper- under the issues made by each and all of the Replications- here we make this point- Where a special Contract is declared on it is competent to prove under the general issue any fact which in its legal opperation destroys the force and opperation of the Contract. So where the Contract is Specially pleaded in bar of the action, it is competent under a general traverse to prove any fact which defeats the Contract.

[12340-87]

11

Objection was also made to the form of the question put to the Witnesses Judge Manierre - and E.S. Williams - Upon this point we say -

1st That the assumption was warranted by the Evidence already before the jury - &

2. That the questions both in form and substance were proper - to Elicit evidence of matters in issue - to wit the value of plaintiffs services. and here we make this point -

That upon the question of value - when applying to service - If the Service is ordinary - Common - or general Service having a deffinite and determinate price - as so much per annum or per diem - the value is to be ascertained by proof of time and of ordinary wages - But where the Service is extraordinary - rare - or particular - having no deffinite and determinate price - ~~either by~~ the law cannot of Course imply - and will not intend that the parties Contracted in reference to any Standard of prices - But the value will depend upon the Circumstances of the Case and it is from those Circumstances alone that a Witness Called upon to testify - or a jury to assess the value of the Services - can form an opinion of value -

12340-88

Objection was also made to introduction of Deed in Evidence Conveying the property to defendant below - which the plaintiff in his declaration had alleged that he had procured

II. As to second assignment - we say that no evidence offered by defendant was excluded except - The questions to D.S. Lees on Cross Examination

The questions asked Lee - pltffs Witness were improper - impertinent - and objectionable in this - that the witness was required by the question to produce title deeds in a Case upon a collateral issue not made even by the Pleadings - and submit them to the inspection of the Curious -. And the answers if permitted would not have been legal evidence of any fact material to the defence. It would seem by the tenor of the questions that the object of Defendant (if he had any except fishing for Defence to a Suit then pending between himself and the Witness in relation to same property) to show.

that the purchase and litigation of the title to the property had not been effectual to vest him with the title- Assuming that this if legally established would have been proper for reduction of plaintiffs Claim under the quantum Meruit- The answer of Witness if affirmative to each would not establish the fact- that the legal title was not in the defendant- for it would remain for a Court to determine the matter- (as it has subsequently done and that too in favor of the Defendant below-) While the answers would not have been evidence to establish the fact sought to be established- and therefore legally could not have benefited the Defendant- yet those answers might have tended to mislead the Jury- Upon these grounds the questions were ruled out- and legally- and rightfully- prevented improper testimony from getting before the Jury.

12346-90 4

III. As to the third assignment of Errors- We Say- That the decisions of the Court below upon all the questions submitted to it and upon which Exceptions were taken- and which are now assigned for Error were properly made- That no decision Complained of prejudiced the Defendant below in his legal rights or prevented him from a full fair- impartial trial of the whole Subject of the Controversy (as presented by the issues joined between the parties-) by a jury of the Country- nor in having a verdict of the Jury upon the Law and evidence.

That the verdict of the jury is supported by the evidence and so far as the defendant below has reason to Complain- is eminently just and proper- And that the Court below sitting at the trial- having a personal knowledge of the Witnesses sworn observing their Manner and taking into view the situation of the parties the Evidence in the Case the proceedings before the Court the instructions given and their probable effect upon the jury and hearing fully the grounds taken for a new trial and the probabilities of a different result upon another trial very properly Overruled the Motion for New trial- and gave judgement for the Plaintiff in the Court below

$12340-97

5

and we say that the judge trying the cause had better information upon and could better appreciate the grounds of Motion for a new trial— than this Court— here the Record alone is before us— there the Whole proceedings as they actually occurred- the appearance of witnesses &c. all aided in correctly adjudging the Motion—.

IV. As to the fourth assignment of Errors- We say— That the instructions given to the jury on behalf of Plaintiff- correctly Stated the law- and were based upon the facts proved upon the trial-

[12348-98]

6

V. As to the fifth assignment of Errors We Say That the Court properly refused to give the instructions asked for by Defendant and refused- that said instruction did not State the law correctly- were not based upon the facts proved in the case- were faulty in form in this- assuming a State of facts that did not exist (See 10th inst. Record p. 147) and telling the Jury what the evidence tended to prove- (See 15th inst. Record page 148.)

The "contract" they speak of- came out in proof as what the defendant said. There was no proof that what Defendant said was true- Nor that Plaintiff ever so agreed- and nothing in all the proof to show that plaintiff- was party to the arrangement- The assuming this Statement as true- being the Statement of the Defendant and that too in direct opposition to the Solemn allegation of the defendant to the Contrary- unsupported by other evidence and that too for the purpose to which it was applied- was to say the least a most extraordinary assumption

(12340-93)

7

VI. As to the Sixth assignment of Error We say. The Court in view of the whole matter and upon carefal examination of the grounds of the motion filed - properly Overruled the same and gave judgement on the Verdict. (See record page. 73.)

VII. As to the Seventh assignment of Errors We say That the evidence before the jury would have justified a Verdict to the amount of fifty thousand dollars - that each issue and allegation was supported by the evidence in favor of the Plaintiff That the Defendant totally failed in legal proof of a single issue not excepting - that on plea of Offsett - Yet it appears by the Verdict of the jury that they gave him credit for $ 1750,00. but as to this We apprehend there is no objection made.

We further say that the evidence of value were the facts in the Case and the testimony of Witnesses- That the Witnesses for the plaintiff in fixing value took into Consideration those facts and Circumstances that Witnesses for the Defence ignored them altogether And the Jury hearing this testimony -as aforesaid and not as a necessary direction- were not only justified- but in duty bound to take the Opinion based upon the Circumstances of the Case as the better opinion- and to act accordingly-

We further say that it is untrue in fact and in Law- that this Work & Labor for was done under a special Contract- The evidence fails to disclose any Contract or agreement absolutely settled upon adopted and fixed between the parties- It does most clearly and positively disprove the Contract set up in the defence- as to the other spoken of it- is a One Sided affair- and that too only affirmed by defendant and not proved- The maxim "that it takes at least two to make a Contract," appears to have been forgotten by the Defendant below.

5/2340-95

9.

VIIII. For Answer to Eighth assignment See our ans. to first- as above given.

IX. For Answer to ninth assignment See our answer to the first.

X. For Ans. to tenth assgt. See our Ans. to first.

XI. For Ans- to Eleventh assgt- See our ans. to second.

XII. In Answer to twelfth Assgt. We say- That the Witness having testified that he was attorney in the case- opposed to Plaintiff for the services in which among other things this suit was brought it was competent and eminently proper for Witness to give history of the case- for the purpose of showing what the plaintiff had done- the nature of the litigation- the care skill and labor necessary to bring about a favorable result &c.

[12340-96]

10

XIII. For Answer to thirteenth assgt See our Ans to first.

XIV. In Ans. to fourteenth assgt We say that no other Objection was made or exception noted to the testimony of Maniere - than those Mentioned or referred to by us above - and which are contained in the twelfth and thirteenth assignments noted above. See Record.

XV. In Ans. to fifteenth assgt ~~We say the~~ See our ans. to first. also we say the basis of knowledge supposed by question was proper -.

XVI. For Ans. to Sixteenth assigt See our Ans. to first.

XVII. In Ans to Seventeenth assgt We say that the objections noticed in the fifteenth and sixteenth assignts were the only objections made to which exception was taken - See Record.

XVIII. For Ans. to Eighteenth assignment See our ans. to first.

[12340-77]

XIX. In Answer to the Nineteenth assignment of errors we say- That the Court very properly refused the motion at that time- that both Sets of pleas were precisely alike- the Replications alike and presented but one issue in fact upon the several pleas- except to the last or fourth plea to which there was by reason of retaining both Sets of Pleas two Replications- "First that Contract set up was terminated according to a Stipulation therein contained- Second that the Contract was Cancelled and annulled by Mutual Consent. We further say that it appears by the record that the pleas ~~the~~ denied and called amended Pleas- were perfect copies of Original pleas- That Defts attys- placed them on file fraudulently and in violation of the Rules of the Court- that they never asked for, much less had leave, to withdraw the Original pleas upon all which issues were joined- that they forced Plff- to Reply to new pleas- resisting Motion to Strike pleas from the files- that ~~for~~ said Sets of pleas were placed on file by the Defendant and by him retained there of record- until the trial was half over- When he makes the extraordinary motion to strike his own pleas from file- the facts as above stated- are all true and justify the ruling of the Court below. See Record pages-

(12340-98)

XX.a For Ans. to 20th assgt of Error See Our Ans to the Nineteenth.

