No. 14646

Supreme Court of Illinois

Marble

vs.

Bonhotel

71641

STATE OF ILLINOIS,

SUPREME COURT,

THIRD GRAND DIVISION.

No. 140

J. W. Middleton & Co., Stationers, 196 Lake st.

Oliver Mc Cable }
ads. } Supreme Court.
King & Bankhead }
June Term A. D. 1864

Suggestions of Appellee's Atty.

1. Since making our Appellees brief in this case, additional Record has been filed; to wit: The deposition of Comstock Colvin; the finding of the jury of the issues submitted to them; and affidavits of Appellee read on the hearing of the motion to dissolve the Injunction. Those affidavits are certified to by the Clerk and there is also, a certificate of the Judge attached stating that they were all read on that hearing.

We think these are a part of the Chancery Record in the case.

This additional Record will enable this Court to see that there was clearly no error in overruling the motions to dissolve the Injunction.

We would especially request the Court to read this additional Record as there is no abstract of it — it has been filed since the abstract was made out. We submit

very plainly. The abstract of the Record filed is very imperfect, but as it is short and well written the Court can read it with but little labor.

On page 7. the word ton is used instead of per 1000 lbs. Lead minerals is always sold by the 1000 lbs. and by the ton. The word ton no where occurs in the whole case.

There are a great many mistakes in the abstract. The contract between Gunnison and Colusa is not correctly stated. Colusa has to work the mine until all the minerals therein should be exhausted.

Just so far as our purpose here to point out all the mistakes — many of them are of no importance.

The appellee did not intend at the time his brief was made out to file any additional Record, as he did not deem it necessary, but as the case has been submitted without argument it was thought best to let the Court see some of the Record from which appellant seeks to draw his inferences, that a full understanding of the facts, although there is an abundance of the evidence

recited in the decree to sustain it.
~~the~~ ~~the~~

See the issues found by the jury in the additional record pp. 44. and on.

They find first: That the mean range in controversy was not the same lead or range worked by Hay & Dunbuke; but they find the 2d. issue for complainant: That the lead or range in controversy was on the same embraced within complainants' Mines claim; and they find the 3. issue for complainants That Mabe did not become the owner of all of Complainants' interest in the Mines and Mines claim; but only the working interest of Coombs as stated in the bill. The fourth issue was found for defts. but it amounts to nothing; neither does the fifth issue, which was found for defts.

Defts. Solicitor admits having proper issues submitted but they have nothing in the case as were undisputed.

The jury found that Mabe had only bought Coombs working interest, and the lead in controversy was on the Mines claim as stated

& Burnett (complainant) owned the one half of all the mining rights.

The court will by reference to the additional & amended Record Pa. 6, 16. on 16 Pa. is a diagram of mine in controversy — showing the different drifts &c. Also on Pa. 61. A full explanation is given in connection with these diagrams which will enable the court to understand the matter.

But with the exception there are no questions raised in this case by appellant, but questions of Chancery Practice. The exception is as to whether the description of the claim is sufficient — this question I have fully considered in my brief.

I think the description is abundantly sufficient, and as shown in my brief, the best that could be given.

The appellant raised no question as to the jurisdiction of the court, in the court below nor does he do so in this court. There is no question then, as to this matter; although

in my brief, I am first to notice the matter of jurisdiction.

As to the objections to the rulings of the court upon the preliminary questions of practice, I have noticed them all in my brief, and opened to authorities to sustain all of my positions.

I moved, however especially upon the court again to the case of Pope & Addison v. Summers 7 J. and the authorities therein referred to. That case covers this whole case.

As to jurisdiction, shewed this court consider the question at all — it is not before the court — I moved especially upon to 2 Johns. Ch. 463, and 6 Johns. Ch. 497. as to inadequate remedy at law and multiplicity of suits &c.

As to issues submitted to a jury in Chancery, being a proper foundation for a decree, I moved upon again to Kelly et al. v. Chapman 12 Wls. 590 to 594, also, Fraser et al. v. Bennet et al. 12 Wls. 310.

Those cases, & the objections that there was

no evidence in the Record upon which to found the decree, aside from the important fact, that there is an abundance of evidence recited in the decree itself; and also, aside from the fact of the depositions, and evidence contained in the Amended record now filed in the case.

The truth is, that there is not a shadow of error in this whole case from beginning to end! both the law and the evidence; and also Equity and justice, are all on the side of the appellee!

It was simply an effort on the part of a Scrimmaged man known to every body to be a dishonest villain to swindle a poor boy who had gone into the army out of his rights in his absence!

As a specimen of the man: After ten or fifteen witnesses had sworn that his claim in controversy was on the land described in the bill, and we are to the contrary, he swears in his third & last answer that his claim was not on that land or all;

and assigns here as an error that the court did not dissolve the injunction on that motion even after the issues had been found by the jury.

We also, make an motion against the integrity of the court without the slightest foundation in the record as will be seen by reference to his application for a change of venue in the record. And also, appears pretty hard against myself, as the court will see by his affidavit in the record and asks the court to dissolve the injunction.

The secret of all this is that he wanted injunction dissolved so that he could get the money in the hands of Hughlett & Son.

It was to prevent this that we asked for an injunction without giving notice. This is a part of the irreparable mischief he would have done.

It is most earnestly requested that the court will be give us a decision in this case at the close of this term, as appellant is giving appellee a great deal of annoyance in regard to working the mine and will continue

to do so until the case is decided.

These suggestions have been made in great haste, as I hardly deemed it necessary to say anything at all in addition to the Brief.

T. A. Green
Att'y. for Appellee

1840.-47

Claude
Ex.
Gardner

Suggestions
for
Appellees Att'y.

State of Illinois---Supreme Court,

Third Grand Division,

APRIL TERM, A. D. 1864.

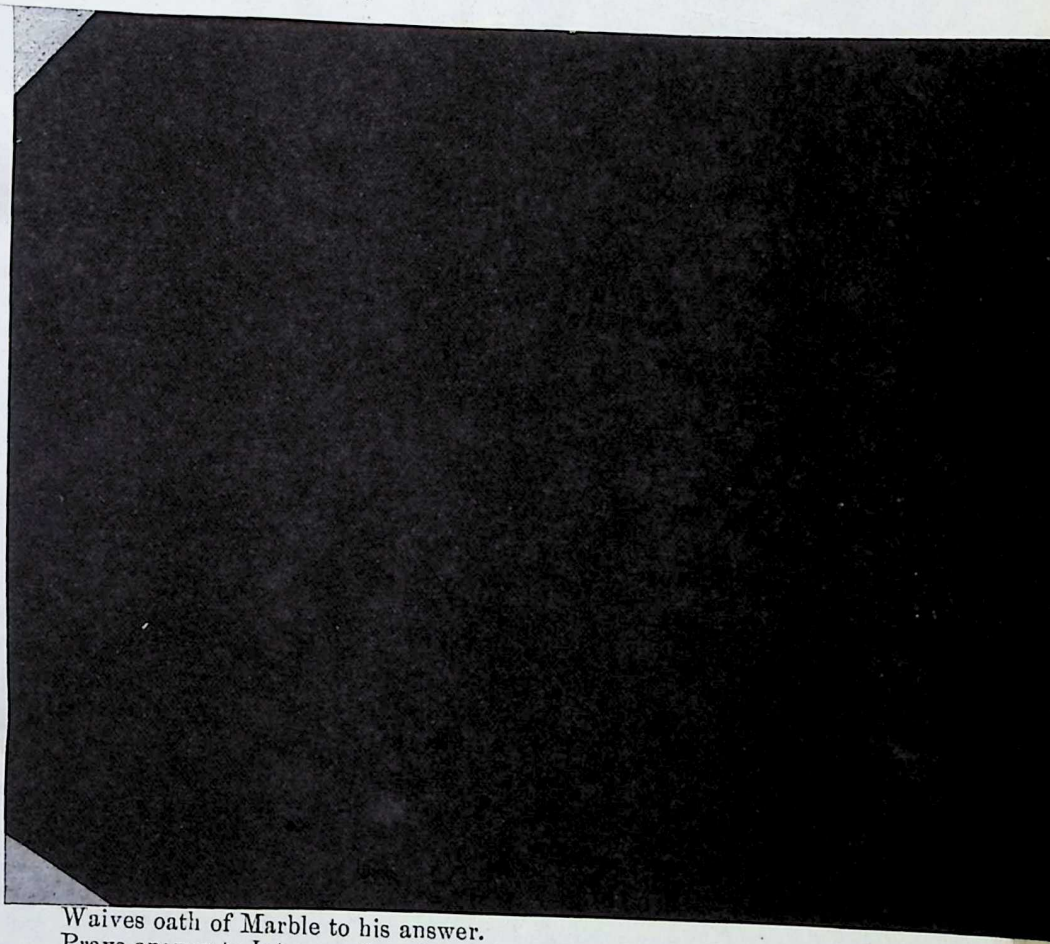
OLIVER MARBLE,
vs
HENRY P. BONHOTEL.

} Error to Jo Daviess County.

ABSTRACT OF RECORD.

Record p 1 Injunction Bill.

The Bill was filed in Chancery by Henry P. Bonhotel as complainant as follows:



Waives oath of Marble to his answer.

Prays answer to Interrogations framed, so as to embody the foregoing allegations.

Prays Marble be made a party to Bill and for summons, and also for writ of injunction.

Prays an account and payment of complainant's share, and also specific performance of the contract in working said mine, and also for general relief.

Affidavit of T. A. Green solicitor, also of Peter Bonhotel to the truth of the Bill.

The fiat of B. R. Sheldon, Judge, &c., ordering the writ of Injunction to issue as prayed.

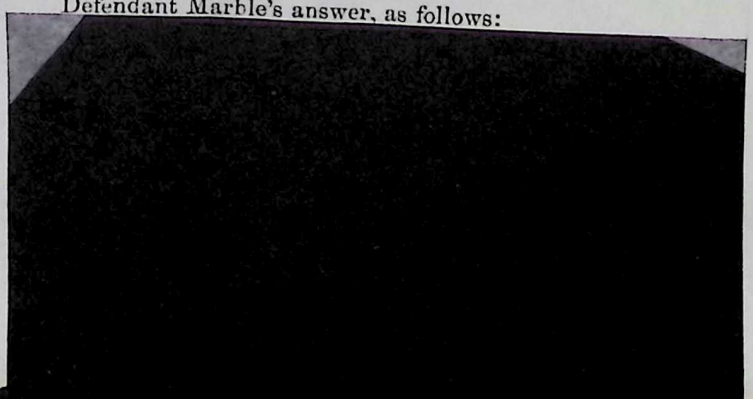
The injunction Bond.

Cost Bond of T. A. Green.

Summons and return.

Writ of Injunction and return.

Defendant Marble's answer, as follows:



describe any lands sufficiently. 2nd. Bill does not make proper parties.

102 Motion for change of venue heard, overruled, and excepted to.

104 Answer of Oliver Marble to last amended bill of complainant shows as follows:

Denies specifically each deed, every allegation in said amended bill, and is sworn to by defendant, and is accompanied by motion to dissolve injunction.

112 Bill of exceptions to the ruling of the Court in overruling motion to dissolve injunction, shows answer and motion heretofore copied, page 104 and on.

113 Motion for continuance and affidavit, and bill of exceptions on overruling motion.

117 [redacted]

122 Defendant's exception to the rendition of said decree, and appeal prayed and granted on giving bond as therein specified.

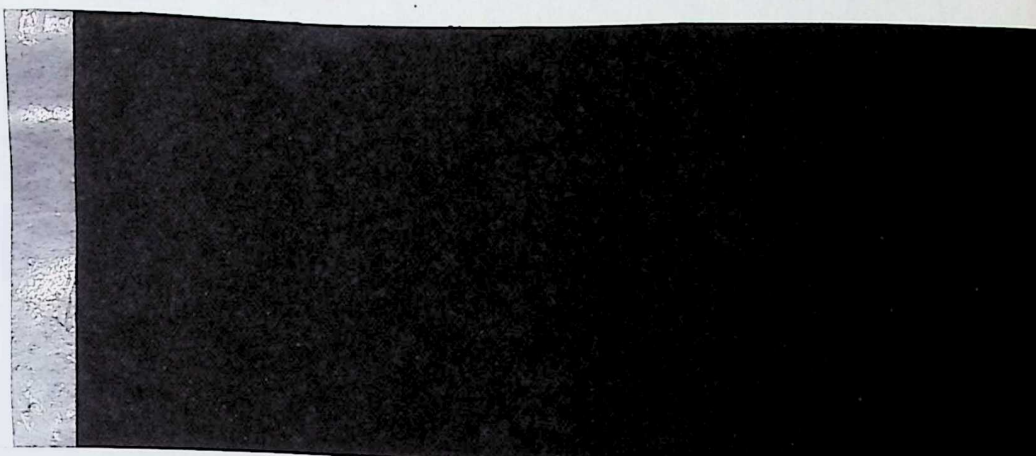
123 Bill of exceptions embodying the testimony offered and heard on final hearing, certified by Court.

126 Appeal Bond.

127 Filing of the same.

ERRORS ASSIGNED.

[redacted]



BRIEF OF AUTHORITIES AND ARGUMENT.

On the 14th day of March, 1863, complainant filed his bill in the Circuit Court of Jo Daviess County, praying for specific performance of a contract and injunction. On the same day an injunction was granted and the writ issued. This we assign as error.

I.

An injunction should not be granted, unless a clear, equitable case is made by the bill.

Daniel's Chancery Practice, 1891. 2, Madd, Ch. Pr. 218, (4th Am. ed.) Jeremy Eq. Jur., 335, 336. 1, Smith Ch. Pr., (2nd Am. ed.) 596, Storm vs Mass: 4, John Ch. 21, Duvall vs Waters. 1 Bland, 576, Hough vs Martin. 2 Dev- & Bat., 379.

The bill in this case shows no cle ar, equitable right, but admits that defendant claims title to the premises, and presents only the litigation of a doubtful right.

The bill fails to show by sufficient description, what and where the complainant claims; the description of land is only that owned by Mrs. Kamphouse and Elizabeth Kamphouse, in Rice Township, Jo Daviess County, Illinois, without specifying what part of said lands, although it admits that the land is mineral land, and covered with mineral claims.

The injunction should have been refused on this ground.

II.

It is only in cases of great urgency, or when irreparable mischief may ensue, that an injunction will be granted before answer.

New York Printing Co. vs Fitch, Piage 97.

Hartridge vs Reckwell, R. M. Cherlt, 264, 265.
Ogden vs Kip, 6 John's Ch., 160, 161.
Perry vs Parker, 1 Wood and Minot, 280.

This bill shows no such case. A large lead of mineral is in controversy, one-fourth claimed by complainant. Defendant's interest in the mine itself shows responsibility sufficient to rebut the allegation of insolvency, which is evidently a mere pretext and excuse for chancery jurisdiction.

III.

But whatever the merits or elements of the original granting of the injunction, it should have been dissolved on motion.

After a sworn answer, sufficiently denying the allegations of the bill, the injunction should be dissolved as a matter course, on motion, unless affidavit is filed that complainant can disprove the answer by witnesses, in which case it is continued for proof. Daniell's Ch. Pr., 1826, 1820, 1828, 1831. 1 Smith's Ch. Pr., 596, 600, 601, notes, (2nd Am. ed.) Affidavits cannot be read to disprove the answer in case of title, Eden on Injunction, (2nd Am. ed.) 136, 137, 383, 384, Eastburn vs Kirk, 1 John Ch. 444.

When the answer denies the facts on which the plaintiff's equity rests, the injunction will be dissolved. This was settled in the following cases:

Ried vs Gifford, 1 Hopk, 416. Gibson vs Tilton, 1 Blan 355. Hollister vs Barkley, 9. N. Hamp. 230, 238. Chesapeake & Ohio Canal Co. vs Baltimore & Ohio Railroad Co., 4 Gill & John 7. Moon vs Reed, 1 Ind. Eq, 418. Livingston vs Livingston, 4, page 111. Wakeman vs Gillespy, 5, 112. McFarland vs McDowell, 1 Car, Law Reports, 110.—Williams vs Berry, 3 Stone & Post, 251. Christmas vs Campbell, 1 Hogh, 123. Thompson vs Allen, 2 Hager, 151. Parkinson vs Trousdale, 3 Scam. 370. Orr vs Littlefield, 1 Wood & Minot, 18.

The Court in case at bar heard the motion on bill and answer, and then after intimating that the injunction would be dissolved, allowed the plaintiff to amend his bill in such a manner, as to make a new case entirely, thus setting aside the answer, by making a new bill outside the answer. The original bill claimed only the range worked by defendant and Wise, and called Marble's Diggings. The answer showed conclusively that this range was struck by Marble and Wise and that Bonhotel never had or claimed any interest in it, or did any work, or expended any money thereon.

The amended bill abandoned the old ground entirely, but claimed that Bonhotel was entitled to thirty-seven and a half feet on each side of his range, thus lapping the new range, which was entirely distinct from the other, but within that distance of it. The Court had no discretion to allow such an amendment without prejudice to the injunction, and should have dissolved the injunction on motion, and the failure to do so is error.

IV.

The allowing such an amendment to a sworn bill was also error. In Daniell's Chancery Pl. and Pr., page 454, note. it is laid down as follows:

"Amendments can only be granted when the bill is defective in parties, or in prayer for relief, or in the omission of a fact or circumstance connected with the substance, but not forming the substance itself, or repugnant thereto." The cases cited are 1 Edw. 46, Verplanck vs Merct. Ins. Co. Lyon vs Tallmadge, 1 John Ch. 184. Rogers vs Rogers, 1 Paige 424. Bowen vs Cross, 4 John Ch. 375. Renwick vs Wilson, 6 John Ch. 81.

It is added, however, "Amendments are always allowed with great liberality until the proofs are closed, EXCEPT WHERE THE BILL IS UPON OATH." Cock vs Evans, 9 Yerger 287. Cunningham vs Pell, 6 Paige 655. In case the bill is upon oath. there is greater caution exercised in reference to amendments, Verplanck vs Merct. Ins. Co., 1 Edw. 46. Swift vs Eckford, 6 Paige 22. Loyd vs Brewster, 4 Paige 538. Parker vs Grant 1 John Ch. 434. Rogers vs Rogers, 1 Paige 424. Whitmarsh vs Campbell, 2 Paige 67. But had the amendments allowed, been proper amendments under above decisions, still the proper steps were not taken to procure them to be made. Daniell's Ch. Pl. and Pr. 455 page (note) it is laid down as follows: "when a plaintiff wishes to amend a sworn bill, he must state the proposed amendments distinctly, so that the Court can see that they are merely in addition to the original bill, and not inconsistent therewith. He must also swear to the truth of the proposed amendments, and render a valid excuse for not incorporating them in the original bill." Citing same cases as above cited, 1 Paige 424, 2 Paige 67, I Edw. 46. Nor can it be said that we have relaxed the English rule in relation to such amendments, inasmuch as the cases above cited are our own, and undoubtedly the rule of our courts at the pre ent day. That the amendment was a substantial one, is shown by the fact that the original bill only claimed a range which was more than twenty-six feet from the range now in controversy, and but for the amendment could not have approached within twenty-six feet of it, the two being parallel, east and west ranges. The bill being a sworn bill should have stood as it was originally, except mere formal amendments, or those not changing its character.

V.

The amended bill was fully answered, the oath of the defendant being attached thereto, and also the original lease under which plaintiff claims being made an exhibit of said answer, showing that only the range, and not thirty-seven and a half feet on either side, was the claim and right of Wise & Bonhotel. This was also further substantiated by the affidavit of Joseph Wise, (filed with said answer,) to whom the lease was given, showing that such was the agreement and understanding and intention of the parties at the time, and that the original contract was never changed by a subsequent contract.

This answer denies the equities in the amennded bill, and is fully corroborated by the original lease and the affidavit of Wise. The Court could have dissolved the injunction on filing the answer to the amended bill, and the failure and refusal to do so is error. (See cases already cited in third period of this Brief.)

VI.

The injunction should have been dissolved on motion, because of the technical as well as substantial defects of the bill, See Daniell's Ch. Pr. page 1896 note, cites Henderson vs Maddison, 12 Sim. 416. "Any technical objection to the bill that would have been good on demurrer," is available against an injunction.

The want of certainty in the description of the premises, and other defects in the bill, should have caused a dissolution of the injunction.

VII.

But not only was the bill amended improperly under order of Court for that purpose, but it was also amended in several important particulars by solicitor Green in vacation, without any order of Court, or application therefor.

By this amendment, which in law we denominate a forgery, the injunction ceased virtually for want of a record to sustain it. It is true that if the alteration had been made by a stranger, it might not, probably would not, have had that effect; but the law is clear and well settled, that the material alteration of an instrument by the party beneficially interested, as by the payee of a note, the obligee in a bond, the grantee in a deed, &c., the instrument is rendered wholly inoperative and void. The reason of the rule applies to this case in all its force. Here is a record of a court setting forth the plaintiff's title—if defectively set forth, he cannot recover, neither can he recover if the proof makes a different case from that in the bill. Knowing this, the solicitor, after the deposition of the main witness taken, changes the contract set forth in the bill so as to conform to the proof, in order that he may recover, when otherwise he could not hope to do so. This unwarranted act has the same effect as the changing of either of the instruments cited above by the party to be benefited thereby and the record being destroyed by the act of the plaintiff, through his solicitor, the injunction falls for want of a sufficient basis, and should have been discharged by the Court on the facts appearing of record, as they did at the subsequent term of court, when the motion was made, based, on affidavit, &c.

VIII.

The argument and authorities cited in 4th period of this Brief against the first amendment allowed, apply with still greater force against the granting of the second amendment. The application does not show a case for amendment, nor does it show what amendment was wanted; and the lease granted

was a general leave, under which the plaintiff made such amendments as he pleased. The granting of such an order would be error under all the authorities, even if the bill had not been a sworn bill. Besides, the amendment was a substantial one. The bill at first limited the contract to three years, or while plaintiff was gone to the war, the amendments make it a continuing contract until the mineral is worked out.

IX.

The demurrer to said second amended bill should have been sustained. Although it has been held in certain cases that a demurrer might be taken from the file, if filed to an amended bill, without leave, or rather that it is in the discretion of the court to allow it to be filed, yet that discretion having been duly exercised, and the demurrer regularly filed, it is the same as if it were filed to an original bill, and such was in fact the opinion of the court. There is such an entire want of description in the bill, that if specific performance were decreed, the sheriff could not, from the description in the bill alone, locate the plaintiff's rights. This bill claims a lease hold interest in land, and that defendant is the tenant of plaintiff; the premises should be described with the same degree of certainty that would be necessary in an action of forcible entry and detainer, or in ejectment. The bill claims no merely equitable right; and if it did, it must still describe the premises with certainty; but the bill is based on a legal right, and the equitable jurisdiction is based on the allegation of insolvency of the defendant, and on that alone.—The description of the premises would not stand for a moment in an action at law, and the defect is so glaring, that it would be good in arrest of judgment after verdict in such an action.

That the demurrer was rightfully filed appears from the fact, that an amended bill, however trifling the amendment, becomes a new bill, and if not answered, the whole bill may be taken "pro confesso," notwithstanding the previous answer to the bill except the amendment. Daniell's Ch Pr. 455, cites Trust and Fire Ins. Co. vs Jenkins. 8 Paige 589, Bosauquel vs Morthan, 4 Simons 573, and Richardson vs Richardson, 5 Paige 58. It is even held that the defendant, though not required to answer, may make an entirely new defence, and contradict his former answer. Same case last cited, also Thomas vs Visiters, Fred. Co., School, 7 Gill & John 369. In this last case, an additional answer to an amended bill was ordered to be taken off the file, because not filed with leave. In the case at bar, the demurrer was filed with leave, and should not have been overruled, because well taken.

X.

The application for a change of venue was made on Monday morning following the trial of issues before a jury, in which the case was given to the jury late on Saturday night, and only one day (Sunday) had intervened. The Court shel

tered himself behind the supposed fact of one day intervening without notice, and overruled the application. If the Court had a discretion in the case, it was used in such a manner as to indicate the final result. (See Chap. 106, Rev. Stat. Sec. 1, 1 Scam 117, 1 Scam 164, 22 Ill. 633.) 21st Ill. 639 is relied on as sustaining the ruling of the Court, but the Court in that case rely on the fact that the affidavit was sworn to one day before the motion. In the case at bar, the affidavit and motion were made the same day, and the earliest civil day after the causes arose.

XI.

The error assigned in overruling motion to disolve injunction, filed with defendant's answer to plaintiff's second amended bill, rests upon the same basis as the former assignments, and the argument and authorities in Point 3rd, only with this difference in point of fact. The answer to plaintiff's last amended bill denies fully and completely each material allegation in said bill, and is admitted sufficient by the issue taken thereon by general replication. The injunction should have been dissolved on motion, and the refusal to do so was error in the Court.

XII.

The application for continuance is to some extent a matter of discretion with the Court, yet it is a legal discretion, and must be exercised in a legal manner and so as to favor the ends of justice. The usual test by which the importance of testimony is ascertained is by asking the opposite party to admit it; if it is not admitted, the Court has reason to suppose that it is important. No such test was applied here, but the motion was met by the remark that no such proof would be heard if offered. We thought the testimony material, and that it should have been heard if offered, and that the cause should have been continued for that purpose.

XIII.

The cause came on for final hearing, and the same readiness to determise the case without proof, indicated on overruling the motion for continuance, prevailed. Although the decree as drawn by the solicitor for plaintiff, sets forth a vast amount of proof, yet none of it was either heard or offered, except what appears in the bill of exceptions certified by the Court.

It is true as stated in said bill of exceptions, that there were depositions on file that were used on the trial of the issues before the jury, but neither those depositions, nor the verdict of the jury, nor any of the papers or pleadings in the common law case tried by the jury, were read or offered as proof on the final hearing of the case at bar. The Court might truthfully have added that there were witnesses present who were not

sworn, and whose testimony was not heard or formally offered in the case, and such a statement would, in our opinion, have had the same weight and force as that relating to the depositions. If the Court could decide a case on one class of testimony not read or offered, he might with equal justice do so on the other, provided he had talked with the witnesses, or knew from any other source, what their testimony might be.

It is not WHAT MIGHT BE proved, but WHAT IS proved that judicially determines a case, at LEAST ORDINARILY, although this seems to have been determined otherwise.

The case at bar is in some respects a peculiar one. It shows that the issues were certified to a jury at a time when there was no issue in Chancery. The amended bill was filed on the 22nd of May, 1863, and after the judge had directed issues to be made up for a jury, and also after those issues were made up and agreed upon by the solicitors, but before they were certified by the Court.

rcd.p 98 Demurrer was filed June 1st, 1863. Answer filed 5th
104 day of June, 1863. General Replication to answer filed June
110 6th, 1863. The trial of the issues closed on the 30th day of
99 May as appears by Marble's affidavit for change of venue.

The case made by the amended bill is a new one, and each allegation therein is specifically denied by the answer, and the replication of plaintiff puts the whole in issue, and the plaintiff holding the affirmative is to bear the burden of proof. No new proof was taken applicable to the new issues in Chancery raised by the new pleadings, nor was any issue or issues re submitted to the jury, as the law requires on amendment of pleadings and forming new issues; as to this point see Daniell's Ch. Pr. 1325. "It should be mentioned, that when, after the judges had certified their opinion upon the case, the Court thought proper to amend the case by the introduction of new facts, it appears to have been sent back to the same Court for their opinion whether the facts so introduced were admissible as evidence in the case, and if so, whether on the case so amended they were of the same opinion as before certified by them," cites Lows vs Manners, Seton on Decrees, 355. If the Court, after directing issues to be tried by a jury, allows an amended bill to be filed, it is error for him, before an issue on the amended bill to certify issue to be tried by a jury, until he knows by the issues in Chancery what is material in the case, and if issues are notwithstanding certified to the jury and tried, the Court should order new issues to be tried by a jury suitable to the changed circumstances of the Chancery pleadings and suit. The verdict of the jury on issues at law is merely in aid of the conscience of the Court, and unless presented on trial hearing to the Court, does not become a part of the record in the Chancery suit. The case might be different when certified from another Court, but this was tried in the same Court, on the Common Law side thereof, and not certified, and is analagous to the answer to a Bill of Discovery filed on the Chancery side, to be used in the trial of a Common Law case, where, as is well known, although before the Court, unless offered in evidence, it makes no part of the record in the cause.

The verdict of the jury on the issues was not before the Court in any just sense—first because it was never offered or read in evidence; second because it was taken before there was a case in Court to try, and should have been set aside as inapplicable to the case as at present existing. These issues as certified by the Court are in the Record, and the 3rd issue is as follows: "Whether said Marble became the owner of all the interest of said Bonhotel in said lead or range of mineral worked by him and in his miner's claim, or only acquired a working interest therein, as set up in the bill." Now the Court will see that this issue is wholly inapplicable in its present form to any issue in the case on the amended bill.—It is true the bill sets up a purchase of a working interest from Colonky, but this allegation is met by a flat denial under oath. The question then is, not whether the whole or a part only was acquired from Bonhotel, but did he make any contract whatever with Bonhotel in regard to this range.

The whole Chancery Record is before this Court, properly certified by the clerk. The proceedings on the issues at law were never made a part of the Chancery Record, and for that reason are not before the Court.

The proceedings against the defendant below, for coneempt, are also collateral and no part of this Record.

XIV.

The 12th and 14th errors assigned have been met already by the 9th Point in this Brief.

XV.

As to the 13th error assigned, we have fully discussed the want of proof in the 13th Point in this Brief. It is only necessary to show what should be done where no proof is adduced on final hearing. Daniell's Ch. Pr., 1898, lays down the rule as follows; "It is to be remarked, also, that although an Injunction may be granted ex parte, and sustained upon a motion to dissolve it, yet if, at the hearing of the cause there be no evidence against the defendant, the bill will be dismissed," citing Berfield vs Kelly, 4 Rup., 355.

A. L. CUMMINGS AND M. Y. JOHNSON,
ATTORNEYS FOR APPELLANTS.

1411

Oliver Marble
vs
Wm. P. Bonbotte

Abstract
appeals bond

Julius Aug. 1864

L Sedgwick

140

IN THE

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

April Term, A. D. 1864.

Oliver Marble, Appellant,

ads.

Henry P. Bonhotel, Appellee.

BRIEF OF APPELLEE.

T. A. GREEN, Solicitor for Appellee.

Filed April 23 1864

D Galena & Ill

GALENA:
W. W. HUNTINGTON, PRINTER, OVER BANK OF GALENA.
1864.

IN THE

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

April Term, A. D. 1864.

Oliver Marble, Appellant,

ads.

Henry P. Bonhotel, Appellee.

BRIEF OF APPELLEE.

T. A. GREEN, Solicitor for Appellee.

GALENA:
W. W. HUNTINGTON, PRINTER, OVER BANK OF GALENA.
1864.

SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION, APRIL TERM, 1864.

OLIVER MARBLE, APPELLANT.
ADS.
HENRY P. BONHOTEL, APPELLEE.

STATEMENT.

It is the custom of those owning mineral lands, in the lead-mining regions of this State, when they wish their lands worked, to throw them open for *prospecting*, and give a general invitation to all miners, and persons, who may wish to engage in the business, to enter upon their lands for that purpose. An owner thus throwing open his land usually makes known what part of the mineral found he will require as ground rent; and sometimes, although but very seldom, makes known what amount of land will be allowed to each miner's claim. If this is not done the custom of miners fixes it at one hundred feet, being fifty feet on each side of the drift or place where the miner first commences work. On the land on which the claim in controversy is located, however, the owners cut down the claims to thirty-seven and a half feet on each side, allowing only seventy-five feet in all to a claim. The mineral is found in lodes or ranges in the crevices in the rocks, and all run exactly parallel with each other, and the miner has the right to follow his lode as far as it may run unless it runs into the land of another. There is, therefore, never any thing said as to the distance a miner shall follow his

lode, as it is always understood that he shall follow it the full extent of the owner's land if he chooses. When land is thrown open as above stated, miners gather upon it and go to work without any further contract, relying entirely upon the custom of miners to protect them in their rights. Owners seldom if ever interfere with them unless, perchance, they forfeit their claims by neglecting to work them for a certain length of time usually fixed by the owner.

POINT 1.

Where irreparable mischief may be done, and notice would only enable the defendant to do it before an injunction could be issued and served, courts will grant injunctions without notice.

3 vol. Daniell's Ch. Pleading and Practice Side, Pa. 1887.
Also, Pa. 1893.

Hartridge vs. *Rockwell*, R. M. Chalt. 260.

This principle is too familiar to require reference to authorities; and the complainant's bill makes out a case clearly within the principle. There was no error in granting the injunction without notice. The granting of a *special* injunction in such a case is, to a great extent, a matter of sound discretion in the court.

Poor vs. *Carleton*, 3 Sumner, 73–4.