XX.b. For Ans. to Twentieth (Second No 20) See our Ans to first and Nineteenth.

XXI. In Ans-to twenty first assigt We say that the Court properly overruled the Motion- That the grounds taken were false in fact-and in law. The evidence in the Case warranted no such Motion On the issues made by the plea of Special Contract the Contract was disproved-and there was no other Contract proved-in the Case. That by the evidence- the plaintiff was entitled to recover to the full amount of his claim. We further say that if the Statement of the defend=ant is evidence in his favor- the supposed Contract was legal- and the plaintiff entitled to recover- and that the whole controversy as to what the Contract or agreement really was if any really existed- was a matter for the jury under proper instructions from the Court- and that the Court under the proof had no right to withdraw the Case from the jury.

[12345-99]

13

XXIII. In Answer to the twenty second assignment of Errors We Say that the instruction given States the law correctly and is applicable to the facts proved - the last clause was given with and intended to qualify instructions given for Defendant.

XXIIII. In Ans. to twenty third ass'gt We say that the instruction is proper.

XXIV. In ans. to twenty fourth Ass'gt We say that the same is proper.

XXV. In Ans. to twenty fifth Ass'gt We say that the Court only gave three instructions for Pltff which are shown by ~~Omitting from the~~ Cutting off the last clause ~~of~~ ~~in~~ in 1st & 2. Instructions and gave ~~third~~ two qualifications to insts for Defts which are the clauses attached to ~~third~~ first & second inst as seen in Record.

[12340-100]

XXVI For Ans to 26th Assgt see our answer to 25th.

XXVII. In Ans. to the 27th Assignment. We only say that it appears by the record that the instructions asked for and refused. Are No on the record. 3rd. 9th. 10th. 11th. 13th. & 15th. See Record page. 146-a 148. and that the same were properly refused. That they are false as propositions of law. and ~~and~~ falsely assume facts to the jury &c.

XXVIII. For Ans. to 28th Assgt see our ans. to 27th.

XXIX. For Ans to 29th Assgt see our Ans to 27th.

XXX. For Ans to 30th Assgt see our And. to 27th.

XXXI. For Ans to 31st Assgt see our Ans to 27th.

12340-101
15.

XXXII. For Ans- to the 32nd Assgt see our Ans to 24th.

XXXIII. In Answer to the thirty third Assignment of Errors- We Answer that the Court below properly gave the Plaintiffs inst^n and properly refused the Defendants Instructions- Marked & used in the Record- (Record page- 140-8.).

XXXIV. In Answer to the thirty fourth- (The New Ass^t sent by some Wise acre from Chicago- (Not having the Record before him) after errors were here assigned- and joinder filed) We say that there is evidence upon every issue joined- that the Verdict of the jury is in these Words- "We the jury find the issues for the plaintiff and assess his damages, &c (Record page- 72.) that in the Cause by the Record it appears that all the issues, Made by the parties- at the time of the trial were issues of fact- all submitted to the jury and Concluded by their Verdict.

(12348-102)

16.

Remarks I. That the Whole of the Record- as well as the specific assignment of errors fails to show that the appellant has been prejudiced in any legal right- or that upon a new trial there is any reasonable prospect of a different result.

II. That the verdict and judgement of the Court below is eminently just~~,~~ the record showing that the appellant has every reason to Congratulate himself upon the result and not One good legal moral or equitable reason or Cause to Complain.

III. It clearly appears that a fair hearing has been had upon the real merit of the Case- and verdict given thereon.

IV. The defence as appears from the Record has been Delay-. Postponement of legal duty whereby the Appellant has had the use of the money of the Appellee- for nearly two years-

[12348-103]

17.

V. The criminations by the Appellant of the Appellee by setting up or attempting to set a defence that the Contract of service was illegal - and that after having pocketed the avails of the service is a strong fact against him - and demonstrates the position - That desperate Cases require desperate treatment.

VI. That honest men - desiring to ascertain truth are never known to stoop to falsehood and deceit to establish a proposition -. ~~That xxxxxxxx xxxxxxx

Copy of Assignment of Errors.

1. That

The Court below (admitted) Erred in admitting improper ~~evidence~~ testimony during the trial of the case on the part of defendant in error- (Appellee).

2. The Court below erred in excluding proper evidence offered on the part of the plaintiff in error- (Appellant).

3ed The Court (below) erred in their decisions of law during the progress of the trial.

4. The Court erred in giving each and every of the instructions asked for by the Plaintiff below.

5. The Court erred in refusing each of the instructions asked for by the defendant below.

6. The Court erred in refusing to grant the new trial asked for by the defendant.

7. The verdict below was against evidence

8. The Court Erred in overruling each and every of the objections made by the plaintiff in error to the evidence of the defendant in error below.

[12340-105]

19.

9. The Court below erred in permitting the introduction of any testimony of services rendered by the defendant in error for the plaintiff in error prior to April 1857.

10. The Court erred in admitting in evidence the deed from Ebenezer Jackson to plaintiff in Error.

11. The Court below erred in sustaining the defendant in error's Objections to each of the plaintiffs in errors questions to D. S. Lee. and in not permitting each and every of said questions to be put to witness and answered.

12. The Court below Erred in permitting the following question to be asked George Maniere a witness for the defendant in Error - "Go on and the History of the Case".

13. The Court erred in permitting the following questions to be asked and answered by George Maniere - a witness for the Defendant in Error. "Assuming that Cone discovered "the defect in the titles and communicated it to "Newkirk, Who under Cone's advice bought up the "title and on the title then acquired suit was "brought - and taking into Consideration the value "of the property - and the services rendered by "Cone - What would be a fair value of his "services?"

(12340-104)

20

14. The Court below erred in overruling Plaintiffs in Error Objections to each of the questions asked George Maniere a witness on the part of the defendant in error & permitting the same to be asked and answered.

15. The Court below erred in overruling the Plaintiff in errors Objections to the following question asked of E.S. Williams a witness offered on the part of the defendant in error and in permitting the same to be answered. to wit. "From what you know of the litigation "and the value of the property affected what "would be a fair value of the services rendered?"

16 The Court below erred in overruling the plaintiff in errors Objections to the following questions propounded to E.S. Williams a witness on the part of the defendant in error and permitting the same to be answered, to wit
"Assuming that Cone discovered the defect "to six lots worth $10 000, and trie, the title "to one, which settles the title to six, How "much in your Opinion is Mr Cone's "services worth?"

17 The Court below erred in overruling each and every of the Objections made by the plaintiff in error to each and every of the questions propound-ed by defendant in error to E.S. Williams a witness offered by him on the trial of the Cause.

[12340-107]

18. The Court below erred in permitting G.W.I. Cone to prove a written notice of the termination of the Contract, the same not being admissable on the ground of variance between the proof and the pleadings.

19. The Court below erred in refusing to strike from the files the original pleas and Replications

20a The Court below erred in refusing to compel the defendant in error to Elect on which set of pleadings he would try the Case.

20b The Court below erred in refusing to exclude all the testimony G.W.I. Cone tending to show a termination of written Contract. the same not supporting the issue made.

21. The Court below erred in refusing to exclude from the jury all the testimony introduced on the ground that the evidence showed that all the services rendered by the defendant in error for the plaintiff in error were rendered and performed under a Contract which was illegal and void.

22. The Court erred in giving the first instruction asked for by the defendant in error.

23. The Court below erred in giving the second instruction asked for by the defendant in error.

24. The Court below erred in giving the third instruction asked for by the defendant in error.

25 The Court below erred in giving the fourth instruction asked for by the defendant in error.

[12340-108]

26. The Court below erred in giving the fifth instruction asked for by the defendant in error.

22

27. The Court erred in refusing to give the twelfth instruction asked for by the plaintiff in error.

28 The Court below erred in refusing to give the thirteenth instruction asked for by the plaintiff in error.

29. The Court below erred in refusing to give the fourteenth instruction asked for by the plaintiff in error.

30. The Court below erred in refusing to give the fifteenth instruction asked for by the plaintiff in error.

31. The Court below erred in refusing to give the sixteenth instruction asked for by the plaintiff in error.

32. The Court below erred in refusing the seventeenth instruction asked for by the plaintiff in error.

33. The Court ~~below~~ erred in refusing each and every of the Instructions asked for by the plaintiff in error which the Court below refused to give.