But it is urged that the description of the claim was not sufficiently *certain* to authorize the issuing of an injunction. As this objection is strongly urged upon other points in the case, I may as well consider it here and be done with it. "The mineral land of Mrs. Kamphouse and Elizabeth Kamphouse her daughter, situate in Rice Township, Jo Daviess County, Illinois," is the very best description that could possibly be given of the land. Everybody in the County and the whole surrounding country knows the land by that description, and hardly the owners themselves know it by any other. So much for the description of the land. "A claim where Joseph Wise

and Henry P. Bonhotel prospected and struck mineral, in the month of March or April, in the Spring of 1862, on the mineral land of Mrs. Kamphouse and Elizabeth Kamphouse her daughter, situate in Rice Township, Jo Daviess Co., Illinois, the same being thirty-seven and one-half feet on each side of the original drift, and known as the Marble Diggings." This is substantially the description given in the bill, and is not only the best, but it is the only description of the claim that could be given. These miner's claims are not numbered, and are only known by their names, but they are well known in that way. They are usually known by the name of the owner or the person working them, as the John Doe Diggings, the Richard Roe Diggings, or the *Marble Diggings*, as in this case. A miner's claim is as well described by its name as a lot in a city is by its number, and there is no more necessity for giving distances or number of feet than there is in describing a lot. But the whole history of this claim is given, and the number of feet on each side of the drift. There could be no difficulty in finding it. It is sufficient if there are circumstances referred to, which will enable any one to locate it with the aid of *extrinsic evidence*. The fact of Marble and Wise being in the possession of, and working the claim or mine, was of itself sufficient to enable any one to locate it without trouble.

Quackenbush vs. *Cosm*, 21 Ills., 99–100.
Jackson vs. *Root*, 18 Johns., 78–79.
Dygert vs. *Pletts*, 25 Wend., 402.
Jackson vs. *Wood*, 13 Johns., 346.

Appellant's sols. insist that as there was a valuable lode of mineral in controversy, and as complainant only claimed one-fourth, that that showed sufficient responsibility on the part of defendant, and the court should not have granted the injunction. They forget to state that Joseph Wise owned a full half of the mine, and defendant only had one-fourth and had to pay all the expenses, which were heavy, of working the half of the whole mine. Defendant had, sometime before the commencement of this suit, bought Wise's half of said mine, but he had sold it back to Wise again, or rather failed to pay Wise and he had taken it back according to their contract,

some time before this suit was commenced. Marble was wholly bankrupt, and deeply in debt. But, as I shall show hereafter, complainant does not rely solely on Marble's insolvency for equitable jurisdiction and an injunction.

POINT 2.

Did the court err in over-ruling the motion to dissolve the injunction? I think not, and if it did, the appellant is not in a position to profit by it. It was the duty of the court to hear the testimony and decide the motion according to the weight of the same.

2 vol. Purple's Statutes, Sec. 13, Pa. 770.

The oath to answer was waived, and it was nothing more than an affidavit as evidence.

Appellant's solicitors state in their brief that the court heard the motion on bill and answer, but such was not the case. The bill was filed and injunction issued in term time, and defendant answered immediately and made a motion to dissolve. There was no time to take depositions, and the solicitors for both parties agreed to take the affidavits of the witnesses and read them in evidence on both sides, which was done. The affidavits of some six or eight witnesses were read on each side, and are all on file in the court below. Defendant also examined witnesses orally in court. It is really remarkable that defendant's solicitors should state such a falsehood in their brief. It is too late now for them to object to the admissibility of affidavits. If affidavits were not admissable on the motion, they should not have read affidavits themselves, and objected at the time to complainant's doing so; and then, if the court allowed complainant to read them, they should have excepted. As the appellant complains of the ruling of the court on the motion to dissolve, should he not have brought up all the evidence so that this *court* might see whether the court below erred in the matter? I think this is a well established rule of practice.

Rundy vs. *Hunter*, 24 Ills., 598.
Ballanc vs. *Samuel* et al., 3 Scam., 381.
Saunders vs. *McCollins*, 4 Scam., 419.
Reve vs. *Mitchel*, 15 Ills., 297.
Swain et. al. vs. *Cawood*, 2 Scam., 506.

It may be insisted, however, that the rule established by these authorities does not apply to a motion to dissolve an injunction in chancery, but I can see no reason why it should not, nor can I find any authority to the contrary. If these affidavits are a part of the record in the case they should have been copied into the record that was certified to this court; and if not a part of the record defendant should have embodied them in a bill of exceptions and brought them up in that way. The truth is, appellant does not want this court to see the evidence nor even the full record of the case. His solictors selected such parts of the record as they wanted, and prevented the clerk from certifying the whole record. All the evidence brought up is the affidavit of Wise, who was convicted on the trial of attempting to bribe witnesses for the appellant, and whose affidavit was contradicted by at least four or five credible witnesses so far as it was against complainant.—It is not embodied in a bill of exceptions, however, and is no part of the record unless all the affidavits are.

POINT 3.

The court did not err in allowing either the first or the second amendment to the bill. The complainant had a right to amend *as of course* the first time without prejudice to the injunction, and a right to amend the second time by filing the proper affidavit, which he did, as shown by the record.

"It is usual for the complainant, in cases where it is expedient to amend, *to move for leave to amend without prejudice to the injunction;* this will not only be granted, but, occasionally, even re-amendment has been permitted."

1 Eden on Injunctions, Am. ed., 149–1.

"It is to be recollected that, after a special injunction has been granted upon affidavit of merits, it is a matter of course to obtain leave to amend the bill "without prejudice to the injunction;" if, however, the bill has been already amended, and the plaintiff has to apply specially for leave, it may be necessary for him to establish an affidavit that the proposed amendments relate to facts of which the plaintiff had no knowledge, to have enabled him to bring them sooner before the court."

3 vol. Daniell's Ch. Plea. and Prac., 1898.

"An injunction bill may be amended so as to insert additional facts relating to the same subject-matter or contract, which existed prior to the filing of the bill, by leave of court, without prejudice to the injunction."

Walker vs. *Walker*, 3 Kelley's Rept., 302.

The court in this case remark: "Amending the bill may be useful for various purposes: for correction of mistakes, or for the suppression of impolitic admissions in the original statements, or for adding new parties, or for inquiring into additional facts, or for the further investigation of facts which have been only partially disclosed, or for putting in issue new matter stated in the answer. If the plaintiff, after he has filed his bill, finds that he has omitted to state any matter, or to join a person or party to the suit which he ought to have done, he may supply such defect by amending his bill. Or if, after the defendant has put in his answer, the plaintiff thereby obtains new lights as to the circumstances of his case, he may amend his bill in order to shape his case accordingly. *And in general any* imperfection in the frame of a bill may be thus remedied *as often as occasion shall require*, but the matter introduced by the amendment must not be matter which has happened since the filing of the bill."

The complainant in this bill was absent in the army, and his father, who attended to the matter for him, was a very old man and a Frenchman, who could scarcely speak a word of English, and who

did not know all about the matter, so that a mistake was very readily made, and the court allowed complainant to amend his bill slightly as to the original contract upon his filing a proper affidavit as shown by the record. The amendment, too, was for the benefit of defendant, by extending his working interest, a matter of which he should not complain.

But appellant founds one motion to dissolve on the grounds that the bill was amended by complainant's solicitor without leave; and has preserved the affidavits filed on that motion in a bill of exceptions. This was simply a mistake, as shown most clearly by the record, and a matter of which the court below was fully satisfied, and afterwards allowed the amendment to be made, as shown by the record. No injury could have been intended, as complainant's solicitor knew very well that leave to amend could be obtained on proper application. I think this has no bearing upon the case.

The authorities seem to make a wide distinction between a common injunction, which is usually for the purpose of staying proceeding at law, and a *special* injunction to prevent irreparable mischief.

In case of *Poor* vs. *Carlton*, 3 Sumner, 73–4, Justice Story remarks: "In case of a common injunction, which usually occurs in bills to stay proceedings at law, it is of course to dissolve such an injunction if the answer denies the whole merits. But in cases of *special injunctions* there are two points which seem to be established in practice; first, *that the dissolution of the injunction is not of course* upon the coming in of the answer denying the merits. In cases of this sort the court will look into the whole circumstances, and will continue or dissolve the injunction in the exercise of a sound discretion."

"As the granting dissolving or continuing of special injunctions to prevent irreparable mischief, is, to a great extent, a matter of *sound discretion* with the court, I am inclined to think that all these preliminary questions in regard to dissolving the injunctions will be readily disposed of.

POINT 4.

The court did not err in over-ruling the demurrer to the bill. I think the court erred in allowing it to be filed at all at that stage of the case, but, I presume, this matters not now. The only cause of demurrer assigned that we deem worthy of notice, is *defective description*, and this matter has been fully noticed on a former point.

POINT 5.

"The statute positively requires that notice of a motion for a change of venue shall be given."

Hunt vs. *Tinkham*, 21 Ills., 639.

No notice was given.

The jury trial ended on Friday and no motion was made till Monday. The verdict was also returned on Friday. They could anyhow have given two or three days notice. This motion comes too late anyhow, and the object is very apparent.

POINT 6.

The court did right in over-ruling the last motion to dissolve.—The filing of the third answer was merely a *quibble*. The jury had just found all the material issues that *were disputed*, against defendant, and the third answer did not, and could not, change the case in the least.

POINT 7.

The court, also, did right in over-ruling the motion for continuance. The facts set up were not material, as it does not state that defendant could prove by any one that Colunky was the agent of

complainint to sell his interest. But as the question as to whether defendant had purchased complainant's interest had just been submitted to and decided by the jury, defendant should have produced the witness on the jury trial, and if he did not know of him at the time, he should have made a motion to re-submit the issues to a jury on the ground of newly discovered evidence. At least, the defendant should have shown some good reason why the witness was not produced on the trial before the jury. The affidavit does not show due diligence. It was nothing but a *desperate* trick after the whole case had gone against them.

"In an application for a continuance, on account of the absence of a witness, if the testimony sought is only important in connection with certain facts, those facts should be set forth or referred to in the affidavit, so that the materiality of the testimony may be apparent to the court."

Bailey vs. *Hardy*, 12 Ills., 459.

"Application to extend the time for the hearing in a chancery case, is always addressed to the sound discretion of the court." A refusal cannot be assigned for error.

Reece vs. *Darby* et. al., 4 Scam., 160.

POINT 8.

The court did not err in rendering the decree for want of evidence to sustain it. The issue found by the jury, and, I think, all the depositions on file in the case, are a part of the record. The depositions were read on the trial of the issues before the jury, but they had been taken long before that time in the chancery case, and were on file in the case. Complainant opposed the submitting of the issues to a jury, and [illegible] his depositions taken and filed for that purpose. Defendant himself petitioned the court for a submission of the issues to a jury, and complain-

ant only waived the necessary formality of feigned issues. But when the jury found against defendant, he then sought to ignore their finding entirely. I insist that the finding of the jury and all the depositions on file in the case, are a part of the chancery record, and that defendant must bring up the whole record in the case before the court will inquire whether there is sufficient evidence to sustain the decree. Is it possible that this court would disturb a decree in chancery upon such *a moiety* of the record as defendant has brought up in this case? And will not this court require the party complaining of the decree to bring up the whole record, so that this court may see whether his complaints are well founded or not?

But the finding of the jury is a sufficient foundation for the decree; and it was a part of the record and before the court, and was also offered on the hearing, and the defendant does not object that the jury found the issues contrary to the evidence, and did not even make a motion for a re-submission on that ground. The finding of the jury need but be certified into chancery.

Kelly et. al. vs. *Chapman*, 13 Ills., 530 to 534.
Ross et. el. vs. *Derr* et. al., 18 Ills., 246.

I think these two authorities settle this whole case.

As to all the evidence being a part of the record in a chancery case, the following authorities are relied upon:

Swift et. al. vs. *Castle*, 23 Ills., 215.
White vs. *Morrison* et. al., 11 Ills., 365.

I am aware that where there have been no issues submitted to a jury, and oral evidence has been introduced on final hearing, and has not, by some means, been preserved in the record, this court will reverse a decree; but when there are depositions and affidavits on file in a case, constituting a part of the record, and the party complaining of the decree fails to bring up the whole record, will

this court reverse a decree upon a *piece* of the record, for the want of evidence to sustain it, even if the issues have not been submitted to a jury? Both the bill of exceptions and the certificate of the clerk show that only a part of the record has been sent up in this case.

In this case, however, there is enough of the evidence recited in the decree itself to sustain it, although it does not contain all the evidence in the cause; but defendant's solicitors admit that, *if true*, there is evidence enough cited in the decree to sustain it; they, however, impeach the decree—insist that it is not true. This is absurd. They say there is an *irreconcilable conflict* between the bill of exceptions and the decree, and that the former contradicts the latter. Such is not the case, and if it were the bill of exceptions must fall. Where a bill of exceptions contradicts the record *proper*, the record stands.

After stating certain parts of the testimony as to the matter of account, the bill of exceptions states that that was all the testimony *formerly* offered at that time, and that there were a number of depositions on file that had been read on the trial before the jury. The evidence was not all read at that time, but it was all offered to the court. It was considered unnecessary by the court to re-read the depositions, as they had all been read once, and defendant's solicitors consented, and said there was nothing to do but to take a decree.

I think this decree has a solid foundation, and that the court should have gone further and decreed a specific performance of the contract. The rights and relations of the parties are somewhat ~~similar~~ peculiar. The complainant owns the one undivided half of all the mineral and mining right in the claim described in the bill, minus the one-sixth part to the owners. He holds it, however, by a mere parol verbal or unwritten contract, which might be voidable under the statutes of frauds, but as he has expended a great deal of labor and money in developing the same, I think the case would not come within the statute, even should the owners attempt to avoid his interest. This, however,

has nothing to do directly with this case. The defendant has a *working* interest *within* complainant's interest of about the same nature. He has the right to work complainant's interest on the terms specified in the contract between Colunky and complainant, until all the mineral shall be exhausted. Defendant bought Colunky's working interest, and stands in his shoes. He has expended a good deal of money and labor, (saying nothing about what Colunky spent before him,) and has reached a point where his working interest is of some value. Complainant also agreed with Wise, who owned and still owns the other half, that they would work the mine together for their mutual benefit; but each was to have the right to sell his interest, or to get some one else to work it, in case he did not interfere with the rights or interest of the other. Before the commencement of this suit defendant worked the mine, but took all the mineral, and since, he has neglected to work the mine properly, and got complainant into difficulty with the owner of the other half, and even greatly endangered his whole interest, as so much work has to be done or the owners may forfeit the claim. Now what other equitable and effectual remedy could a court of chancery give than to decree a specific performance? Even if the complainant could throw the defendant out of the mine, it would not be equitable to do so, as he has expended a good deal of money and labor in opening it, and it is just beginning to pay him.

"It is in the discretion of the court to decree a specific performance. Such a decree will only be made where it is strictly equitable to make it."

1 Bale & B., 69. 5 Ves., 720.

"The party who seeks a specific performance in equity must show, 1st, that the legal remedy is inadequate, and that without a specific performance injustice or irreparable injury will be done; and, 2d, that the contract is fair, just and reasonable, equal in all its parts, founded on an adequate consideration, and free from fraud, misrepresentation, or surprise."

2 Story Eq. tit. Specific Perf. 6 John's Ch. 222.

But whether complainant was entitled to a specific performance or not, he was certainly entitled to the relief given him by the decree. Even had defendant not been insolvent, what adequate relief could complainant have had at common law? If it had been at all possible for him to have so described his share of the mineral as to have enabled him to Replevy it, he would have been compelled to have kept an officer standing at the mine eternally with a writ in his hand. Wise's share and all was taken out together, and sent off from day to day to the smelter's. Complainant might have recovered the value of the mineral had defendant been responsible, but this would have led to an almost endless series of law suits. It would have been nothing but one suit after another until the mine should be exhausted. Complainant shows cause for an injunction, and equitable jurisdiction, on the ground of preventing a multiplicity of law suits, and that his remedy would have been inadequate and vexatious at law on account of the intimate relation of the parties and the determination of defendant to continue his wrongful acts in the future.

10 Ves. 159; 6 Johns., 497; 8 Paige, 212.
Coit vs. *Horn*, 1 Sandf. Ch., 1.
Livingston vs. *Livingston*, 6 Johns. Ch., 497.
Watson vs. *Hunter*, 5 Johns. Ch. 169.
Johnson vs. *White*, 11 Barb., 194.

How could the title to the mine have been settled, under the peculiar state of circumstances, at law? Considering all the circumstances of the case, and the *intimate* manner in which the rights of the parties are blended, it seems to me that it is a very proper case for equitable jurisdiction, aside from the insolvency of the defendant; but they gave up the question of his insolvency early in the case, and did not attempt to contest it. This fact was proved by a number of witnesses. But defendant did not object to the jurisdiction in the court below, nor does he do so here; nor could he do so here unless he objected to the jurisdiction below.

"If jurisdiction of a cause, in the court below, was legally possible, and no question was made on that point at the trial, the appellate court will assume the jurisdiction to have existed."

Ct. of Appeals, 1857. *Bidwell* vs. *Astor Mutual Ins. Co.*, 16 N. Y., (2 Smith,) 263.