The Court below erred in giving each and every of the instructions which they gave for the Defendant in Error.

34. That the verdict of the jury did not dispose of all the issues in the case, that the judgement below does not dispose of all the issues in the case. that there are issues in the case undisposed of & the Court erred in rendering judgement without disposing of them.

End of Assignments of Errors.

John E Cone
in Person.

[12340-109]
23.

Conclusions Newyork Mem. of Cases.

As to the admissibility of Evidence there are always two prominent and conclusive points of inquiry to wit

1st Is the evidence offered Competent evidence of the fact sought to be established

2d & 3d Is it pertinent to the Subject of inquiry — or in other words does it tend to prove the issues joined between the parties —

Upon the general Doctrine of Admissibility we refer to Starkie — Phillips and Greenleaf generally — Particularly we cite 1st & 2d Starkie 175. 337-8. 344. 419. 435. 462. 490. 534. As to fact being evidence for one purpose and not for another — ib 543. As to Competency of parol Evidence where a written Contract or other writing is in controversy See 2 Starkie 765 & 768. also Greenleaf. §302. et seq.

When objection is made to the introduction of Evidence upon the trial of the Cause — We are to inquire first is it Competent to prove the fact sought to be established — and Secondly does the fact if fully established tend to prove the issue (or any of the issues where there are several) joined between the parties — The first inquiry will be answered by the books — The Second only by a perfect and legal apprehension of the issue and the Connection between the disputed matter therein found and the fact sought to be established — The first can be answered by

[2340-18]

Every one who can read - and has read and remembers the rules upon that subject - the second requires legal discrimination a just apprehension of the real issue - and a knowledge of the coherence of facts in the ordinary transactions of life - It can not be (from the nature of the case) reduced to specific regulation - but each case having its own individuality must in this respect - have a law unto itself - All the adjudications upon questions of irrelevancy of evidence - furnish no standard - are not and can not be really authority only so far as showing how courts have held in individual cases - it may enable us to say what they might - hold - when a case presenting the precise issue - the particular fact - should again come before it - and the precedent would be stronger or weaker in authority as the case under consideration approached toward or receded from absolute identity - With this view of the matter I cite as to admissibility of Jacksons Deed to Brockett the case of Johnson vs. Bright - 15th Ills. R. page - 466.

X18240-11

I

John E Bone
acts
A. B. Newberry

I. Brief on Admissibility
of the Evidence

Cone acts Newkirk.

Applications to a Court made pending the Cause in which they are made are not always matter of right= Where they are matter of right — where by refusing the application the party applying is materially injured — that injury should be repaired — But in no Case will a party be permitted to rely upon the indulgence of the Court and by so relying to take steps in a Cause and at his convenience repaire the Mischief caused by his own Misconduct= Nor will a party be permitted to trifle with, or disregard the proper and necessary rules of practice and then to claim an advantage through his own Wrongful act. It is a necessary and a universal rule that a party is bound by every step taken by himself in a Cause — That every paper filed by him becomes a part of the record That when replied to he has no right to withdraw the Same — Nor power over it. He will not be allowed to trifle with the Court by acting and retracting.

[1904-113]

The foregoing general principles & sanctions the following rules- to wit.

1st ll That all applications to a Court ~~for~~ by a party for leave to withdraw a paper, pleading, or Record filed by himself- is an application of favor and not of right- and is addressed to the discretion of the Court- and the refusal of the Court to grant the favor asked cannot be assigned for error. Leigh v Hodges 3 S. 17. 11 Ala. 19.

2nd ll That wherever the party has filed a paper- pleading- or Record- and the other party has acted thereon by replying thereto- or taken any steps in reference to the matter- and has any interest in; or any right- affected thereby it- is his right to have the same retained of Record and to oppose an application to withdraw- and if the Court should overrule his objections to the withdrawal and grant the application- that ruling of the Court might- be assigned for error. Cooper v. Buckingham. 3 Scam. 496.

1234-114

3ed

That a party filing supplementary pleadings without leave - and without obtaining leave to withdraw pleadings already filed and answered - does not and cannot Supercede by his supplementary pleadings - those already on file - Nor does the opposite party by answering the supplementary pleading waive any right to or in the issues made by the former pleadings or to a trial upon those issues -

4th

That the issues tendered by the pleas are not increased or in any wise changed by duplicate pleadings - but the issues may be and will be increased by replying differently to each set of duplicated pleas. in such case there will be two issues instead of one upon each plea and repliant obtains the advantage of replying double by act of the other party - without the aid of the Court for that purpose. 3 S. 17. & 546. 11 Ills 19. & 237.

Tidds 8. 673.

S 12340-115

Remarks- In the Case at Bar. the Court will observe that by the act of the defendant below the plaintiff below had replied double to the fourth plea- that each replication puts in issue a ~~material~~ fact material to the plaintiffs right of recovery in the action That the application as to the withdrawal or striking from the files the pleas were not made until the defendants Counsel say- by the question put to the witness that they had been playing with edge tools and were likely to get Cut in the operation.

This Court I apprehend will readily see- That had the Court ~~below~~ at that time granted any of the applications made by the defendant below- and thereby deprived the plaintiff below of the benefit of either of the facts ~~set~~ up in the two replications to the fourth plea- by denying evidence thereof to the jury- it would have been guilty of a gross error to the prejudice of the plaintiff below and one which this Court would have felt in duty bound to Correct.

[12340-NB]

1 1 Decl

John E. Cone
ads
A Bickwith

1 1. Brief on
practice—and
question of striking
pleas from files

The Doctrine upon the right and duty of the Court to instruct the jury upon points of Law arising upon the evidence has been discussed by this Court; in the following Reports.

4	Breese. 171. 218. 231. 270.
5	1st Scam. 53. 112. *407. 505. 593.
4	2. Scam. 26. 69. *226. b368. *legal subject—and
2	3. Scam. 219. 365.
1	1st Gilm. 14. As to abstract
1	2nd Gilm. 202.
4	3. Gilm. 204. 99. *202. 381. 2*482.
2	4th Gilm. 127. 441. first case as to Written Instr.
2.	11th Ills. 198. 484.
2	12th Ills. *195. 259. Seems refused as to assuming facts &c.
2.	13th Ills. 78. 343.
2	14th Ills. 195. 474.
5.	16th Ills. 39. 283. 339. 397. 415.

No of Cases 36.

Thirty Six Cases upon this Subject from which we derive this doctrine—

That the Instructions must correctly state the law—and be applicable to the evidence before the jury.

*69 y b368 4 abs prop the Inst. need not be given
*226—where 4 an Instruction was refused—yet 2 Court refused to reverse

1—See above note

12340-117

We cite two Case-
1st Hamilton & Hunt - 14th Ills. 474.
2. Clement v. McConnell ib - 155. in which the doctrine of applicability was applied; and only by way of illustration we hold, that this question to wit: was the instruction asked applicable to the Case as shown by the evidence? is one only to be answered by a just and perfectly legal view of the Evidence itself a view enabling us to clearly ~~and~~ distinctly see the real legal Status of the parties by the facts disclosed.

Site attached

S 10340-118

III. 3 ed/n

Come ads Newkirk

IV. Brief on Instructions to the Jury.

The general doctrine upon Contracts- justify the following propositions-

1 That a contract may cease by limitation in point of duration of time or exhaustion of subject matter- ie be executed-

2. It may be determined by a subsequent agreement upon the same subject Matter or by express- recission or abandonment.

3 That where the subject-matter of a contract might be evidenced by parol and not required to be in writing or under Seal- it will be determined by a subsequent parol agreement- though prior Contract was under Seal.

We remark upon the foregoing propositions-

1 That the basis- the true legal reason of the rule- that a parol agreement will not defeat a Sealed Contract- is- That the law requiring written evidence of the Contract in relation to certain things no other species of evidence will be received to establish them.

[12340-119]

It follows as an inevitable Conclusion in the case - That Where the Subject matter of the Contract is such that ~~the~~ Contract in relation thereto by parol would be void That prior Subsequent first last and intermediate Contracts by parol would be void also - It also follows that Where the Subject Matter of a Contract is such as not to require it to be evidenced by a written instrument that A Contract in relation thereto cannot by being in writing or under Seal change it in any respect or raise it in point of dignity in any degree nor make it necessary for parties to afterwards sign and Seal Writings in relation thereto because forsooth upon one occasion they have thought proper so to do. In other words acts of parties do not change the laws of the land. See Chitty on Contracts &c - et seq. 2 Parsons on Contracts 87 170

512340-128

IV 4th

Com adv Newkirk

~~For~~ Brief on Contract

Cone cds. New trials. Brief on New trial.

The Doctrine of New trials when allowed and refused has been before this Court in the following Cases - Reported in our Reports.

Cases found in Brees - 6. 15. 44. 62 111. 176.
11. 164 201. 221. & 229.
4 1 Scammon. 131 - ~~the first Case after~~ 215. 491 -
the first Case after Statute allowing writ of error to decision on Motion for New trial. - &
2. 643. 2 Scam. 248. & 391. 3rd Scam. 17
4 97. 132. 412 483. 4th Scam.
2 446 & 497. 1st Gilman 270. 160. 389. 475.
6 ~~449~~ 663. & 669. 2nd Gilman. 388. 400.
449. & 618. 3rd Gilman 18. 85. 202.
Decision - 222. 4th Gilman 129. 5th Gilman 72.
& 469. 11th Ills. 36. & 142. 12th & 13th Ills. 149.
13th Ills. 85. 169. 219. & 697. 14th & 15th Ills. 141. & 152.
*66 495 - Showing when verdict should be set aside as being against evidence
15th Ills. 35. 140. & 444. 16th Ills. 61. *66. 138.
313. & *495. & 17th Ills. 66. 67. & 399.

62. Cases in all. making when taken altogether a large volume by way of treaties upon the Subject - and leaving the authority of judicial determinations - Yet in all these Cases we find but this Simple doctrine - to wit: That a New trial will be granted when it appears that a real Substantial injury has been perpetrated by the former trial and Refused - when it appears that Substantial Justice has been done.

[12340-121]

The doctrine is founded in reason— on a just apprehension of the true object of Judicial inquiry to wit. to secure justice to the rights of all. It is not limitted to the narrow boundaries of technical forms— but regardless of those forms looks to the real merits of the case— to the effects of the judgement— and the consequences to each of the parties of granting or refusing the application. All the cases upon this subject found in the books only shew us the application of the doctrine to individual cases and furnish no certain rule of application— Indeed from the very nature of the case specific rules are impossible— for establish a rule to cover and the very next case coming before the Court and being strictly within the letter of the rule may by its peculiar background circumstances make the application of the rule subversive of the doctrine upon which it is founded.

And here I desire to make this single remark— That all overruled cases— teach us the danger of mistaking a rule for the doctrine that supports it— and all cases have been overruled upon this express ground that the doctrine of the law had been improperly applied— in the case.

[12342-12]

5th the.

Com ads. Newbiert

V. Brief on Newbiert

Come adv

Newkirk. Brief On Maintenance

The Common Law Doctrine upon the Subject of Maintenance is found in the English books – and few Cases are mentioned or referred to by American Writers and in American Courts. The definition of the offence is the "Unlawfull taking in hand or maintaining a Suit in which the Maintainor has no interest."

This implies an unlawfull act. Where the act alleged to be done is legal" this doctrine has no application.

As to general doctrine upon this Subject see Russell on Crimes 179 ~~[illegible]~~ Hawkins Pleas to the Crown ~~[illegible]~~. 454. 460. Bacons Abridgment Vol 6. page 410. Chitty on Contracts 573. 584. 5. and note – Parsons on Contracts 2 vol. pp 262. and Notes – also Spencer v. King 5th (Hammond) Ohio 113. and Johnson vs. Bright 15th Illinois R.

As to the application of the English Books (in reference to certain Matters) in this State See Revised Statute 1845 of Illinois Cap. 24. Title Conveyances Sections 1. to 4 including 4. page 108. Ib Cap. 38. Title Criminal Jurisprudence Division 9. Sec. 107. 188. page 170.

[illegible]

Champerty - is "Unlawfull Maintenance "in Consideration of a Share or part of the matter in dispute, or of what may be recovered in the Suit." See authorities cited above. In Order to support this Charge - It is essential to Show that an act of "Unlawfull Maintenance entered into and made part of the Countract. In examining this Subject when a Charge of Unlawfull Maintenance is made - We are to look to the act done or Contemplated to be done.

Here I remark that the Subject Matter must govern in all Such inquiries and that no agreement Can Make an illegal act Valid - Nor Make a legal act illegal and Void. in other Words private individuals Cannot by their agreements - Change the Law of the Land. This question arises upon the instructions.

L 12340-126

VI. 64

Con. architectural work

VI. Brief on question of Maintenance

A B Merkuk } Brief
v
John E Eaves

I. The first question is to arise as to the issues in the case

a The declaration contains four counts - to which pleas were put in - & replications thereto and the case fully tried.

b These pleas & replications were done away with by new pleas replications and form no part of the issue to be tried.

c It is said there is no case to file new pleas.

1. This is not true in point of fact, as leave was granted though not shown by record. The object being to simplify the issues.

2nd Admitting there was no leave granted - the plaintiff below cannot object after taking issue thereon - and especially after - having moved below

[1234 0-27]

to strike them from the file.

We have read the application and the pleading the case will be treated as if leave was granted to file and appears to have been filed.

Beckwith's claims ✗ 2 Gunn R 463
1 Gilm R 38
✗ 5 Gilm " 461

3d Third pleas & applications cannot be in the case because there cannot be two sets of pleadings and two sets of issues. The Court will bear in mind that the new pleas are identical with the old. Long v Abatement Caption
Mitchell vs Williamson 9 Gill 76

4 The Court will presume that old pleas and applications to be withdrawn when a new issue has been made up

Mackey vs Mitchell ✗ 2 Miss R 178
Sweeny vs Wilkins ✗ 6 Miss 174
1 Mississippi "
9 Gill 76

* The Court refused to strike the new pleas from the files & ordered the same to be filed as of the date of the original pleas. Stark vs Hennen 2 Sm & M 258.

[123 40-128]

II D.

What Doro is dro ispne to be tried
a. Jrnal ispne.

b. Pl Off- replication

c. "All the plaintiffs services sues for
ren rendered under a sealed contract
rel pleth at large. and that said
agreement was in full force &
not annulled.

Replication thereto. None of the
services ren rendered under the
contract.

Thus admits the contract to be in
force. pr all allegations in the
plea not denied by the replication
are admitted.
Jackson v Bardeen 1 Cowen R 42.

[1240-129]

.d. To 4th plea substantially like the 3rd - that such contract was annulled by mutual agreement April 1st 1854. This admits the agreements & its existence but annulled by special agreement

.III. Defendant denies to the existence of any terms prior to April 1. 1857.

A By the pleadings it has been seen that it is admitted that the contract was in force till April 1st 1854.

B By reference to the contract which was admitted in the case by it will be seen by its terms it is broad enough to cover every service

[123.40-130]

(over)

176. Objection to the admission of the deed to Newkirk v Dawson -

1st There was nothing in the case to make it evidence - on the contrary the evidence shews that it was not done pursuant by Case, but through other parties -

The Affidavit of grimes that. deed in evidence is - that Consideration to accrue in the benefits resulting from the sport y the case y Newkirk v Dawson in the above title - Now

Make it to be true - that a debt may and half of Durango - and let may be brought in Court - he hires an Attorney - during his absence - does it proved that he is to be charged with because of the of his property - not in Court - and which he is retaining is efficient indemnity thereby -

183. ~~Testimony~~ of Hand S. Lee

183. The testimony of Hand S Lee

To shall the plaintiffs claim they offer Hand S Lee to prove ~~the~~ value of the land tract -

In ~~cross~~ such to have that the plaintiff had not title Clear to all -

The 2 & 3 questions are certainly ~~proper~~ inadmissible and ~~are~~ proper cross questions -

192 Questions asked Marvin

212 1st question asked E Williams

216 2 question asked E Williams

This question is wrong -
1st It assumes to give him the exemption of the finding - which he shall have if there is illegal - and immaterial a case to exist.