Also, Court of Appeals, 1849. *Clark* vs. *Sawyer*, 2 N. Y., (2 Const.,) 498.

"The legal presumption is, that the decree appealed from is correct."

Williamson vs. *Field*, 2 Barb. Ch., 281.

If there was no evidence offered on the final hearing to entitle complainant to a decree, defendant should have objected at the time to the court's granting a decree. The bill of exceptions shows that defendant's solicitors *consented* to the taking of the decree on final hearing. When the cause was called for hearing they said there was nothing to do but for complainant to take a decree.— Is a party allowed to sit in court and thus consent to a decree against him, and afterwards turn around and object to it?

A party who consents to a decree or order cannot take an appeal. This is a well established rule.

Jarus vs. *Palmer*, 1 Barb. Ch., 379.
Boyce vs. *Boyce*, 2 Chan. Sent., 24.

An appeal from a final hearing dees not bring up questions definitively adjudicated and disposed of prior to the decree.

Does this appeal bring up the preliminary questions at all?

Mapes vs. *Coffin*, 5 Paige, 296.
Teal vs. *Woodworth*, 3 Paige, 470.

The following authorities are referred to generally in support

of appellee's side of this case. Some of them have been already referred to on the different points in this brief.

Moor vs. *Hylton*, Dec. Eq., 429.
Orr vs. *Merrill*, 1 Wood and Minot, 376.
Hollister vs. *Barkly*, 9 N. Hamp., 230.
Poor vs. *Carlton*, 3 Sumner, 73.
2 vol. Waterman's Eden on Injunctions, 383.
3 Daniell's Ch. Plea. and Prac., 1854.
Pavers vs. *Heery*, R. M. Charlt., 523, 524.
1 Paige, 97.
Jerome vs. *Ross*, 7 Johns. Ch., 315.
2 Story Eq. Jur. Secs. 928, 929.
5 Metcalf, 148.
~~*Putnam* vs. *Valentine*, 5 Ohio, 187.~~
Hanson vs. *Gardiner*, 7 Sumner's Vesey, 305, b. note c.
2 Johns. Ch., 463; 6 Johns. Ch. 497.
Mohawk vs. *Hudson R. R. Co.* Artcher, 6 Paige, 83.
Bangs vs. *Derckinfield*, 18 N. Y., (4 South, 592.

T. A. GREEN,
Att'y for Appellee.

The case in 3 Sumner 76 and the case in 7 Johns. Ch. 465 also 6 Johns. Ch. 497 are specially referred to in this case.
Note—Appellants abstract pg. interfor and contains, many immaterial & unnecessary matters which should be expunged. The whole abstract is full of [illegible] but the Record is short and contains matter.

State of Illinois
Jo Daviess County
Fourteenth Judicial Circuit } Pleas in the Circuit
Court begun and held
at Galena, within and for the County
of Jo Daviess aforesaid, on the third
Monday of the month of August A.D.
1843. before the Hon Benj. R. Sheldon, sole
judge of the said fourteenth Judicial
Circuit of the State of Illinois

R. H. McClellan Prosecuting Atty. Pro tem.
Wm R Rowley Clerk
John L. Harris. Sheriff.

Henry D. Bonhotal }
vs } Bill for Injunction
Oliver C. Marble. }

Be it remembered that
heretofore to wit: on the fourteenth day of
March. A.D 1843. the plaintiff above named
by T. A Green Esq his solicitor filed
in the Clerks office of our said Circuit
Court his Bill, Injunction Bond. and
Bond for costs in this cause.

The Bill for Injunction, filed by
the Complainant, is in the words
and figures following, to wit:

State of Illinois } In the Jo Daviess
Jo Daviess County } County Circuit Court
March Term A.D. 1868.

Bill in Chancery
To the Hon
Benjamin R Sheldon, judge of the four-
teenth Judicial Circuit of the State
of Illinois. In Chancery, sitting.

Your orator, Henry C Bouhotal
a citizen of Jo Daviess Co. Illinois, and a
miner by trade, respectfully showeth
unto your honor, that your orator
and one Joseph Wise, of the same
County and State, and also a miner
by trade, did sometime during the
month of March or April in the spring
of A.D. 1862, enter into an agreement to
engage together, in prospecting for
mineral on the mineral land of Mrs
Kamphouse and Elizabeth Kamphouse
her daughter, situate in Rice Township
Jo Daviess Co. Illinois: That your
orator and said Wise, immediately
thereafter commenced prospecting on
said land, and after working some
length of time, found a small lead or
vein of mineral; That your orator
and said Wise, by the custom of miners
and those owning mineral lands, as
well as by the implied consent of the
owners of said land, acquired the right
and privilege of working said lead or

Your orator and said Price
Chace [illegible] and all the mineral
in said mine, or on the claim on which
your orator and said Price as aforesaid
rights to mine as aforesaid should be
exhausted, on the following terms and
conditions, towit: Your orator and said
Price, were to give the said owners of said
lands, the one sixth part of all the mineral
taken out as grounds rent. Your orator
further shows, that the said contract
entered into between the said Price and your
orator was as follows towit: each one was
to pay one half of all the necessary expenses
in commencing and carrying on said
prospecting and mining business, and each
have one half of all the mineral that
might be found in said and on said
~~mine~~ claim after paying the one sixth
part as aforesaid for grounds rent, and
each one was to bestow his labor and skill
in prospecting and mining business, and
in case either was unable from sickness
or any other cause from so doing or in
case either did not wish to so work in
said mine himself, he was to have
permission to get someone else in his
place, equally skilled and able to labor
and either was to have permission to rent
or sell out his interest in said mine and
claim, at any time, in case he did not
interfere with the rights and interest of

the other. Your orator further shows that after your orator had destroyed a great deal of labor and skill in connection the said Wise, in opening said mine, and immediately after finding some mineral and when the prospects for striking large quantities of mineral were very good, your orator, wishing to enlist in the army, sold his interest in said mine to one Comstock Calonny; a brotherinlaw of your orator. on the following terms and conditions Towit: Said Calonny was to rent said mine on the shares, but was to have the first six thousand lbs of mineral taken out. that would fall to your orators interest in said mine. after which the said Comstock Calonny was to give your orator the one half of all the mineral that should fall to the share of your orators one half interest in said mine; and your orator appointed his father Peter Bouhstal, as his agent. to look after your orators interest in said mine. and fully empowered the said Peter Bouhstal to do all and every thing in regard to said mine in every respect that your orator himself could do. until your orator should get home from the war. Your orator further shows that the said Calonny continued to work said mine until about the 20th of December A.D. 1862. at which time by and with the consent of your orator

orator himself the said Conveyance Covenanting for and in consideration of Twenty dollars sold his right to work said mine on the shares. for your ~~xxx~~ orator as aforesaid to one Oliver Marble of the City of Salem County and State aforesaid. And the said Marble agreed to deliver your to orator, his share of said mineral. faithfully and promptly and comply with all the terms and conditions on which your orator let said mine the same as the said Colonny was to do. Your orator further shows that said Marble was to have the right of working your orators part of said mine as above stated until your orator should return from the army. and that your orators term of enlistment was three years from about the first of August A.D 1862. and that your orator is still in the army not having been discharged and that your - has been in no way at all disabled from discharging his duties as a Soldier, and will in all probability be able to serve out his full time, so that said Marble will most likely be entitled ~~xxxxx~~ to work said mine as aforesaid for about two years. and six months yet. That your orator has fully and faithfully discharged his part of said Contract. and is still willing at all time to do so. That in addition to a great deal of time and labor bestowed by your orator, in opening said mine, your orator also expended a large sum of money in opening the same. and reaching the mineral

as aforesaid. and that your orator and said Wise had only taken out a small quantity of mineral up to the time your orator so let said mine to the said Colonay. That said Colonay and said Wise had taken out but six thousand and forty lbs of mineral, up to the time said Colonay sold his right to said Marble. and that Marble was entitled to about three thousand lbs of the first mineral shall be taken out. and fall to the interest of your orator in said mine, as the said Colonay had only gotten about three thousand and twenty lbs of the six thousand lbs he was to have of the first mineral taken out.

That soon after said Oliver Marble commenced working your orators share or part of said mine on the terms and conditions above stated. in connection with the said Wise, who worked his own half, that said Marble and said Wise began to take out large quantities of lead mineral, the said lead or vein which had been struck by your orator and said Wise became very large. and yielded large quantities of said mineral.

That the said Marble although often requested, absolutely refused to deliver to your orators agent. for your orator, his share of said mineral or any part thereof, and openly declared that he would not do so. and did sell the mineral

that he will not give your orator his share of whales ever may taken out in the future. pretending that said Marble under some pretence or other unknown to your orator, was entitled to the whole interest of your orator in said mine; but your orator avers that said Marble has no shadow of right to said mine and claims more than above stated.

That up. the 9th day of March A.D 1863. said Marble sold from said mine to Samuel Hughlett & Thomas Hughlett, who do business under the firm name of Hughlett & Son. about sixty thousand lbs of mineral forty eight thousand lbs of which they paid at forty six dollars per thousand lbs. and the balance at from 50 to 53 dollars per thousand lbs. That said Marble has received both his own and your orators share of money for the said 48000 lbs of mineral, and there is still in the hands of said Hughlett & Son. the value of the balance of said Mineral

Your orator further shows that said Marble is a very poor man and deeply in debt. and that said Marble is wholly irresponsible, and that said Marble owns no property at all in the County of St Davids and State aforesaid. nor any where else in said State, as your orator is informed and believes. that is subject to execution and sale for his debts

under the laws of this State, and that said Marble is actually attempting as your orator is informed and believes to defraud your Orator out of his said share of the said mineral taken out of said mine and that unless said Marble is restrained by a writ of injunction out of this honorable Court. and selling your orators share of said mineral and collecting the price thereof and also from collecting the one half of the money now in the hands of the said Hughlett & Ord. minus the one sixth for ground rent as aforesaid, which the said owners of the land are entitled to as aforesaid, that your orator will be in great danger of loosing all the mineral and money to which your orator is entitled as aforesaid.

And your orator further shews that said Oliver Marble is making every effort in his power to exhaust said mine, and to get all the mineral out of the same as soon as possible and to dispose of, get the money for the same before your orator can recover your orators share by due course of law; And your orator further shows that there is great danger of said Marble's exhausting said mine or lode within a short time, if the said Marble continues to work the same as he is now doing, and that your orator only hope or chance of ever recovering what is justly and of right due your orator from said Marble, is in having said Marble restrained

the writ of Injunction from this honorable Court of Chancery from receiving, collecting or authorizing any one else for him to receive or collect whatever money there may be in the hands of the said Laughlett & Lee and also from selling your orators share of whatever mineral may be taken out of said mine, and of whatever may now be out at said mine.

And your orator hereby expressly waives the answer of the said Oliver Marble being under oath.

Your orator prays that the said Oliver Marble may be required to the best of his information remembrance and belief, to make full true and perfect answers to all the allegations of this bill and the following interrogatories to wit:

1. Whether said Marble did not only buy out whatever interest the said Comstock Colony had in said mine or lead, and in and to said miners claim above mentioned and described: and whether it is not true, that said Marble never purchased any other interest from the said Complainant or any one else holding under him in and to said mine and miners claim?

2d. Whether it is not true, that said Marble was to give Complainant one half of all the mineral taken out of said mine that might fall to the share of said complainant and those holding

under him, mines the one eighth for ground rent. and a little upwards of three thousand lbs of the first mineral taken out; which said Marble was entitled to under said contract.

Your orator, further prays that said Oliver Marble may be made a party defendant to this bill, and that a summons in Chancery may issue against said Oliver Marble, And your orators further pray that a writ of Injunction may issue out this honorable Court enjoining and restraining the said Oliver Marble from receiving, collecting or authorizing any one else for him to receive, ~~and~~ collect any money which may now or hereafter be in the hands of the said firm of Keightley & Son for mineral as aforesaid, raised & delivered by the said Wise and Marble from the said mine known as Marble's diggings, and described as above, and in which your orator has one half interest, which said Marble might otherwise collect as the share of the said Complainant Henry O. Bonhote and also the share of the said Marble, being, one half of all the money in the hands of said Keightley & Son, for mineral delivered by said Wise and said Marble from said diggings. And also that said Marble be restrained from selling or authorizing or appointing any one else to sell any more mineral from said mine, that may fall to the share of the one half interest in said mine

claimed by the said Complainant, and
possessed by said Marble, until said Marble
shall pay over to said Complainant the
one fourth of all the mineral that has
been taken out of said mine or the value
of the same. After which your orator prays
that the said Marble may be enjoined
only from selling your orators share of
said mineral, the same being one fourth
part of all the mineral taken out of said
mine, minus the one eighth for ground rent.
And your orator further prays that this
honorable Court may compel the said
Oliver Marble to pay your orator all that
may be due your orator from said Marble
for mineral, sold as aforesaid, to which rightfully
belonging to your orator. And your orator
further prays that the said Oliver Marble may
be decreed specifically to perform his said
agreement or contract to work said mine
and mineral claim, and to deliver to your
orator the one fourth part of all the mineral
taken out of said mine as fast as the same is
taken out, minus the one - for ground rent.
And that your orator may have such other
and further relief as the nature of this case
may require. And your orator will ever
pray.

Henry P. Bonhotal
Dep. F. T. Green.
Solicitor for Complainant

State of Illinois }
Jo Daviess County } On this 14th day of March
AD 1863, personally appeared
before T. A Green. and de made oath that he
is the attorney for the Complainant in the
above entitled cases. and de that the Statements
of said bill are all true to best his knowl
edge, information and de belief.
Sworn to before me this T. A Green.
14th day of March. AD 1863.
W K Rowley Clk
By T. R. Bird deputy

State of Illinois }
Jo Daviess County } Peter Bonhotal. being
first duly sworn.
deposes and says. that deponant is the
agent of Henry P Bonhotal to attend
to and look after the interest and
business of the said Henry P Bonhotal
in regard to the lead mine in mentioned in
the above Bill in Chancery against the
said Alvin Marble. and de deponent
further states that he has heard said
bill read and de the facts set forth in said
bill are all within the personal knowledge
of deponent. as fully so as within the
knowledge of the said Complainant him-
self. and that said facts as set forth
in said Bill are true

Pierre Bonhotal

Subscribed & Sworn To before
me this 14th day of March A.D.
1863. Joseph N Barry
Justice of the Peace.

On filing of the foregoing
Bill of Complaint and accompanying
bond let a writ of injunction issue as
therein prayed for.

Filed Jo Davis Circuit Court. Benj. R. Sheldon.
Judge 14th Jud. Cir. Ills.

Endorsed
Filed March 14th 1863.
Wm R Worley Clerk.
By F. D. Marshall. deputy

The Injunction Bond filed by the Complainant with the bill in this cause is in the words and figures following towit:

Know all men by these presents. That we Henry P Bonhotal Franklin Smith and Benjamin F. Fowler, of the City of Galena Jo Daviess County Illinois are held and firmly bound unto Oliver Mantle of the said City, County & State, in the penal sum of One Thousand dollars lawful money for the payment of which well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly, severally and firmly by these presents. In witness our hands

and do seals this 14th day of March. A.D. 1868.

The condition of the above obligation is such that whereas the said bounden Henry P Bonhotal has filed his Bill in Chancery on the Chancery side of the Circuit Court of Jo Daviess County, Illinois against the said Oliver Marble for specific performance of a parol contract in regard to an interest in a certain lead mine, and also praying an injunction out of said Court against the said Oliver Marble, defendant to said Bill to restrain said Marble from selling said bounden Henry P Bonhotal's share of the mineral taken out of said mine, and from collecting money from Hughett & Dow for mineral already sold Now Therefore if the said Henry P. Bonhotal shall pay all the cost and damage that may be awarded against him in case said Injunction shall be dissolved; Then this bond to be void. Otherwise to remain in full force.

Henri P Bonhotal (Seal)
By Peter Bonhotal atty in fact.
Franklin Smith (Seal)
Benj F Fowler. (Seal)

Approved
W R Rowley Clerk
by F B Newhall. dep'ty.

Endorsed
Filed March 14th 1868.
Wm R Rowley Clerk
By F. B Newhall dep'ty.

The Bond for Costs filed by the Complainant in this cause is in the words and figures following Towit:

State of Illinois } In the Jo Daviess
Jo Daviess County } County Circuit
Court. May Term.
A D 1863.

Henry P. Donhoffal
vs
Oliver Marbles. } Bill for specific performance & Injunction.

I do hereby enter myself security for costs in this cause and acknowledge myself bound to pay or cause to be paid, all costs which may accrue in this action, to the opposite party or any of the officers of this Court. In pursuance of the laws of this State.

Thomas A. Green.