[12346-102]

220 Objection to the proof G.W. J. Bond -

not admissible under the pleading.

1st That the monies never were
intended under the contract

2nd Paid on the 1st day of
April A.D. 1884 "by mutual ~~consent~~
agreement the contract was annulled"

It does not tend to show the
Annulling of the contract by mutual
agreement

The suit in this case was against
Sudduth - and the Court will
reverse the judgment on that ground
the bill of exceptions containing all
the evidence in the case.

3 Geo R 310
11 Ala R 84
13 Ala R 455
16 Ala R 74

1st In amount of damages

2nd The pleadings & evidence as
that the contract was in force

3rd Because illegal & irrelevant
evidence into the case

3/2348-133

Before examining the plaintiffs witness
in any the verdict was against
evidence and contrary to the
instructions of the Court. The services
per rendered & rendered under the
written contract & under the
one testified to by D.O.D. Lane. If
under the written contract that
is an end of the case. for it
is broad enough to cover all services
and the Court so instructed the
jury. (See the 1st. 2nd & 3d instruc-
tions in the defendants.) On this point
there can be no question.

Therefore if the plaintiff recovers
at all. It must be cause that
contract was terminated. if ~~the~~
~~testimony~~ ~~it~~ ~~was~~ terminated ~~the~~
the services per all rendered under
the ~~to~~ are certified to by D.O.D. Lane.
We might with great force assume
that D.O.D. Lane is successfully conduc-
ted. (See testimony of Barker (259)
P. O'Donnell (239) & B Seymour (239).
and the indorsements on the contract)
but for the purposes of this question
we ~~assume~~ pass by that inquiry.
By that contract he cannot
recover. The Court below so instructed
the jury. in there respects instruc-
tion. We particularly call the
attention of this Court. to the part
that this instruction is ~~almost~~ substantially in
the words of his testimony. Substantially

$1200 (134)

his testimony and the instructions are the same. If the instruction is law- his testimony establishes an illegal contract- or else the plaintiff cannot recover any such verdict as was rendered in a day part in this case- Is it law?- It is- Hecto Thurston v Percell- that the contract was illegal; and that he cannot recover, in any courts of law or equity.

1 Rich 415- Thurston -vs- Percell- 1 Pickering R 415- When an attorney was to receive ten per centum on the amount recovered- if he recovered nothing to have his fee- Parker Chief Justice- "he cannot hesitate to pronounce the contract offered by the plaintiff- by which he was to receive ten per centum on whatever sum he might recover as indemnity." "It comes within the description of champerty at Common law- Now what does Bacon say- Croswell Digest Page 234 "New contract was that the plaintiff was

to go on and perform services for
defendant in examining titles for
defects. advise the Dr what to
buy. and to prosecute suits for
the recovery of the titles ~~defendant~~ to them
purchased;. during the time
the defendant to pay him money
enough to support his family and
buy a law library. and pay off
his debts. if they ~~succeeded~~ did
not succeed. defendant to lose what
he had advanced. and plaintiff to
lose his services. if they succeeded
plaintiff to have a fair compensation
otherwise nothing. If this is not
an illegal contract. at Common
law, then is no case illegal.

[1234-136]

Hawkins in his pleas of the Crown
Page 463- says. "Champerty is a
species of maintainance - "which
is the unlawful maintainance
of some bargains
of a suit in consideration to have
some part of the thing in dispute
a some profit out of it" Again.
Page 464- and Page 454- and Page
455- "all persons may be properly
called guilty of maintainers - who act as
1 Hobart 249 are of the council for the party". -
Such bargains are illegal both
by the common law & Statute of
Westminster 2d."

Ackes Case 2nd Rolle 208.
Thurston v Percival 1 Pick R 416
Stanley v Jones 20 Eng Common Law 165.
is strongly in point. "It was also
a party agreed to communicate
information - as would enable such a
2/2340-137
Read-

party to recover a sum of money by action - upon condition of recovering a portion of the sum recovered called illegal - So in Peters - v Bagwell 15 Vesey R 149 Shamperly "is a bargain for part of the subject for which the parties are litigating in a court of justice" - So in Wood v Downs - 18 Vesey R 120 - It is ~~not~~ illegal for an attorney to carry on a suit - "in consideration of a bargain to have part in case profit arise & otherwise - Claims in dispute" Such contracts ~~void~~ held illegal by Lord Loughborough in Wallis - v Duke of Portland 3d Vesey R 501

S 1284-138

. /

Still stronger is the case of Banks, v
White - 1 Jones Equity 104. decided
in 1853 where all the law is
~~reviewed~~ reviewed
~~in point~~, the court say - "it
manifestly appears - that champerty
is an offence at common law
independantly of any
statute - not only in England
but in most if not all the states
of the Union - the decisions
in which cases from that same
source. ~~have a conclusive~~ to
the same ~~decision~~ It further
appears, that every contract or
agreement made - into which
champerty enters as a consideration,
is illegal & void - Especially ~~was~~
is this the case - where they had
adopted the common law as in

[illegible]

the State - (South Carolina) The case under which this decision was made was a contract between a father & son by which the son was to assist the father ~~&~~ in farming a part of the property in controversy - The Court held also that the party could not agree to contract away part of their respective & the ~~said~~ ~~case~~ decided By Statute Ruples Statute Volume 2nd Page 707 - The common law of England ~~is~~ adopted and all acts of the British Parliament in and then of - prior to the 4th of James first - The Statute of Westminster was prior to this - And in this case of Barnes - v. Utsey Dunlap

12340-140

don cted - under a statute of South Carolina - not as broad - & was held ~~that~~ as an act stated under the Common Law -

[1234D-14]

So in ~~Watts~~ Lathrop v. Bank of Amherst. 9 Metcalf R 489- a contract by which an attorney was to manage a suit- and to recover a certain percentage- if he did not recover he was to be paid his actual expenses- this was held illegal and void- So Blackstone says in his commentaries- 4 Bl R 134 defines maintainance to be- "the assisting of either party, to a suit in it money or otherwise to prosecute a defendant- & is punishable at common law by fine & imprisonment. And he styles such persons- "pests of society, that are perpetually stirring up to distribe the peace of their neighbors."- Coke says "his

~~Hoss~~ ~~a witness~~ ~~are~~ ~~seamed to~~
~~the point~~. ~~He~~ Mother was to examine
titles for defts. ~~H~~. and advise the
Dr what to buy. Blackstone could
not have ~~to have~~ descended ~~there~~
case more lapidly if he had had
had A before his ~~may~~ 8 yrs. So
in Martin's Anns. 1 3 Dessd
201. a bond that A B named
Jack a will. or use his reasons
certs held void. ~~same doctrine~~

~~Vaughn~~ A
So in Wheeler's Rpts 2 4
Alabama R 472, same doctrine
Contended
~~contended~~ in sustaining. And in
Brown's Beauchamp & Mann R
413 - the where doctrine is
denied with great clamp and
at great length

[1234-43]

Agan in say the Court erred in giving the instructions for the plaintiff. which entitled him to recover from the defendant for finding the defts in the tello- in say. that ~~such~~ the act of the plaintiff in discharging the wards for defective titles. imparting there dis ceanis to the defendant- & ~~induced~~ inducing him to buy the same was illegal - & illegal no compensation can be recovered for the services thus rendered. and the instructions are therefore wrong in allowing the jury to consider ~~that~~ "the finding" in their verdict. In say illegal wlts at Common Law & by Statute.

[12348-144]

Let us see the where ~~lead to~~ per
y the instruction - Ans - if the plaintiff
reached the ends - found a defective
title - ~~Ans~~ he had no interest in
the matter - & this another reason
interests to buy up an outstanding
title - ~~as the title does~~ per this
does any calculate to disturb mens
titles - & stir up litigation - the jury
are entitled to give him a verdict
Now the effect y this is to stir up
litigation - Gene had no interest
in the matter - does not propose to
have ~~any interest in the matter~~
only in the discovery - Now Hawkins
says - Page 454. Maintenance is
When one ~~stirs~~ stirs up quarrels and
suits in the country in relation to

[12348-145]

matters wherein he is in no way
concerned." - The dent effect of plaintiffs
acts was to stir up litigation - the
effect of the instructions to maintain
and sustain them - and is within
the case laid down by Hawkins.
This point seems to clear to justify
further discussion - Also claim
that the instructions ~~refuse~~ evidently
allows the plaintiff in error to
do acts forbidden by the Statutes of
Illinois - Purples Statute 1. Vol. Pages 380. & 3
7 & 18.

(12346-146)

The Court refused to affirm the sixteenth instruction asked for the defence. The plaintiff claimed large dues because he had definitely settled the title ~~to the~~ and the jury gave him large damages for that reason. Now if the title was not finally settled. It forms as a matter of course, but the plaintiff could not recover for settling the title. It therefore becomes important that the defendant should have that fact before them, which was the instruction. Now the legal effect of the ~~the~~ mandate of the Supreme Court was a matter for the Court to pass upon. It was for them to say whether the question of title was finally

(1234-147)

new about as the facts
result. The case was remanded
for what purpose? No further proceedings
what proceedings - a trial! if on
that trial the defendant should
show she had been in possession
of the premises ten years paid
all taxes on the land would
she not defeat Newkirks title.
That branch of the case had not been
tried - But at all events there must
be another trial - in which Newkirk
must employ counsel - Now before
one can recover per per pricily
sitting a case - on which is the
basis on which his evidence is given
and the point rendered
the case must be pricily settled -
the litigation ended. And it is certainly
complained to the jury to know that

[12340-148]

the matter was not yet finally determined.

$18,250. Otherwise ~~the defendant~~

Newkirk would have to pay some

$18,250 and ~~he~~ perhaps lose the

tide. That finding could only be

based on the ground that the

plaintiff had wasted for the defendant

a large property. And is the basis on

which the estimate is made of

consequences. ~~Mannie says no~~

~~man professional service [illegible] should~~

~~be [illegible]~~ Not one

of Countryes. place consequences

at one half of two indeed a second

accept upon the hypothesis that he

had assigned a large property for

Newkirk by his pudding and setting

[12340-149]

the allo: Hence the importance of having it distinctly before the jury mind the fact contained in the instruction

[12340-150]

17 Instruction. The Court erred in refusing the seventeenth instruction asked for by the defence. The pleadings and evidence raised the issue whether the written contract was in force. Plaintiff had offered evidence to show its termination and the defendant that it was still in force. Now the instruction is that the endorsements on the written contract of April 17, 1854, & Sept 19, 1854, made by the plaintiff are competent evidence for the jury to consider. and have a tendency to show that such written contract was in force at the time said endorsements were made. Then can be no question but what this is law. It is relevant to go to the jury & evidence in the

[1234-154]

case- The payments were pleaded- May they were in writing signed by the plaintiff- & not disputed on the trial.

That A ~~such~~ such a tendancy, that they have

Are a fact to be considered by the jury. cannot seriously be disputed.

The receipts were received on the "ultimo contract."

[12346-152]

Now understand the defendant in
error says that he cannot complain
of the refusal to give the instruction
asked for - because the court gave
a similar instruction - (see No 11).
This is not true - the only similarity
between the two instructions is that
they both relate to the endorsements
The result simply is - that
those endorsements are to explain
and be subject upon the
as to the time when such moneys
were received, and the purposes for
which received - The effect is not relative
as to the question whether such con-
tracts were in force or not. The
statement of the 11th is
in no wise reaches the

[12340-153]

question whether that contract was ci
fraudulent. It must be remembered
in mind on the trial has been
admitted & to be communicated and
upon which the defendants have been entitled to this instruction
The true test is. if after giving
the thereto. in had been added
the principle in the 17th would there
have been a repetition of principle
or of idea. Let us put them together.
That the receipts & endorsements of
the plaintiff dated April 17th 1854, &
Sept 29 1854. made by the plaintiff
on the back of the written contract
of March 20. 1854 and not explained
by the plaintiff. are binding and
conclusive on the plaintiff as to the
time when such money were paid

[123HD-154]

recent, the amendments and the purposes for which such sums of money are raised. and ~~has~~ are competent evidence for the jury to consider than a tendency to show that such written contract was in force at the time said endorsements were made. There is no objection of the conclusions or inferences which the jury had a right to draw from these endorsements. The last is a ~~credit~~ simply giving further data the first. and contains a deduction which the defendant had a right to ask the jury to make. and is not contained in the ~~list~~. are given.

[12340-155]

The Court was asked to give the following instructions.

~~In this~~ We have shown the contract testified to by G. W. Lane to be illegal. The question submitted admitting that contract to be true & gave the plaintiff a legal cause of action was a matter not for the jury but for the Court. The Court are to determine the legal effect of all contracts. ~~In this~~ ~~case~~ no one ~~questions~~ will question that if the contract testified to by Lane had been in writing the instructions asked would have been proper. The same rule holds true in regard to parol contracts. ~~This~~ Harris & Wood. 1 Murphy 113. Rhodes -vs- Dresser Busbee (N C) L 337 10 Iredell R 474 18 Eng C L R 161 4 Dev + Batt 220

H F Waits
Atty for Plaintiff in Error.

[12340-156]

II. V

~~The plea to the~~

The Court will there the judgment
when the judgement does not
dispose of the issues the judgment
on the merits in this case does
not dispose of the issues. Most
those issues are in Rawlins
Mcrae v. Roby. 3 Gelms R 476
3 Gelms 326
Rumple v. Martinez 3 Gelms 183.
Ferguson v. Smith 1 Wilson 183.

[12340-167]

Does not take
to know the
value of the
finding

A. B. Newhall
vs
Jr. Supreme Court C.
Isham & Conn -

Although thirty four errors have been assigned, in this cause it is believed that they have all been waived & except those which grow out of the motion refusal of the motion for a new trial - The appellant in this Court is confined to the errors presented to this Court below with his motion & has clearly waived all the errors occurring on the trial, which were not presented in his motion for a new trial -

5 Eng. Ark. Rep. 485 Berry vs Singer
~~584 Samuel vs Cannon~~
4 id — — 176 Anthony vs Humphries
~~4~~ 3 id — — 99 Hord vs Clark —
5 Pike — — 144 Dewley vs Robbins -
5 Mason C.C. — ~~161~~ 165 Cunningham vs Bell
38 Maine Rep 256 Dinsmore vs Weston -
32 — — 572 Cole vs Bruce —
14 id 421 State vs Call —
8 Hamm. Ohio 307 Remington vs Hunnyton
3 Cranch (U.S.) 415 Cowles vs Cunningham

Motion on Record & 147 - Page 73 - Record -

The general assignment of errors filed on the motion in this cause that the verdict was contrary

[12340-158]

to cause of Evidence may be sufficient but in such case the only question is whether the Evidence, taken and considered as a whole, sustains the verdict; ~~& the cases cited Hallenbeck & Brown~~ or rather whether the verdict is without Evidence to sustain it - 14 Hork Rep 202 = Bowen & Clark -

The 1st 2. 3. 4. 5. 6 & 8th assignment of Errors are repeated & answered in the other Errors assigned -

7th

Assignment of Errors is that the verdict is contrary to the evidence - We cannot better answer this Assignment of Errors than by referring to a few leading authorities which fix the rule for this court of Chancery -

3 Wood & Minot Rep - 38. 348 - 1 Curtis C.C. 63 -
14 Geo - 41 - Powell & Bigley
5 Eng Ad & E Rep 188. 658 - 1 Eng. Ad & E 86
21 Conn 245 - Dermott et ux & Loomer -
28 Maine 579 - Gilden & Dunleah -
5 Gil 72 - 569 = 11 Illinois Rep 56

The Courts does not favor the granting of a new trial and unless injustice will result from a refusal the Court will not interpose with the ruling of the Judge below who had better opportunities for knowing the real merits of the case - A mere technical Error will not reverse a judgment where the Court can see that substantial justice has been done - 1 Gil 475 - Gillett & Sweat -
3 Gil 202 Greenup & Stoker
4 Gil 496 - Delanney & Burnett -

[12346-159]

9th The Court below erred in permitting the introduction of any testimony of services rendered by the defendant to the plaintiff in error prior to April 1854. In this we answer that some service had been rendered prior to that period under the contract and some not under the contract and some moneys had been paid on account of both without any specific appropriation and there was a plea of set-off & that it was impossible to adjust the account without enquiring into the amount of service rendered & the amount of the set-offs as well prior as since that time.