Dated this 14th day of March. A D 1863.

Approved.
Wm R Rowley Clerk
by F. D. Newhall, Deputy

Endorsed
Filed March 14th 1863.
Wm R Rowley Clerk
by F D Newhall deputy.

Upon the filing of which said Bill, Injunction Bond and Cost Bond. There issued out of our said Clerks office a summons and writ of Injunction against said defendant

according to the prayer of said bill.

The summons issued in this cause is in the words and figures following to wit:

State of Illinois } The People of the
Jo Daviess County } State of Illinois to the
Sheriff of said County, Greeting:

We command you to summon Oliver Marble to appear before the Circuit Court of Jo Daviess County at the next term. To be holden at Galena on the Third Monday of May next. To answer Henry P. Bonhotal in a Bill in Chancery for Injunction, And have you there and then this writ

Witness William A Rowley Clerk of the Circuit Court of Jo Daviess County Illinois and the seal thereof at Galena this 14th day of March 1863.

Seal

Attest: Wm A Rowley Clerk
by F D Marshall, deputy

Goot & Hamilton

Which said summons was returned into Court by the Sheriff with the following return endorsed thereon to wit:

"Executed the within summons by reading the same and delivering a true and correct copy of the same to the within named Oliver Marble, this 16th day of March, A.D. 1863.

J. C. Hawkins Sheriff Jo. Co. Ills.
by O. P. Hopkins deputy.

The Writ of Injunction, issued in this cause is in the words and figures following towit:

State of Illinois }
Jo Daviess County } To Oliver Marble, his Attorney, Agent and Employees, each and every one of them Greeting.

Whereas, It has been represented to the Judge of our Circuit Court, in and for said County of Jo Daviess (Exercising Chancery jurisdiction) in a certain cause therein depending wherein Henry P Bonhotal is complainant and you the said Oliver Marble are defendant, on the part of the said complainant, that you the said Oliver Marble, have received and are receiving certain moneys, in the hands of Samuel Hughlett and Thomas Hughlett, partners doing business as Samuel Hughlett & Son, for certain minerals or lead ore, raised from the land of Mrs Kamphouse and Elizabeth Kamphouse her daughter, situate in Rice Township Jo Daviess County Illinois, and are about to sell certain minerals or lead ore raised from said land.

We therefore in consideration of the premises aforesaid do strictly enjoin and command you the said Oliver Marble and your attorneys, agents and employees, and each of you that you do from hence forth, absolutely and entirely desist from receiving or collecting said money from said Hughlett and Son

or from authorizing any one for you or in your name to collect the same; or from selling any mineral or lead ore, that may be taken out of said land or that may now be out of said land, or from committing or doing any other or further act in or upon the said premises or any part thereof, which may in anywise injure the interests of said Complainant until our said Court shall make other order to the contrary. And hereof fail not under the penalty of what the law directs.

To the Sheriff of said County to execute.

Witness Wm R Rowley Clerk of the Circuit Court of said County and the Seal thereof at Galena this 14th day of March A.D. 1863.

Seal

Attest: Wm R Rowley Clerk
by F D Newhall, deputy

Which said writ of Injunction was duly returned into Court by the Sheriff with the following return endorsed thereon, to-wit:

Executed the within writ by reading the same and delivering a true and correct copy of the same to the within named Oliver Marks at the hour of 1/2 o'clock P.M. this 16th day of March A.D. 1863.

O. C. Hawkins Sheriff
by O. C. Hopkins Deputy

And afterwards towit on the 17th day of March A.D. 1863. as yet of the March Term aforesaid of said Court the defendant by Johnson & Cummings his solicitors filed in this cause his answer to the complainants Bill in this behalf. together with a motion to dissolve the injunction herein. which said answer & motion are in the words and figures following towit:

State of Illinois } In Circuit Court. To the
Jo Daviess County } March Term A.D. 1863.

Henry C. Bonhotal }
vs } Bill in Chancery for
Oliver Marble. } Injunction &c.

And the said Defendant by Johnson & Cummings his solicitors, comes and responds to the Bill filed against him, and reserving to himself all and all manner of advantage arising to him from the many errors & uncertainties in said Bill contained, to as much of the same, as he is advised is material for him to answer, answering, says.

It may be true that said Complainants and said Joseph Rice had a contract together about the mineral ranges & the prospecting and working the same in Rice Township County & State aforesaid but denies that said Rice and said Complainant had such a contract

in regard to and was the owners of the mineral range claimed by this Defendant and now worked by him and the said Joseph Wise. This Respondent further admits that the said Wise and the said Complainant did work in prospecting for mineral, near where this Defendant discovered the mineral lead now known as "Marble lead" but without finding any thing of value, or even sufficient to pay the expenses of prospecting.

That long before the time spoken of by said Complainant as the time when the said Comstock Colony agreed to work the share of the said Complainant the said Joseph Wise sold to this Respondent for a valuable consideration, all his interest in said mineral prospect by means this Defendant became the owner of one half of the same with the said complainant the owner of the other half. That after Wise had sold his half to Respondent, Complainant agreed with Respondent, and with said Comstock Colony that the said Colony should work the share of said Complainant, and have the one half the proceeds of said Complainants half, after receiving a bonus of the first six thousand lbs of mineral of the share of said Complainant, after the expenses were paid, and that all the expenses of working the one half of said Complainant, except the labor so furnished by said Colony, should be furnished and

by said Complainant, while Colonay furnished the labor; That afterwards, said Colonay and Respondent, worked on for a considerable time, this Respondent furnishing all expenses except the labor of Colonay & supplied a portion of the labor also, and receiving no return in mineral or in money from said Complainant or from said Colonay, until his means were entirely exhausted, and he was compelled to stop the work for want of means. At which time this Respondent ascertained that Colonay had full power and authority to act for said Complainant in his absence in the matter of said prospecting and mineral claim, and that this Respondent threw to get rid of a partner who never paid a cent towards expenses after his enlistment, proposed to said Complainants partner and agent to purchase all the interest of said Complainant and said Colonay in said mineral prospect and diggings, and did, for a valuable consideration, to wit: for the sum of Twenty dollars, over and above the indebtedness of said Complainant to this Respondent for advances in expenses of working said diggings, purchase of the said Colonay, partner and agent of the said Complainant all the interest of both the said Complainant and the said Colonay in said mineral prospect and diggings, whereby the partnership between the said Complainant

and this Respondent ceased and came to an end. And this Respondent relies on the fact that said Complainant never had any interest in the diggings now known as Marbles diggings, which are other and different from those which complainant had an interest, and this Respondent denies that said Pierre Bonhotal has authority to act for said Complainant in any manner, and avers that the said Colony was and is his only authorized agent in regard to the mineral prospect and diggings belonging to Marble and Bonhotal and Colony at the time of the enlistment of said Complainant. And this Respondent further avers that afterwards this Respondent made an arrangement with the said Joseph Wise whereby the said Wise furnished money for prospecting, and assisted this Respondent in mining and prospecting near where said former prospecting was carried on, but in a different range and crevice altogether, until the said Wise and this Respondent, at last struck mineral in said last mentioned range and crevice, and found a valuable lead: and having at great labor and expense found and raised much heavy and valuable mineral, Complainant now fraudulently, maliciously and injuriously claims to be the owner of one half of the same and of all the proceeds thereof:

Hard grow respondent distinctly and emphatically avers, that said Complainant had abandoned his claim in said mining prospect and diggings, and refused to furnish means for the further prosecution thereof, long before the Respondent, to get rid of a worthless partner purchased his interest; and further that the said Colonay his agent refused to advance any share of the expenses, and even neglected to work his share of the diggings, long before Respondent purchased the interest of said Complainant and of said Colonay as aforesaid.

And to the specific Interrogatories Defendant specifically responds as follows.

Ans 1st Int. It is not true that said Defendant bought out whatever interest said Colonay had in said mine or lead or miners claim, nor is it true that he never purchased any other interest; but on the contrary it is true that he long before purchased the whole of Wise's interest, and that he purchased of said Colonay as agent of and partner of said Complainant both Colonays and Complainants interests in said miners claim

Ans 2d Int. It is not true, that this Respondent was to give to said Complainant the one half or any other share of the mineral taken out of said mine, nor that he made any contract whatever with said Complainant

in relation to mining, except as above stated.

And this Respondent insists that this bill and the process and proceedings under the same are most unjust and oppressive and iniquitous, and that the whole constitutes an attempt on the part of said Complainant to steal away his rights and to oppress and defraud him under the form of law, but contrary to equity and good conscience, and the said Defendant utterly denies the charge of insolvency made in said Bill, and also all fraud or attempt to defraud Complainant in anyway or manner whatsoever, and also all attempts or designs contrary to equity and good conscience, without this that any other matter or thing in said bill not herein specifically traversed or denied is true, and having fully answered, prays that the Injunction most wrongfully obtained against him be dissolved, and he be hence dismissed with his reasonable costs, most unjustly sustained herein &c.

Johnson & Cummings
his solicitors

A. W. Marble

State of Illinois
Jo Daviess County } ss. This day came before me William R. Bowley, Clerk &c, Oliver W. Marble and made oath in due form of Law,

and deposeth as follows. that the foregoing answer as stated of his own knowledge is true, and that on information and belief he believes it to be true.
Sworn & subscribed this 2 O. Marble
17th March A.D. 1863.
Wm R Rowley Clk
by F. R Newhall, Dep Clk.

State of Illinois } In Circuit Court.
Jo Daviess County } March Term. A.D. 1863.

Henry D. Bonhotal
vs
Oliver Marble. } Bill for Injunction & specific performance.

And the said Defendant by his solicitors comes and moves the Court to dissolve the Injunction herein and files answer & affidavits in support thereof.

Johnson & Cummings
Solicitors for Defts.

Endorsed
Filed. March 17th 1863.
Wm R Rowley Clk
By F. R. Newhall Dep Clk

And afterwards to-wit on the 20th day of March. A.D. 1863, as of the March Term. A.D. 1863, of said Jo Daviess County Circuit Court, in the record of the proceedings thereof in the above entitled cause, appears the following entry to-wit:

Henry Bonhotal
vs
Oliver Marbles. } Injunction.

This cause having this day been brought on to be heard upon a motion of the defendant by W. J. Johnson & A. L. Cummings his solicitors to dissolve the injunction herein after hearing part of the evidence. The further hearing of this cause is postponed until Tomorrow morning.

And afterwards towit on the 21st day of March A.D. 1863. as yet of the March Term A.D. 1863. of said Circuit Court in the records of the proceedings thereof in the above entitled cause appears the following entry towit:

Henry Bonhotal
vs
Oliver Marbles. } Injunction

Now at this day came again the parties hereto. and the further hearing of this cause. the same is taken under advisement by the Court.

And afterwards towit on the 23d day of March A.D. 1863. as yet of the March Term A.D. 1863. of said Circuit Court. in the records of the proceedings thereof in the above entitled cause. appears the following entry towit:

Henry Bonhotal
vs
Oliver Marble. } Injunction

The Complainant by his solicitor moves the Court for leave to amend his bill in this cause. which leave is granted by the Court. and the Complainant thereupon files his amended Bill.

The amended bill filed by the Complainant, and referred to in the last above recited entry is in the words and figures following to wit:

State of Illinois } In the Jo Daviess
Jo Daviess County } County Circuit Court
March Term. A.D. 1863.

Bill in Chancery

To the Honorable Benj R Sheldon Judge of the fourteenth judicial Circuit of the State of Illinois In Chancery sitting:

Your orator Henry P. Bonhotal a citizen of Jo Daviess Co Illinois, and a miner by trade, respectfully shews unto your Honor. that your orator and one Joseph Wise of the same County and State, and also a miner by trade, did sometime during the month of March or April in the Spring of A.D. 1862. enter into

an agreement to engage together in prospecting for mineral on the mineral land of Chas Kamphouse and Elizabeth Kamphouse her daughter, situate in Price Township Jo Daviess Co Illinois. That your orator and said Price immediately thereafter commenced prospecting on said lands and after working some length of time found a small lead or vein of mineral That your orator and said Price by the custom of miners and those owning mineral lands, as well as by the implied consent of the owners of said lands, acquired the right and privilege of owning said miners claim, which was thirty seven and one half feet on each side of said lead. so long as your orator and said Price might choose to do so; or until all the mineral in said mine, or in the miners claim to which your orator and said Price acquired the right to mine as aforesaid. the same being thirty seven and one half feet on each side of said lead, should be exhausted. on the following terms and conditions towit: Your orator and said Price were to give the said owners of said lands the one eighth part of all the mineral taken and ground out.

Your orator further shews, that the said contract entered into between the said Price and your orator was as

29

following, to wit: each one was to pay one half of all the necessary expenses in commencing and carrying on said prospecting and mining business, and each have one half of all the mineral that might be ~~raised~~ found in said mine and on said miners claim, after paying the one eighth part as aforesaid for ground rent. and each one was to bestow his labor and skill in said prospecting and mining business, and in case either was unable from sickness or any other cause from so doing, or in case either did not wish to so work in said mine himself, he was to have permission to get some one else in his place, equally skilled and able to labor. and either was to have permission to rent or sell out his interest in said mine and claim at any time, in case he did not interfere with the rights and interest of the other

Your orator further shews, that after your orator had bestowed a great deal of labor and skill, in connection said Rice in opening said mine, and immediately after finding some mineral, and when the prospects for striking large quantities of mineral were very good, in said lead on said miners claim, your orator sold his interest in said mine and in said miners claim, to one Comstock Colcord, a brother in law of your orator, on the following terms and conditions, to wit

Said Colonay was to rent said mine and mines claims on the shares, but was to have the first six thousand lbs of mineral taken out. that would fall to your orators interest in said mine, after which the said Comstock Colonay was to give your orator, the one half of all the mineral that should fall to the share of your orators one half interest in said mine, and the said Colonay was to furnish all the necessary expenses of working the same. was to have permission to work said mine and mines claims until all the mineral on said claims should be exhausted, and all the veins, ranges and leads on said mines claim should be worn out. or so long as it might be advisable to work said mine and mines claims, and then give up the same to Complainant. and your orator appointed his father Peter Bonhotal as his agent to look after your orators interest in said mine and on said mines claims, and fully empowered the said Peter Bonhotal to do all and every thing in regards to said mine and said mines claims, in every respect. that your orator himself could do. until your orator should get home from the war.

Your orator further shews. that the said Colonay continued to work said mine and the different drifts then open in said mine and mines claims until about the 25th of December A.D 1862 at which time

by and with the consent of your orators agent as well as with the consent of your orator himself, the said Comstock Colony for and in consideration of twenty dollars, sold his right to work said mine on the shares, for your orator as aforesaid, and also the interest of said Colony in the tools, rail road cars &c used in same, to one Oliver Marble, of the City of Galena, County and State aforesaid. And the said Marble agreed to deliver your to orator his share of said mineral, faithfully and promptly and comply with all the terms and conditions on which your orator at said mine, the same as the said Colony was to do. Your orator further shows that said Marble was to have the right of working your orators part of said mine & mines claim as above stated, until your orator should return from the army, and that your orators term of enlistment was three years from about the 1st of August A.D. 1862 and that your orator is still in the army not having been discharged, and that your, has been in no way at all disabled from discharging his duties as a "Soldier" and will in all probability be able to serve out his full time, so that said Marble will in most likely be entitled to work said mine and different drifts and leads in said mines claims, as aforesaid, for about two years and six

months yet.

That your orator has fully and faithfully discharged his part of said contract, and is still willing at all times to do so. That in addition to a great deal of time and labor bestowed by your orator in opening said mine. your orator also expended a large sum of money in opening the same and reaching the mineral as aforesaid. and that your orator and said Wise had only taken out a small quantity of mineral, up to the time your orator left said mine, to the said Colonny.

That said Colonny and said Wise had taken out but six thousand and forty lbs of mineral, up to the time said Colonny sold his right to said Marble, and that Marble was entitled to about three thousand lbs of the first mineral that should be taken out and due to the interest of your orator in said mine and said leads, as the said Colonny had only gotten about three thousand and Twenty lbs. of the six thousand lbs he was to have of the first mineral taken out. That soon after said Oliver Marble commenced opening your orators share or part of said mine and mines claim on the terms and conditions above stated, in connection with the said Wise, who worked his own half. that said Marble and said Wise

begun to take out large quantities of lead mineral, the said lead or vein which been struck by your orator and said Wise which became very large and do yielded large quantities of said mineral.

That the said Marble, although often requested, absolutely refused to deliver to your orators agent for your orator, his share of said mineral or any part thereof, and openly declared that he would not do so. and still so declares. and also declares that he will not give your orator his share of whatsoever may taken out of the said mine and mines claim in the future, pretending that said Marble under some pretense or other, unknown to your orator was entitled to the whole interest of your orator in said mine and mines claim. but your orator avers that said Marble has no shadow of right to said mine and claim more than above stated.