Again. By the contract Cone was to render only such personal service and the proof is that he rendered other service (see C. W. A. Cone & Hawkins testimony)

C. W. A. Cone swears that plaintiff in the Court below commenced to making examinations of records in April 1853, and as he had already been at work one year when the contract was terminated. It would surely be reasonable that Dr Mostick should get this year's labor for the

[12340-160]

pay Trader the Contract Q. one Month - [See page 86 of the original Record] and also pages 189 & 160 = Gilt & Cone swears that Dr Newkirk rescinded the agreement & made a new contract - & the original agreement was rescinded by consent of parties Cone was entitled to recover on a quantum Meruit for all the services rendered - as well before ~~the termination~~ April 1854 as afterwards

10th "The Court erred in permitting the deed from Jackson to be read in evidence - 15 Illinois 466 - Johnson & Bright

This was proper to show the nature & beneficial character of the ser= =vices rendered by Cone to Dr Newkirk 15 Illinois 466 - Johnson & Bright -

11th "The Court below erred in excluding the testimony of Dr S. Lee =

This testimony was not proper evidence of title, it was not the highest evidence of title in the power of the party the Records were open to & got certified copies of the same -

Again The question was asked on cross Examination of plaintiffs own witness & no foundation was laid

by the Examination in Chief - and it was a matter in the discretion of the Court whether such question, should be allowed = Dr Mc Vickers Counsel should have called the Witness themselves if they desired to have that part of the case -

Again, the presumption is that the Court below ruled correctly and it may be that the witness did not have notice to produce said title papers; or that he did not desire to Exhibit his title deeds or disclose any defect in his claim of title - in either case the Court did right - and a Bill of Exceptions is like a pleading to be most strongly against the Excepter -

12 - The Court below erred in permitting
See 15 Ill 466 - the following question to be asked Hon Geo Manierre - a witness for the defendant in error " Go on & give the history of the Case !!

To this we answer that Manierre stated facts & then as an Expert gave his opinion of the value of the services - this was proper -

[12340-4W]

12-

13th is answered by the authorities to 12th Judge Mouton answered as an Expert — was entitled to give his opinion —

14, 15, 16 & 17th are also answered by the same authorities as E. S. Williams was also an Expert = Record P-104 =

18th The Court below erred in permitting G. W. P. Cone to prove a written notice of the termination of the contract the same not being admissible under the pleadings —

To this ~~bill~~ reply — That even if Nos. 2 special pleas would not admit of the proof = That on the whole merits of the case could be more properly tried under the general issue — There was no error in the matter = The Court will not Examine the validity of a special plea or issue, when the merits of the case has been fully tried under general pleadings = 4 Porter & A Rep 333 = 396 5 Porter 224 = .

But there cannot be a doubt that the Evidence was admissible the gist of the pleas were that the services were rendered under the contract the Replication denies the fact — that the contract was cancelled & annulled in accordance with a stipulation in the Contract contained —

19 + 20th There ~~assignments of Error~~ Errors are not tenable - These motions were addressed to the discretion of the Court & Error cannot be here assigned on them -

21st This assignment of Error is entirely untenable It asks this Court virtually to nonsuit the plaintiff - The remedy was by asking an instruction as to the law - But the contract was legal beyond question -

22, 23, 24, 25 + 26th It is not perceived why these instructions are not good law -

Not a law question - 4 Litt 412 - Rust & Lane -
3 Hen. Del - R. 139 - Bayard & McLane -
6 Mon - 389 - Caldwell & Shepherd -
5 Mun - 180 Spencer & King -
7 Mun - 96 Hall & Kirby -
15 & Cranch 4 14 - Johnson & Wright -
~~1 Dana 179 - Bruce & Bell~~
4 id 172 Wilkins & Roberts
10 13, Mon. 341 Runyan Dec'd & Trent -
~~2 Dana~~ 5 Thomas Coke Top. paging 425, 6 -
1 Russell on Crimes 2 ed 175 -
1 Dallas Rep. C. C. 462

27th The 12th instruction is certainly not law - The parties certainly could terminate the contract by mutual agreement without notice -

(12340-162)

28th Is certainly not the law = The instruction says it is "contrary to the "Statutes of Illinois" What Statute is certainly not, Sec 107 Nos 108 - Page 170 Rev Stat of 1845 = Because each of those sections require that the offence shall be committed "with a view to promote strife & commotion" or "with a view to promote litigation" The gravamen is the gist of the offence -

Besides Sec 4 P. 105, Title Conveyances Rev. Stat - 1845, The common law rule is Expressly Changed & Repealed -

29 & 30th - Is not law - The agreement is not void for champerty - See authorities In 26th Error assigned -

31st The sixteenth instruction, is not law - & not based upon the testimony — How could the Court know whether the title was settled? At Chancery it was settled by the Supreme Court - at all events the Court had no right to say that the question of title was not settled - as between Newkirk & Chapman it was settled - & the Court did not know as to the persons claims -

32 The Seventeenth instruction is not law. Even if it were evidence that might be considered by the jury. The tendency & Effect of the proof was not for the Court but for the jury. It was a question of fact & not of law as to what the "tendency" of a given act or acts does show. 12 Ill. 195 Emmes & Blackhead

But the receipts are not in Evidence. The record shows that "the agreement was read" and the Clerk has copied "the indorse = ment" into the Record. but that does not make them a part of the Record 5 Gil. 209. 13 Ill. 78.

An indorsement on an agreement is no part of the agreement. 21 Vermont 222 Mc Daniels & Saskum. 12 Illinois 356. Gilpatrick & Horton.

And besides there is no proof that the plaintiff made the indorsement. and the Record does not show that the indorsements were read in evidence and every intendment is made in favor of the ruling of the Court below.

33 A pignment is general. & has been answered. on the particular pignments.

[12340-163]

3 4th That the issues were not all disposed of - The verdict is as broad as it is possible for a verdict to be "We the jury "find the issues for the Plaintiff and "assess his damages to the sum of &c" —

Such a verdict necessarily finds all the issues submitted to them - It does not require authorities for so plain a proposition -

134

A. B. Saunders
v
L. S. Cone
Affd for Bill

Adamson B. Newkirk
vs
John E. Cone. } Supreme Court
Appeal from Cook

The action is assumpsit -
4 Counts for work, labor & professional services,
4 Pleas - Amended - filed 12 Sept. 1856,
1st Gen. Issue
2d. Special Plea of set off.
3d. That on 20th March 1854, a Contract was made, setting it forth, & that all the services were performed under it - & that it has never been annulled, but still in force -
4th - Sets forth same Contract, & avers that all the work was done under it & while it was in force, & that Defts had paid on the same $1990.83/100
To the First plea. Plff filed Similiter
" " Second - Plff replied that he did not undertake & promise as in plea alleged
" " Third - Plff replied that none of the services were rendered under the Contract
" " Fourth - Plff filed 15 Sept. 1856. Amended replication, that on the 1st April 1854, the Contract was by Mutual Consent, annulled -

The above define the issues presented by the pleadings -

[12340-164]

The matter set up in the 3d & 4th amended pleas if maintained is a defence to the action.

The 3d plea contains two traversable allegations each important.

1st That there was a contract between the parties under which the work was done

2d That the contract had never been annulled, but was still in force.

The Plff traversed but one of these allegations by his replication. Viz. That none of the work was done under the Contract.

It is a general rule in pleading, that a party confesses all such traversable allegations on the opposite side as he does not controvert. The omission by him, to traverse material facts alleged by his adversary, is considered as an admission of them. And what he thus concedes on the record, he is not permitted afterwards to controvert

Dana v Bryant et al. (1 Gilm 107)

Stephen on Pleading. 217.

This 3d Replication, then, confesses the existence of the Contract. That it had never been annulled - but was still in force. & the only issue

made under the plea is whether the Contract was broad enough to cover the services sued for -

This issue was disposed of by the Court in the Instruction No 1. given at the instance of defendants' Counsel -

The 4th Plea is a special plea in bar & goes to the Plffs right to recover -

It alleges that the services were performed under a Contract, (setting it forth) and while it was in force -

To this plea the Plff on the 15th Sept. 1856 by his amended replication replied, that the Contract was by mutual Consent annulled on the 1st day of April 1854 -

The force of the Contract from the 20th March to 1st April 1854, is admitted by the replication -

The only issue tendered by the Plff to this plea, & the only one to be tried, was - whether the Contract was or was not annulled by mutual consent on the 1st April 1854 -

The Jury returned that they found the issues for the Plaintiff

[12340-165]

The issue under the 3d amended plea, then, was found for the Plff. which was against the direct instructions of the Judge — & was manifestly wrong.