That up the 9th day of March A.D 1863. Wade sold from said mine to Samuel Hughlett and Thomas Hughlett who do business under the firm name of Hughlett & Son. about Sixty thousand lbs of mineral, forty eight thousand lbs of which, they sold at forty six dollars per thousand lbs. and the balance at from 50 to 53 dollars per thousand lbs. That said Marble has received back his own and your orators share of money for the said 48000 lbs of

mineral, and there is still in the hands of said Hughlett & Son the value of the balance of said mineral,

Your orator further shews that said Marble is a very poor man and deeply in debt, and that said Marble is wholly irresponsible, and that said Marble owns no property at all in the County of Jo Daviess and State aforesaid, nor any where else in said State, as your orator is informed and believes, that is subject to execution and sale for his debts under the laws of this State. And that said Marble is actually attempting as your orator is informed and believes, to defraud your orator out of his said share of the said mineral, taken out of said mine. and that unless said Marble is restrained by a writ of Injunction out of this honorable Court from selling your orators share of said mineral and collecting the price thereof, and also from collecting the one half of the money now in the hands of the said Hughlett & Son, minus the one sixth for grounds rent as aforesaid. which the said owners of the lands are entitled to, as aforesaid, that your orator will be in great danger of losing all the mineral and money to which your orator is entitled as aforesaid.

And your orator further shews that said Oliver Marble is making every effort in his power to exhaust said mine, and

get all the mineral out of the same as soon as possible, and to dispose of and get the money for the same before your orator can recover your orators claim by due course of law. And your orator further shews that there is great danger of said Marbles exhausting said lead and all the mineral on said claim, within a short time if the said Marble continues to work the same as he is now doing, and that your orators only hope of ever recovering what is justly and of right due your orator from said Marble is in having said Marble restrained by writ of Injunction from this Honorable Court of Chancery from receiving, collecting or authorizing any one else for him to receive or collect whatever money there may be in the hands of the said Hughlett & Son and also from selling your orators share of whatever mineral may be taken out of said mine, and of whatever may be out of said mine.

And your orator hereby expressly waives the answer of the said Olivier Marble being under oath:

Your orator prays that the said Olivier Marble may be required to the best of his information, remembrance and belief, to make full true and perfect answers to all the allegations of this bill, and the following interrogatories to wit:

1. Whether said Marble did not only buy out whatever interest the said Comstock Co had in said mine or lead, and in and to said mines claim above mentioned and described, and whether it is not true that said Marble never purchased any other interest from the said Complainant or any one else holding under him, in and to said mine and mines claim.?

2d. Whether it is not true, that said Marble was to give Complainant one half of all the mineral taken out of said mine that might fall to the share of said Complainant, and those holding under him mining the ore and to pay for grounds rent and a little upwards of three thousand lbs of the first mineral taken out. which said Marble was entitled to under said contract?

Your orator further prays that said Oliver Marble may be made a party defendant to this bill, and that a summons in Chancery may issue against said Oliver Marble; and your orator further prays that a writ of Injunction may issue out of this Honorable Court, enjoining and restraining the said Oliver Marble from receiving collecting or authorizing any one else for him to receive or collect

any money which may now or hereafter be in the hands of the said firm of Hughlett and Son for mineral as aforesaid. sold & delivered by the said Rice and Marble from the said mine and mines claim known as Marbles Diggings, and described as above, and in which your orator has one half interest. which the said Marble might otherwise collect as the share of the said Complainant Henry P. Bonhotal, and also the share of the said Marble, being one half of all the money in the hands of said Hughlett & Son, for mineral for mineral delivered by said Rice and said Marble from said diggings and said mines claim. and also that said Marble be restrained from selling or appointing or authorizing any one else to sell any more mineral from said mine that may fall to the share of the one half interest in said mine claimed by the said Complainant and worked by said Marble, until said Marble shall pay over to said Complainant, the one fourth of all the mineral that has been taken out of said mine. or the value of the same after which your orator prays that the said Marble may be enjoined only from selling your orators share of said mineral the same being one fourth part of all the mineral taken out of said mine, minus the one eighth for ground rent.

And your orator further prays that

this honorable court may compel the said Olivier Marble to pay your orator all that may due your orator from said Marble for mineral sold as aforesaid, which rightfully belongs to your orator, and your orator further prays that the said Olivier Marble may be decreed specifically to perform his said agreement and contract to work said mine and mineral, and to deliver to your orator the one fourth part of all the mineral taken out of said mine as fast as the same is taken out minus the one part for groundrent and that your orator may have such other and further relief as the nature of this case may require, and your orator will ever pray.

Henry P. Bonhotal
By T. A. Green.
Sol. for complainant.

State of Illinois }
Jo Daviess County } On this 14th day of March A.D. 1863. personally appeared before T. A. Green and made oath that he is the attorney for the Complainant in the above entitled case and that the statements of said bill are all true to best his knowledge information and belief.

T. A. Green.

Sworn To before me this 14th day of March A.D. 1863.
W. K. Bowley Clerk
by J. R. Bird Dep.

State of Illinois }
Jo Daviss County } Peter Bonhotal. being
first duly sworn. deposes
and says that deponent is the agent of
Henry P Bonhotal to attend to and look
after the interests and business of the said
Henry P Bonhotal in regards to the lands
same as mentioned in the above bill in
Chancery against the said Alvin Marble.
and deponent further states that he has
heard said bill read, and the facts set
forth in said Bill are all within the per-
sonal knowledge of the deponent. as fully
as was within the knowledge of the said
Complainant himself. and that said
facts as set forth in said Bill are
True.

Pierre Bonhotal.

Subscribed & sworn to before
me this 14th day of March. AD 1863.
Joseph N. Barry
Justice of the Peace.

On filing of the foregoing bill of complaint
and accompanying bonds let a writ of
Injunction issue as therein prayed for.
To Clerk Jo Daviss } Benj. R Sheldon.
Circuit Court. } Judge 14th Jud Cir Ills.

State of Illinois }
Jo Daviss County } Peter Bonhotal
being first duly sworn

deposes and says. that deponent is the agent of the said Complainant in the above bill. Henry P. Bonhotal, to attend to and look after the interest of the said Henry P. Bonhotal, Complainant in and about the lead mine and mines claim known as the Marble Diggings, and fully mentioned and described in said Bill in Chancery wherein said Henry P Bonhotal is Complainant and Oliver Marble defendant. Deponent further states that deponent is as fully acquainted with the facts set forth in said bill as the said Complainant himself, and in fact more so. and that said facts as set forth in said bill are true. Deponent further states that he has heard said Bill read over since it has been amended, and that the facts and Statements set forth in said amended bill are true,

Pierre Bonhotal.

Subscribed & sworn to before me
on this 23rd day of March, A.D. 1863.
William Farrar. J.P.

Endorsed
Filed as amended March 23d 1863.
W R Rowley Clerk
By T. R. Bird Deply.

And afterwards towit on the 24th day of March, A.D. 1863. as yet of the March Term A.D. 1863. in the record of the proceedings

41

thereof, in the above entitled cause, appears the following entry towit:

Henry Bouhotal
vs
Olivier Mauble. } Injunction.

Now at this day came on to be heard the motion to dissolve the injunction herein, and the plaintiff having filed his amended bill, and the defendant having filed his answer thereto, after hearing the evidence in the cause and the argments of counsel the motion to dissolve this injunction is denied by the Court. But it is ordered that the writ of Injunction herein be so modified as to include only all minerals in or taken from the original range struck & owned by the Complainant herein and Joseph Wise on the grounds of Compshouse and the land thirty seven and one half feet on each side of said original range, and the said defendant by his attorneys files affidavit and motion for rule on the Complainant to furnish additional security upon the injunction bonds given in this cause; which motion after argument by counsel, and the justification of one of the sureties thereon is overruled by the Court. And the defendant also files affidavit and motion for rule upon the Complainant to file a new Cost bond in this cause, which motion after argument by counsel is sustained by the Court, and

the Complainants is ruled to file another bonds for costs in this cause, on or before the first day of the next term of this Court.

The defendants answer to the Complainants amended bill, referred to in the last above recited entry is in the words and figures following towit:

State of Illinois } In Circuit Court.
Jo Daviess County } March Term A.D. 1863

Henry. R. Bonhotal }
vs } Bill in Chancery for
Oliver Marble. } Injunction, as amended.

The answer of Oliver Marble said Defendant by Johnson & Cummings his solicitors, to the amended Bill filed herein against him. shews as follows:

This Respondent reserving to himself all and all manner of advantage to him arising from the many errors and uncertainties of said amended Bill. to so much of the same as he is advised is material for him to make answer unto. answering says. That it is not true as in said amended bill is supposed and alleged. that the mining lead or premises claim in said bill described and set forth extended thirty seven and one half feet on the South side of said Range in which the said Complainant Bonhotal

had an interest, but on the contrary, this defendant distinctly avers that said mining claim or lead never was held to extend beyond the range or crevice in which said Bonhotal Colony worked, and afterwards Marble Colony worked, and further avers that said Bonhotal never made any agreement at all in regard to said range, as respondent is informed and believes, but that Joseph Wise, who first stakes said lead, and afterwards gave said Bonhotal an interest therein made an agreement with the owners of the land for this range, and that alone, without any grounds on either side thereof.

And this Respondent utterly denies that the diggings known as the Marble diggings ever were claimed by himself or Bonhotal or Wise and Bonhotal, or were staked or known to exist until long after Bonhotals interest was sold by Colony to this Respondent. And this Respondent denies that there was any claim of Seventy five feet, or any beyond the range itself. And this Respondent avers and shows that a certain authority in writing (exhibit "A" of Joseph Wise's affidavit) signed by Mrs Le-fevre formerly Mrs Kamphouse named in said Bill was executed and delivered to Mr Joseph Wise as an authority to work the range of Wise and Bonhotal as well as the other ranges of said Wise and that the same is certified

by Henry Kamphouse, the agent of Mrs E. Elizabeth Kamphouse as the mining authority of the said Wise, under which he worked said range, and that no other agreement was ever made in regards to said Range, as Respondent is informed and believes. And this Respondent further avers and shows that the only lead or range in which Complainant and Respondent were interested together, was the range situated about 26 feet north of the Marble Diggings, and that Respondent is interested with other parties in other diggings on the Kamphouse grounds, beside the one in controversy, and in none of them has Bonhotal worked or claimed any interest except in the one in controversy: And affiant further states that the old range in which Bonhotal once had an interest has not been worked by any one since Respondent purchased of Colonsky and that the Wise and Marble diggings have no connection therewith:

And this Respondent refers to his answer to the original Bill, and makes the same a part of his answer to this Bill as amended, and prays that the same may be taken as his answer with this amended answer to said amended Bill and as to all the amendments of said Bill this Respondent denies the same, and prays that the Injunction be dissolved or restricted to the old range described ~~[illegible]~~ in the

said Complainants original Bill, and that he be hence discharged with his reasonable costs.

Johnson & Cummings
Solicitors for Deft.

A. Marble.

State of Illinois } In Circuit Court
Jo Daviess County } March Term A.D. 1863.

And the said Defendant Oliver Marble comes and makes oath in due form of Law, and deposes as follows. That the facts stated in the above amended answer of his own knowledge are true, and the facts on information and belief he believes to be true.

Sworn & subscribed before me this 24th March 1863.
Wm. C. Bostwick
Seal
Not Pub

A. Marble.

State of Illinois } In Circuit Court.
Jo Daviess County } Jo Daviess County March Term. A.D. 1863.

Henry D Bouchotal
vs
Oliver Marble.

Joseph Wise, being first duly sworn deposes and says, as follows.

That he is the Joseph Wise named in a certain writing hereto attached, and marked Exhibit A of this affidavit, that said paper was executed about the 14th of May A.D. 1862

and delivered to him under circumstances following. Affiant Joseph Wise had made an arrangement with Mrs Lempers and Elizabeth Kamphouse by which this affiant was to prospect on their lands and to pay to them one seventh of all the mineral struck on their lands after the first six thousand pounds as rent That early in the spring of A D 1862 affiant had struck mineral in four different ranges on their lands, one of them being the range afterwards worked by Marble and Colonny as stated in said Complainants Bill. Affiant was then notified and ordered off the ground, and finally agreed with said parties to give one sixth of all mineral raised on their ground for rent. Then they wanted him to give up some of his ranges. and he refused to give him more than one, but afterwards agreed to give him his four ranges. but restricted him to the ranges themselves and refused to give a written lease. Afterwards Mrs Lempers signed the paper hereto attached as exhibit "A" and gave it to me as authority to work the ranges but still refused to give any ground outside the ranges themselves. The 4th range worked by Marble and Colonny was one of the ranges. and I accepted all the ranges on those conditions, to have only the ranges. Deshotels made no

sort of agreement with any of them about the range so far as I know. In fact I know he did not. for the parties did not even know Henry P. Bonhotal in the matter at all. Henry Kamphouse claimed to be the agent of Mrs Elizabeth Kamphouse stated that he did not know Bonhotal at all. in the transaction. and did not know that he ever saw him.

Affiant was very particular about the matter and recollects perfectly the arrangement made in regard to said range in which Bonhotal had an interest, because of their trouble about rent and their trying to get away from affiant all his ranges except one, and refusing all the time to let him have any grounds additional to said ranges.

It was because of their refusal to let him have but one range at first and giving affiant notice to quit or and changing the rent. that affiant wanted authority to go on with his work that had been stopped by them, and this paper exhibit "A" was finally given for that purpose This affiant further states. that the range now worked by this affiant and made and known as the Marble diggings, is another and different range, from the one in which Marble and Colorney worked and in

which Complainant Bonhotal hads an 48
interest That said last mentioned Bonhotal
range has not been worked or interfered
with since Marble purchased Bonhotals and
Colonneys interest. and that there is no
mineral in sight in the same, nor any show
for mineral therein. that the said Marble
Colonney & Bonhotal Range has never been
worked since some time last year, and
that the range known as the marble
diggings, was first discovered and
struck by this affiant and Marble
in January or February 1868. That no
claim had been set up by any one to said
range or the mineral in it until after
it was founde to be a rich lead, when
the same was claimed by Complainants
in this suit. or rather, as affiant believes
by some other person for him.
Affiant is acquainted with Henry
Kamphouse, before mentioned and
named in one of Plaintiffs affidavits
and saw him certify said paper as the
one given affiant by Mrs Leupers.
and further affiant saith not.
Sworn subscribed before
me this 24th day of March 1873 Joseph Wise
W.m C Bostwick
Seal Not Pub

Exhibit "A"
I undersigned gave the Privilg to

Josef Wise to go on with his work in the mynes of the ground of John Kamphouse deceased on the Rieers with he is working on now.

Caroline Lempert.

Galena May 14/62.

I certify that the above was given by Mrs Lempert to her Wise, and written by me as authority to work the Ranges claimed by him.
Galena March 2d 1863. Henry P. Kamphouse.

Endorsed.
Filed March 24th 1863.
Wm A Rawley Clerk
By J R Bird deputy.

The affidavit for sufficient Injunction Bond, referred to in the last above recited entry is in the words & figures following towit:

State of Illinois } In the Circuit Court.
Jo Daviess County } March Term A.D. 1863

Henry P. Bouhard }
vs } Bill Injunction
Oliver Marble. }

And the said Marble being first duly sworn, deposes as follows. That he is acquainted with the circumstances of Benjamin F. Fowler and Franklin Smith, sureties on the

Injunction Bond in above case, and has made diligent ~~enquiry~~ inquiry of others as to their pecuniary responsibility, and from what he knows and can learn of others, he is satisfied that neither of them is worth any thing more than enough to pay their debts, and makes this affidavit for the purpose of procuring security on said Injunction Bond.

Subscribed & sworn to before me this 24th day of March A.D. 1863.

W R Rowley Clerk
By T R Bird deputy

O. Marbles.

Endorsed.

Filed March 24th 1863.
W R Rowley Clk
By T R Bird deputy.

The affidavit for new Cost Bond referred to in the last above recited entry is in the words and figures following to wit:

State of Illinois } In Circuit Court
Jo Daviess County } March Term. 1863.

Henry A Bonhotal }
vs } Bill for Injunction
Alvin Marble. }

and the said defendant Marble makes oath in due form of law and deposes as follows. That said Complainant is out of the State and has no property in

the State subject to execution from which the costs of this suit could be made, and that the security D Slocum is believed by this affiant to be wholly irresponsible for costs. and that he has no property known to affiant and affiant believes he has no property subject to execution in this State, and affiant prays that other security may be given for costs herein.

Sworn & subscribed before me this 24th day of March A.D. 1863. O. Mandle

W R Crowley Clerk
By T R Bird deputy.