Again the issue under the 4th amended plea, (that the Contract was annulled by Mutual Consent on the 1st April) was found also for the Plff. As to this issue the verdict was clearly against the evidence.

The testimony nowhere discloses any proof to support the issue made by the Plff. On the contrary, by his own witness the Plff disproves his issue, & proves that it was not annulled by mutual consent; but by the act of the Plff himself who availed himself of the right reserved in the Contract to each party to determine it by a notice in writing of thirty days.

See testimony of G. W. S. Cone. folios 220 to 236.

First. On the trial the Court erred in admitting & allowing the Jury to consider as an element of damages in the Plff's behalf, any services rendered by the Plff from the 20th March to 1st May 1854 — because — assuming that the proof of cancelment of the Contract by

the Plaintiffs written notice. given 1st April supported the issue: (of annulment by mutual consent) Yet the Plff could only release himself from the obligations of his Contract after thirty days notice - If because the parties had agreed upon a reserved right, the act of one asserting it in the manner prescribed by the Contract can be construed into an annulment by "mutual consent". Yet the terms of the agreement are not modified - After the notice he was bound to the Defendants service for thirty days thereafter - unless expressly relieved by the Defendant -

Therefore the testimony of the several Witnesses tending to prove services from 20th March to 5th May should have been withheld from the Jury -

See testimony of G. W. I. Cox folios 156. 7. and 169. where Witness says Plaintiff employed his whole time for 14 months for defendant. & Connected with this Evidence see folio 236 - (the notice proved from Defr. to Plff.)

- See also Gen. Mauserre's testimony. fol 192 to 200 -

- And testimony of McAllister. fol 211.

[12340-162]

Secondly. The Court erred on the trial in refusing to confine the evidence of the Witnesses to the issue presented by the pleadings - folios 220-225 - Gen'l Ev. Vol. I. § 57. 1 Rest. Prin. Elborne § 229-249.

The issue under the amended pleadings was - annulment of the Contract "by mutual consent" - the Witness swore that the Plff terminated it by his own act, by a written notice to the Defendant.

The amended pleadings were in substitution of the original pleadings - which were abandoned - They were not additional pleadings but were recognized & treated as amended pleadings - under which the issues were to be formed for the trial -

On the 15th Sept. a motion to strike Defts amended plea from the files & for leave to the Plff to withdraw his replications to the amended plea, was denied by the Court - & the amended pleadings established as the pleadings in the Cause - Leave was granted to the Plff to file new replications to the Defts 4th Amended plea - See fol 125 to 139. 6 Missouri 174 — 177

Thomas v Young 5 Texas R. 253
Mitchel v Williamson 9 Gill R 77

Thirdly. The Plaintiff having failed to establish the issue tendered by himself in his amended repls

cation to the 4th plea, the Court erred in not withdrawing from the Jury, not only the evidence tending to shew a termination of the Contract in the Mode proved by the Writnesses Cone, ~~but~~ but also erred in not withdrawing all the testimony offered to prove Services, which the Contract could cover - which according to the instruction, before referred to, (No 1.) embraced all the Services proved by the Plaintiff - For since by the pleadings the existence of the Contract was admitted, - & since the Plff failed in establishing the issue he presented, by which he sought to avoid the force & effect of the Contract - it follows that the Contract was in full force, & so far as the issues were concerned, the Court & Jury were bound to regard it -

S12346-147

Both in any view of the Case the Plaintiff was not entitled to recover - whether under the Written Contract set forth in the Record, or under the verbal Contract or agreement or arrangement testified to by G.W. S. Coe - Both are illegal - & are within the law against Champerty & Maintenance -

4 Bkst. Com. 134 Champerty is a bargain for an interest in a Share of the subject matter of a Suit, in case it prevail, in consideration that the Champertor, advance money or carry on the Suit at his own expense. - Maintenance does not involve any agreement for an interest in the subject matter - Champerty is therefore maintenance & something more, & is founded upon, both by Law & Equity, as tending not only to foment litigation, but to pervert the objects of the Law -

Thus where an Attorney after rendering some service in a Suit brought by the Deft. entered into an agreement with him by which he was to receive ten pct. upon the Sum recovered, the agreement was held to be bad for champerty -

5 Paige 313. Thurston v Percival 1 Pick R. 415.

Lathrop v Amherst Bank 9 Metcalf R. 489.

Says Justice Story, "It is not confined to advances of money in consideration of a division of the subject matter of the suit but embraces all modes of assistance furnished on such consideration - Thus an agreement to give up certain securities, or to communicate certain information, or to procure evidence, upon condition of receiving a portion of the sum recovered is champerty - Story on Contracts § 581

Stanley v Jones 7 Bing 369

The rule in Equity & at law is the same - in both tribunals Champerty constitutes a complete defence to a contract -

Maintenance is generally defined to be "the officious assistance by money or otherwise, proposed by a third person to either party to a suit, in which he himself has no legal interest, to enable the party to prosecute or defend it." However modern constructions have qualified the law of maintenance, as it was formerly held, there is no change in it, where the contract or act is poisoned by any ingredient of Champerty -

The Ancient Statute of Edw 1st reached Attornies as well as others - nulle ministre de loi, ne nul autre, were permitted to take

upon him any business in suit in any Court or to have part of the thing in plea or demand. Every agreement relating thereto was declared void

Lord Loughborough considered the offence of maintenance as malum in se - & all agreements tainted with it. Even as between Attorney & client are void in Equity as well as at Common Law -

Kenney v Browne 3 Ridg P.C. 462
Wallis v Duke of Portland 3 Vesey 494
Powell v Knowles 2 Atk 224
Stevens v Bagwell 15 Vesey 139
Wood v Downs 18 " 120
Arden v Patterson 5 Johns Ch R. 48.9.
6 Cowen 431 1 Greenleaf 292
Key v Vatheir 1 Hammond Ohio R. 132.
Barney ex dem v Strong 1 Jones Equity (N. Car.) 103
24 Alabama 472. 4 Littell (Kelly) 417. 5 Monroe 416
22 Pend 406. 13 Iredell 201.
Harrington v Long 2 Mylne & Keene 590

A Solicitor or counsellor cannot contract with his client for a part of the matter in litigation as a compensation for his services
10 Paige 352. (affirmed 2 Denio 607. Case of Wallis v Loubat) - (see 5 Paige 311. In re Beakley)
There would be no bounds, (says Lord Thurlow Wells v Middleton 1 Cox 125) to the crushing

[12340-169]

influence of his power if it was adverse.
~~Merritt v Lambert 10 Paige~~

Berrien v Mc Lane 1 Hoff Ch Rep 421. Contains a strong declaration that every agreement made pending a litigation to pay Counsel or the Attorney a part of the property recovered is illegal on the ground of the relation of the parties & of the doctrine of Champerty.

In Box v Barnaby Hobart's Rep 117 marginal the Chief Justice declares "I hold that if an Attorney follow a cause to be paid in prop. when it is recovered, that is champerty."

Supreme Court

A. B. Newkirk

ads

John E. Cove

Appeal from Cook Circuit Court

Brief for Appellee

D. Stuart

for Appellee

State of Illinois ss } Supreme Court
Third Grand Division } April Term 1857.

John E Cone } Appellee
ads
Adamson B Newkirk } Appellant

Appeal from the Cook
County Court of Common Pleas.

And now comes the said appellee in his own proper person and says that there is no Error in the Record, and proceeding aforesaid of the Court below to the injury of said Appellant as he has alleged. And this he is ready to verify by the Record aforesaid. Wherefore he prays Judgement &c.

John E. Cone.
Appellee.

[12340-171]

134.

Supreme Court
April Term 1887.

Appeal from Cook Co. C. C. P.

John E. Cone

vs

Adamson B. Newkirk

Joinder in Error

Filed April 23. 1887
L. Leland
Clerk