Endorsed
Filed March 24th 1863.
W R Crowley Clerk
By T R Bird deputy.

And afterwards to wit on the 18th day of May A.D. 1863. as part of the May Term A.D. 1863 of said Circuit Court. in the record of the proceedings thereof in the above entitled cause appears the following entry to wit

Henry Bonhotal
vs
Oliver Mandle. } Injunction

Now at this day comes the Complainant by his solicitor and files a new bond for costs in this cause, and the defendant by

by his solicitors, files affidavits and a motion to dissolve the injunction herein, and the complainant files affidavits counter thereto, and after argument of counsel the motion to dissolve the injunction herein is taken under advisement by the Court.

The new bond for costs referred to in the last above recited entry is in the words and figures following to wit:

State of Illinois } In the Jo Daviess
Jo Daviess County } County Circuit
Court. May Term A.D. 1863.

Henry D. Bouhotat }
vs } Bond for Costs.
Olivier Marble. }

I do hereby enter myself security for costs in this cause, and do acknowledge myself bound to pay or cause to be paid all costs which may accrue in this action either to the opposite party or to any of the officers of this Court, in pursuance of the laws of this State. Dated this 16th day of May A.D. 1863.

Charles Dougette.

Approved.
W. R. Rowley Clerk
By T. R. Bird deputy.

Endorsed
Filed May 18th 1863.
W. R. Rowley Clerk
By T. R. Bird deputy

The affidavit and motion, filed by the Defendant, and referred to in the last above recited entry, is in the words and figures following to wit:

State of Illinois }
Jo Daviess County } ss.

Henry L. Bonhotal

vs

Alvin Marble

Bill Injunction

This day came before me Alvin Marble the defendant in the above entitled suit and made oath in due form of law, & deposed as follows. That the Bill on which Injunction was granted in above case was filed in the Circuit Court of Jo Daviess County Illinois in the March term thereof A.D. 1863. to wit on the 14th day of March 1863. that defendant filed his answer and accompanying affidavits and motion to dissolve Injunction on the 17th day of March A.D. 1863. that Complainant filed affidavits in support of his bill, on the 19th day of March A.D. 1863. that Defendants motion to dissolve Injunction came on to be heard on bill, and answer, and affidavits of both parties, and that the Court decided in effect, that the Bill did not make a case sustaining the Injunction, because it did not cover the Mineral Range in controversy and granted Complainant on his

application, leave to amend the Bill without prejudice to the injunction which was done by adding a Miners Claim of 37½ feet on each side of his ranges, and the bill so amended in Red Inx. was replied by Complainant on the 23d day of March AD 1863.

That this Defendant filed his answer to amended Bill and Wise's affidavit thereto attached on the 24th day of March 1863. and the motion to dissolve was again heard on amended bill and answer and affidavits, and the Injunction as limited and restricted by an order of Record of said Court of the 24th day of March 1863. was ordered to be continued until further order of said Court. Which is the last entry of Records in said cause. That some time in May AD 1863. affiant is not positive whether on the fourth or fifth day of said Month, but on one or other of those days, he was present in the office of A Maxfield Esq at a conversation between O. H. Green Esq Counsel for Complainant and A. L. Cummings Esq Counsel for this Defendant, in which said Green admitted to said Cummings that he had again amended his Bill in points material to his rights to recover in this suit, towit: that he had changed the Contract between Bonhotal & Colony and also between said Colony & Defendants as to Colonys owning interest so that instead of a contract to convey

until Bonhotal returned from the
war. it now reads (on 4th Page) "the right
of working your orators part of said
mine or miners claim as above stated
until all the mineral in said miners
claim should be exhausted, and until
all the ranges veins and leads on said
miners claim should run out" and
this affiant shews that on the 4th Page
of said Bill where this amendment
was made, ten lines of the contract
originally stated in said Bill are stricken
out. and the words above quoted after
the word until were substituted in
their place, making an entirely different
contract from the one originally stated
and this affiant further shews that
the marginal amendment. and also
all other amendments in red ink on the
third page, except those extending the
terms to a mine and miners claims.
have been added by some one. and
affiant believes by said Owens since the
last adjournment of this Court. affiant
further states it as his belief, that said
amendments were made after a part of the
proofs was taken on the part of the
Complainant and to make it fit
Comstock Colony's Deposition
affiant further states that the record
shews no order for second amendment.
and no application for leave to amend

subsequently to the order before referred to, and that the same was done in order to prej= udice the Defendants rights in said suit

Sworn & subscribed before me
this 15th day of May 1863.
Wm R Rowley Clk
By T. R. Bird deputy

Oliver Marble.

State of Illinois } In the Circuit Court for Davis
Davies County } County May Term A.D. 1863.

Henry Bonhotal
vs
Oliver Marble } Bill Injunction

And the said defend= =ant by his solicitors comes and moves the Court for a dissolution of the Injunc= =tion heretofore granted herein, for the reasons in the above affidavit stated.

Johnson & Cummings
Sols. for Dft.

Endorsed
Filed May 18th 1863.
Wm R Rowley Clerk
By T. R. Bird. Deputy.

The counter affidavit to above, filed by the Complainant herein, and referred to in the last above recited entry is in the words and figures following to-wit:

57 65

Henry. P. Donhotal } In the Js Davies Co
vs } Circuit Court.
Oliver. Marbles. } May Term A.D. 1868

T. A Green. being first duly sworn, deposes and says. that he is the attorney of the Comt, in said cause. That since the last term of this Court. deponent amended the bill in said case, as follows towit: It was stated in said Bill that according to the contract between Comstock Colony and said Complainant, that said Colony was to have the right to work said mine and miners claim on the terms and conditions therein stated until Complainant should return from the army, and that complainants term of enlistment was three years. from about the first of Aug: 1861 #2. and deponent amended said bill by drawing marks across that portion of the bill. and writing on the margin that said Colony was to have the right to work said mine and miners claim until all the mineral in the same should be exhausted, and until all the ranges, veins and leads on said claim should run out.
Deponent states. that the above is all the amendment deponent made to said bill since the last term of this Court. and deponent further states that said amendment was made

by deponent with the firm belief that 57 & 6
deponent had a right to do so under the
leave granted at the last term of this Court
to Complainants to amend his said bill
without injury to the Injunction in
said case. and that deponent had
no intention whatever of amending said
bill without leave to do.
That deponent informed Mr Cummings
one of the attys for dfts. immediately
after deponent so amended said bill
and handed out to said atty. the amend-
ments that had been made. thinking at
the same time, that there was no doubt
as to Complainants right to so amend.
deponent further states that he intended
to make said amendment immediately
after the last term, and called at the
Clerks office to get the papers to do so,
but found that Mr. Cummings had them
and deponent did not get said papers
until some time afterward, when he
got them for a few days from Mr Cummings
at which time he made said amendments
and returned the papers to Mr Cum-
mings, and informed him that said
amendments had been made, and
handed out the same. Deponent further
states that he misunderstood Peter Bonhotal
agent of said Henry Bonhotal, Com.
when he drew said bill, in regard
to said matter, so amended; that said
Peter Bonhotal is a Frenchman, and

cannot speak the english language so as to be entirely understood, and in fact, that it was impossible for deponent to properly understand all he said, and that it was for this reason, that said contract between said Colony and Bonhotal was not correctly drawn in said bill at first. Deponent further states that he distinctly recollected that it was on the last day of the last term, just before the motion to dissolve the injunction was last argued that deponent presented authorities in regards to Complainants right to amend without injury to said Injunction, and supposed that leave to be amend was granted on the last day of said term, until after deponent amended as above stated, when he examined the docket, and found the order to amend was dated on the day before the last day of said term, that deponent thinks it was a mistake. Deponent further states, that he had no intention whatever of violating any rule or order of this Court, and as he understands the matter has not done so in any particular

T. A. Green.

Sworn to before me this 18th May 1863.
W. K. Rowley Clk
By J. R. Bird dep.

Endorsed
Filed May 18th 1863
W. K. Rowley Clk
By J. R. Bird dep.

And afterwards towit on the 19th day of May A.D 1863. as yet of the May Term A.D 1863. of said Circuit Court. in the record of the proceedings thereof in the above entitled cause appears the following entry towit:

Henry Bonhotal
vs
Oliver Marble. } Injunction

The Court having fully considered of the motion heretofore filed by the defendant to dissolve this injunction, overrules the same. To which ruling of the Court the defendant by his solicitors then and there excepts.

And afterwards towit on the twentieth day of May A.D 1863. as yet of the May Term A.D 1863 of said Circuit Court. in the Record of the proceedings thereof in the above entitled cause, appears the following entry towit:

Henry Bonhotal
vs
Oliver Marble. } Injunction

Upon motion and affidavit of the complainant by his solicitor, the defendant is ruled to appear and show cause if any he may have, why attachment should

~~69~~ 61

not issue against him for contempt of Court in violating the injunction herein and the defendant by his solicitors files affidavits and a motion for a trial by jury in this cause; and the Complainant moves the Court for leave to amend his bill

The affidavit referred to in the last above recited entry is in the words and figures following towit:

State of Illinois } In Circuit Jo Daviess
Jo Daviess County } County to the May
Term A.D. 1843

Henry P. Bonhotal }
vs } Bill & Injunction
Oliver. Marble. }

To the Hon Benj R.
Sheldon, Judge &c. in Equity:

Your petitioner Oliver Marble, a citizen of Jo Daviess County Illinois, respectfully shews unto your ~~Honor~~ Honor. that he is defendant in the above entitled suit in Equity. That the title to the diggings known as the Marble diggings is in controversy in said suit and that the whole suit depends on the title. Your petitioner believes that a jury of the country is the proper Tribunal to try all questions of fact, especially when it is one of facts ~~solely~~ solely. That he is advised by his counsel

that but for the allegation of insolvency of this Defendant, in which the matter is brought within Equity Jurisdiction & Injunction obtained. the suit would be purely one at law. in which petitioner would be entitled to a jury trial. Petitioner therefore prays that an issue be sent out of Chancery to be tried by a jury of the County to try the title to the Marble diggings, in order to relieve and satisfy the Conscience of this Honorable Court, and as your petitioner as in duty bound will ever pray &c.

Sworn Subscribed before me.
This 20th day of May 1863.
W R Rowley Clk
By T. R. Bird deputy

Oliver Marble

Johnson & Jennings Sols.

Endorsed
Filed May 20th 1863.
W R Rowley Clerk
By T. R. Bird. deputy.

And afterwards towit on the 21st day of May A.D. 1863 as part of the May Term A.D. 1863. of said Jo Daviess County Circuit Court. in the Record of the proceedings thereof in the above entitled cause, appears the following entry towit:

Henry Bouhotal
vs
Oliver Marble. } Injunction

Now at this day

comes the complainant and files an affidavit in support of his motion to amend his bill in this cause: and said motion to amend bill having at this day come on to be heard, the Court after hearing the arguments of Counsel, takes said motion under advisement. and the Court having fully considered of the motion of the complainant to amend his bill in this cause sustains the same, and leave is therefore granted the said Complainant to amend his said bill, which is to be done without prejudice to the injunction in this cause And the motion heretofore filed by the defendants for a jury trial in this cause having this day been brought on to be heard, after arguments by Counsel is sustained by the Court. and a trial by jury granted. And it is ordered by the Court that the parties make up and file the issues to be tried by said jury.

The affidavit, in support of motion to amend bill, referred to in the last above recited entry, is in the words and figures following to wit:

State of Illinois } In the Jo Daviess
Jo Daviess County } County Circuit Court
May Term A D 1863.

Henry P Bonhotal
vs
Oliver Marbles.

Peter Bonhotal being first duly sworn deposes and says: that he is the agent of said Complainant, that said Com. was absent from this State in the army at the time the above entitled suit was commenced and is still so absent. That when deponent first stated the said case to the attorney for said Complainant, deponent understood and so stated to said attorney, that said Colonney was to have the right to work said mine and miners claim mentioned in said bill on the terms therein stated until Complainant should return from the army: that since the ~~Judgment~~ adjournment of said ~~Court~~ term and since the amendments to said bill under leave of this Court that the fact has come to the knowledge of the deponent that said Colonney was to have the right to work said mine and miners claim until all the mineral in said mine and on said miners claim should be exhausted, or so long as it would be advisable to work said mine and miners claim, and then give up the same to Complainant. That deponent is the only agent authorized by said Complainant to attend to Complainants business in and about said mine, and that deponent is a Frenchman, and both

65-75

speaks and understands the English language very imperfectly and was very likely to make mistakes and misunderstand the facts in said case.

Deponent prays that Complainant may be allowed to amend his said bill in accordance with the above facts, which have wholly come to the knowledge of deponent, since the adjournment of the last term of this Court, and since the expiration of the time allowed by this Court to amend said bill in the first place.

Pierre Bouhotal.

Sworn to before me
this 21st May 1868.
W. R. Rowley Clk
By T. R. Bird deputy

Endorsed
Filed May 21st 1868.
W. R. Rowley Clerk
By T. R. Bird deputy.

And afterwards towit on the 22d. day of May A.D. 1868. as part of the May term A.D. 1868. of said Jo Daviess County Circuit Court, in the record of the proceedings thereof in the above entitled cause appears the following entry towit:

Henry Bouhotal
vs
Olivier Marble. } Injunction

Now at this day comes the Complainant and files his amended

bill herein.

The Complainants amended bill referred to in the last above recited entry is in the words & figures following to wit:

State of Illinois } In the Jo Daviess County
Jo Daviess County } Circuit Court.
March Term A.D. 1865.

Bill In Chancery.

To the Honorable Benjamin Sheldon. judge of the fourteenth judicial Circuit of the State of Illinois.
In Chancery Sitting:

Your orator Henry D. Rowhotal. a citizen of Jo Daviess Co Illinois and a miner by trade, respectfully sheweth unto your honor, that your orator and one one Joseph Rice of the same County and State, and also a miner by trade, did sometime during the month of March or April, in the spring of A.D. 1862, enter into an agreement to engage together in prospecting for mineral, on the mineral lands of Mrs Kamphouse and Elizabeth Kamphouse. her daughter, situated in Rice Township, Jo Daviess Co Illinois That your orator and said Rice immediately thereafter commenced prospecting on said lands, and after working some length of time, found a small lead or vein of mineral. That your orator and said

Wise by the customs of miners and those owning mineral lands, as well as by the implied consent of the owners of said land, acquired the right and privilege of working said miners claims which were Thirty seven and one half feet on each side of said leads, so long as your orator and said Wise might choose to do so or until all the mineral in said mine or in the miners claims to which your orator and said Wise acquired the right to mine as aforesaid, the same being Thirty seven and one half feet on each side ~~thereof~~ of said leads, should be exhausted, on the following terms and conditions to wit: Your orator and said Wise were to give the said owners of said land the one sixth part of all the mineral taken or as ground rent.

Your orator further shews that the said contract entered into between the said Wise and your orator, was as follows to wit: each one was to pay one half of all the necessary expenses in commencing and carrying on said prospecting and mining business and each have one half of all the mineral that might be found in said mine and on said miners claims, after paying the one sixth part as aforesaid for ground rent, and each one was to devote his labor and skill in said

prospecting and mining business; and in case either was unable from sickness or any other cause from so doing, or in case either did not wish to so work in said mine himself, he was to have permission to get some one else in his place equally skilled and able to labor and either was to have permission to rent or sell out his interest in said mine and claim at any time in case he did not interfere with the rights and interest of the other.

Your orator further shows that after your orator had bestowed a great deal of labor and said, in connection the said Wise, in opening said mine, and immediately after finding some mineral and when the prospects for shipping large quantities of mineral were very good in said lead on said miners claims, your orator rented his interest in said mine and in said miners claims, to one Comstock Colonny a brotherinlaw of your orator, on the following terms and conditions to wit: Said Colonny was to rent said mine and miners claims on the shares, but was to have the first six thousand lbs of mineral taken out that would fall to your orators interest in said mine, after which the said Comstock Colonny was to give your orator the one half of all the mineral that should fall to the share of your orators one half

69 79

interest in said mine, and the said Colony was to furnish all the necessary expenses of working the same, was to have permission to work said mine and mines claim, until all the mineral in said claim should be exhausted, and all the veins, leads and ranges in said mines claim should run out. or so long as it should be advisable to work said mine & mines claim. and then give up the same to Complainant and your orator appointed his father Peter Donhotal as his agent to look after your orators interest in said mine and in said mines claim. and fully empowered the said Peter Donhotal to do all and every thing in regards to said mine and said mines claim, in every respect that your orator himself could do, until your orator should get home from the war. Your orator further shews that the said Colony continued to work said mine and the different drifts then open in said mine and in said mines claim until about the 25th of December A.D. 1862. at which time by and with the consent of your orators agent. as well as with the consent of your orator himself the said Comstock Colony, for and in consideration of Twenty dollars, sold his right to work said mine on the claims. for your orator as aforesaid and also the interest of said Colony in the tools, railroad cars &c used in draw

to one Oliver Marble of the City of Salem, County and State aforesaid, and the said Marble agreed to deliver your Orator his share of said mineral, faithfully and promptly, and comply with all the terms and conditions on which your orator let said mine and said mines claim, the same as the said Colonny was to do. Your orator further shews that said Marble was to have the right of working your orators part of said mine and mines claim as above stated, until all the mineral on said mines claim should be exhausted and until all the ruges, veins and leads on said mines claim should run out or so long as it might be advisable to work said mine and mines claims, then give up the same to complainants. That your orator has fully and faithfully discharged his part of said contract and is still willing at all times to do so.

That in addition to a great deal of time and labor bestowed by your orator in opening said mine, your orator also expended a large sum of money in opening the same and reaching the mineral as aforesaid, and that your orator and said Mine had only taken out a small quantity of mineral up to the time your orator so let said mine and claim to the said Colonny.

That said Colonay and said Wise had taken out but six thousand and forty lbs of mineral up to the time said Colonay sold his right to said Marble and that Marble was entitled to about three thousand lbs of the first mineral that should be taken out and full to the interest of your orator in said mine and said leads, as the said Colonay had only gotten about three thousand and twenty lbs of the six thousand lbs he was to have of the first mineral taken out. That soon after said Alvies Marble commenced working your orators share or part of said mine and miners claim on the terms and conditions above stated, in connection with the said Wise. who worked his own half. that said Marble and said Wise began to take out large quantities of lead mineral, the said Wise and Marble having struck a large vein of mineral on said miners claim and within from 20 to 25 feet of the original lead or drift and to the the South of the same, all being already on the said miners claim and which extended as aforesaid 67½ feet on both sides of said original drift which became very large and yielded large quantities of said mineral

That the said Marble although often requested, absolutely refused to deliver

to your orators agent for your orator, his share of said mineral or any part thereof, and openly declared that he would not do so, and still so declares: and also declares that he will not give your orator his share of whatsoever may be taken out of the said mine and mines claims in the future, pretending that said Marble under some pretence or other unknown to your orator was entitled to the whole interest of your orator in said mine and mines claims: But your orator avers that said Marble has no shadow of right to said mine and claims: the said claim extending thirty seven & one half feet on each side of the first drift, more than above stated: That up the 9th day of March A.D. 1868. said Marble likewise made sale from said mine* to Samuel Hughlett and Thomas Hughlett who do business under the firm name of Hughlett & Son. about Sixty thousand lbs of mineral forty eight thousand lbs of which they sold at forty six dollars per thousand lbs. and the balance at from 50 to 53 dollars per thousand lbs. That said Marble has received both his own and your orators share of money for the said 48000 lbs of mineral and there is still in the hands of said Hughlett & Son, the value of the balance of said mineral. Your orator further shews that said Marble is a very poor man

* and the said last mentioned lead or vein in the said mines claimed by said

10 24
72 29

73

unde deeply in debt, and that said Marble is wholly irresponsible, and that said Marble owns no property at all in the County of Jr Davis and State aforesaid nor any where else in said State as your orator is informed and believes, that is subject to execution and sale for his debts under the laws of this state, and that said Marble is actually attempting as your orator is informed and believes to defraud your orator out of his said share of the said mineral taken out of the said mine and from said miners claims from the last mentioned lease, and that unless said Marble is restrained by a writ of Injunction out of this Honorable Court from selling your orators share of said mineral and collecting the price thereof, and also from collecting the one half of the money now in the hands of the said Hughlett & Bro. minus the one eighth for ground rent as aforesaid, which the said owners of the lands are entitled to as aforesaid, that your orator will be in danger of losing all the mineral and money to which your orator is entitled as aforesaid and your orator further shews that said Elmer Marble is making every effort in his power to exhaust said last mentioned lease or mine, also to exhaust all the mineral on said miners claims, and get all the mineral out of the same as soon as possible, and to dispose of and get the money for the same before your orator

can recover your orator shall by due course
of law. and your orator further shows that
there is great danger of said Marbles removing said lands and all the minerals on said
claims within a short time if the said
Marble continues to work the same as
he is now doing, and that your orators
only hope or chance of ever recovering
what is justly and of right due your
orator from said Marble, is in having
said Marble restrained by writ of Injunction
from this honorable Court of Chancery from
receiving, collecting or authorizing any one else
for him to receive or collect whatever money
there may be in the hands of the said
Houghlett & Son. for mineral from said
last mentioned mine or leads, and from
all of said miners claims, and also from
selling your orators share of whatever mineral
may be taken out of said leads and diggings
known as the Marble diggings and described
as above. and whatever may be out of
said mine, leads and diggings, known and
described as above. And to your orator
hereby expressly waives the answer of the
said Alvin Marble being under oath.
Your orator prays that the said Alvin
Marble may be required to the best of his
information, remembrance and belief
to make full, true and perfect answers
to all of the allegations of this bill and the
following interrogatories, to wit:

1. Whether said Marble did not only buy

out whatever interest the said Counselor Colvonny had in said mine or lead, and in and to said miners claim above mentioned and described, and whether it is not true that said Marble never purchased any other interest from the said Complainant or any one else holding under him in and to said mine and miners claim?

2d. Whether it is not true that said Marble were to give Complainant one half of all the mineral taken out of said mine that might fall to the share of said Complainants and those holding under him mining the one sixth for ground rent and a little upwards of three Thousand lbs. of the first mineral taken out which said Marble was entitled to under said Contract.

Your orator further prays that said Marble may be made a party defendant to this ~~suit~~ bill, and that a summons in Chancery may issue against said Oliver Marble, and your orator further prays that writ of Injunction may issue out this honorable Court, enjoining and restraining the said Oliver Marble, from receiving collecting, or authorizing any one else for him to receive or collect any money which may now or hereafter be in the hands of the said firm of Vaughn & Lowe for mining

as aforesaid, sold and delivered by the said Wise and Marble from the said mine and mines claims, and all the leads and ranges of said claims, known as Marble Digging, and described as above, and in which your orator has one half interest which the said Marble might otherwise collect as the share of the said Complainant Henry R. Bonhotal, and also the share of the said Marble, being one half of all the money in the hands of said Houghlett & Son for mineral delivered by said Wise and said Marble from said Diggings and said Mines claims and also that Marble be restrained from selling or appointing or authorizing any one else to sell any more mineral from said mine, and from any lead or vein of mineral on said mines claims, and in said claim or diggings, known as Marbles diggings and described as aforesaid that may fall to the share of the one half interest in said mine, and all the leads on said mines claims. Claimed by the said Complainants, and worked by said Marble, until said Marble shall pay over to said Complainants the one fourth of all the mineral that has been taken out of said mine or any leads on said mines claims, or the value of the same, after which your orator prays that the said Alvin Marble may be enjoined only

from selling your orators share of said mineral, the same being one fourth part of all the mineral taken out of said mine and of all the leads veins and ranges of mineral in said miners claim, mines the one sixth for ground rent.
And your orator further prays that this honorable Court may compel the said Oliver Marble to pay your orator all that may due your orator from said Marble for mineral sold as aforesaid which rightfully belonged to your orator and your orator further prays, that the said Oliver Marble may be decreed, specifically to perform his said agreements or contracts to work said mine and all the leads on said mineral claims, and, and to deliver to your orator the one fourth part of all the mineral taken out of said mine or said miners claim and out of all the leads on said miners claim that may hereafter be discovered or in any mine ~~my~~ your orator may have in said diggings, as fast as the same is taken out. minus the one sixth part for ground rent. And that your orator may have such other and further relief as the nature of this case may require, and your orator will ever pray.

Henry P. Bonhotal
By T. A. Green.
Sol for Complainant

State of Illinois }
Jo Daviess County } On this 14th day of March
A D 1863. personally appear-
ed before T A Green, and made oath
that he is the attorney for the complain-
ant in the above entitled case, and that
the statements of said bill are all true to
best his knowledge, information and belive.
Sworn to before me T. A Green.
this 14th day of March A D 1863.
W R Rowley Clk.
By T. A Bird dep.

State of Illinois }
Jo Daviess County }

Henry P Bonhotal
vs
Oliver Marble. Peter Bonhotal
being first duly
sworn deposes and says that deponent
is the agent of Henry P Bonhotal, to attend
and look after the interest and business
of the said Henry P Bonhotal in regard to
the lead mine in mentioned in the above
Bill In Chancery against the said
Oliver Marble, and deponent further
states, that he has heard said bill
read, and the facts set forth set in said
bill are all within the personal
knowledge of deponent, as fully so
as within knowledge of the said Com-
plainant himself, and that said facts

as set forth in said bill are true

Subscribed & sworn to before me this 14th day of March A.D. 1862
Joseph H. Barry
Justice of the Peace

Filing of the foregoing bill of complaint & accompanying bond & writ of injunction issue as therein prayed for.
Fo. Clerk Jo Davies Circuit Court
Benj R. Sheldon
Judge 14th Jud Cir. Ills.

State of Illinois }
Jo Davies County } Peter Bonhotal being first duly sworn, deposes and says that deponent is the agent of the said Complainant in the above bill, Henry P. Bonhotal to attend to and look after the interests of the said Henry P. Bonhotal Complainant, in and about the leading and mining claim, known as the Rancho diggings, and fully mentioned and described in said Bill In Chancery, wherein said Henry P. Bonhotal is Complainant and Oliver Marble defendant. Deponent further states that deponent is as fully acquainted with the facts set forth in said Bill* are true, deponent further states that he has heard said bill read over since it has been amended, and that

* as the said Complainant himself, and is fact more so, and that said facts as set forth in said Bill.

the facts and statements set forth in said amended bill are true

Subscribed & sworn to before me this 23d day of March AD 1863. Pierre Bonhotal.

William Farrar J.P.

State of Illinois }
Jo Daviess County } ss. Peter Bonhotal being first duly sworn deposes and says that deponent is the agent of the Complainants to said bill to attend to and look after the interests of said Complainants in and about the mine and mines claim mentioned in said bill, deponent further states that he has heard said bill read since amended last, and knows the contents thereof, and that all the facts and statements of said bill are as fully within the knowledge of deponent as within the knowledge of complainant himself and that said facts set forth in said bill are true, except such matters and things as are stated on information & belief and those he believes to be true. Deponent further states that said Complainants is out of the State.

Subscribed & Sworn to before me this 16th day of May AD 1863. Pierre Bonhotal

Henry Mayfield J.P.

~~86~~ 81

State of Illinois }
Jo Daviess County }

Henry P. Bonhotal }
vs
Oliver Marble. } Pierre Bonhotal being first duly sworn deposes and says he the agent of said Complainant. That he has heard said bill read since last amended and knows the contents thereof and that the same are true, except such matters and things as are stated on information, and deponent believes these to be true. That said Complainant is out of the State in the army.

Pierre Bonhotal

Subscribed & sworn to before me this 21st day of May 1863.

W. R. Rowley Clerk
By T. R. Bird deputy.

Endorsed
Filed as reamended May 22d 1863.
W. R. Rowley Clerk
By T. R. Bird. deputy.

and afterwards to wit on the 20th day of May A.D. 1863. as of the May Term A.D. 1863 of said Circuit Court in the record of the proceedings thereof in the above entitled cause appears the following entry to wit

Henry Bonhotal
vs
Olivier Marble } Injunction

The Defendant at this day comes and files his answer to the rule heretofore entered against him by the Court, to appear and show cause why he should not stand committed for a breach of the injunction herein. and also files his bill of exceptions. as to leave heretofore granted the Complainant to amend his bill in this cause, which said bill of exceptions is certified by the Court.

The Bill of Exceptions filed by the defendant, and referred to in the last above recited entry is in the words and figures following to wit.

Henry S Bonhotal
vs
Olivier Marble. } In Circuit Court
May Term A.D. 1863.
Bill of Injunction

Be it remembered that on this day came on to be heard the motion of the defendant to dissolve the Injunction heretofore granted in this case, which motion is in words and figures following Towit:

State of Illinois
Jo Daviess County } In Circuit Court
Jo Daviess County
May Term A.D. 1863.

Henry P Bonhotal
vs
Oliver Marbles. } Bill & Injunction

And the said defendant by his solicitors comes and moves the Court for a dissolution of the injunction heretofore granted herein for the reasons in the above affidavit stated.

Johnson & Cummings
Sols. for deft.

which motion was founded on Marbles affidavit in words and figures following towit:

State of Illinois }ss.
Jo Daviess County }

Henry P. Bonhotal
vs
Oliver Marbles. } Bill & Injunction

This day came before me Oliver Marbles the defendant in the above entitled suit, and made oath in due form of law & deposes as follows. That the bill on which Injunction was granted in above case was filed in the Circuit Court of Jo Daviess County Illinois in the March Term thereof A.D. 1863, towit on the 14th day of March 1863. That defendant filed his answer and accompanying affidavits and motion to dissolve Injunction on the 17th day of March 1863. That com-

complainants filed affidavits in support of
his bill on the 19th day of March AD 1863.
That defendants motion to dissolve injunc-
tion came on to be heards on bill and
answer and affidavits of both parties,
and that the Court decided in effect that
the Bill did not make a case sustaining
the Injunction, because it did not
cover the mineral range in controversy,
and granted complainant on his appli-
cation, leave to amend the Bill without
prejudice to the Injunction which was
done by adding a Miners claim of
300 feet on each side of his range. and
the bill as amended in reference was
replied by the complainants on the 23d day
of March AD 1863. That this defendant
filed his answer to amended bill & his
affidavit thereto attached on the 24th
day of March 1863. and the motion to dissolve
was again heard on amended bill and
answer and affidavits, and the injunction
as limited and restricted by an order of
record in said Court of the 24th day of
March 1863. was ordered to be continued
until further order of said Court. which
is the last entry of Record in said cause
That sometime in May AD 1863. affiant
is not positive whether on the 4th or 5th
day of said Month between one or other
of those days, he was present in the office
of A. Warfield Esq. at a conversation

97 85

between T A Green Esq. Counsel for Complainant and A Cummings Esq. Counsel for this Defendant. in which said Green admitted to said Cummings, that he had again amended his bill in points material to his rights to recover in this suit, to wit: that he had changed the contract between Donhotal and Colonay, and also between said Colonay and Defts Marbles, as to Colonays working interest, so that instead of a contract to work until Donhotal returned from the war. it now reads on 4th page, "the right of working your orators share of said mine and said miners claim as above stated, until all the mineral in said miners claim should be exhausted and until all the ranges, veins and leads on said miners claim should run out" and this affiant shows that on the fourth page of said Bill, when this amendment was made, ten lines of the contract originally stated in said bill are thrown out. and the words above quoted after the word until were substituted in their place, making an entirely different contract from the one originally stated, and this affiant further shows that the marginal amendments and also all amendments in red ink on the third page excepting those extending the terms to a mine and miners claim, have been added by some one, and affiant believes by said Green since the last adjournment of this Court affiant further states it as his belief that the

said amendments were made after a part of the proof was taken on the part of the complainants, and to make it fit Comstocks Colonneys deposition, Affiant further states, that the Record shews no order for second amendment, and no application for leave to amend subsequently to the order before referred to, and that the same was done in order to prejudice this Defendants rights in said suit.

Sworn to subscribed before me this 15th day of May 1863. Oliver Marbles.

W. R. Crowley Clerk
By T. K. Bird deputy

and plaintiff resisted said motion and filed the following affidavit towit:

Henry P. Bonhotal vs Oliver Marbles. In the Jo Daviess Co Circuit Court May Term A.D. 1863.

T. A. Green being first duly sworn deposes and says that he is the atty of the Com in said case. That since the last term of this Court, deponent amended the bill in said case as follows towit: It was stated in said Bill that according to the Contract between Comstock Colonney and said Complainant, the said Colonney was to have the right to work said mine and miners claim on the terms and conditions therein stated, until complainant should return from the army, and that Complainants

Term of enlistment was three years from about the first of August 1862. and deponent amended said bill by drawing marks across that portion of the bill and writing on the margin that said Colonay was to have the right. word said mine and miners claim until all the mineral on the same should be exhausted, and until all the ranges, veins and leads on said claim should run out. Deponent states that the above was all the amendment deponent made to said bill, since the last term of this Court; and deponent further states that said amendment was made by deponent with a firm belief that deponent had a right to do so under the leave granted at the last term of this Court to Complainants to amend his said bill without injury to the injunction in said case. and that deponent had no intention whatever of amending said bill, without leave to do. That deponent informed Mr Jennings, one of the attys for defts, immediately after deponent so amended said bill, and pointed out to said atty, the amendment that had been made, Thinking at the same time that there was no doubt as to Complainants right to so amend. Deponent further states that he intended to

make said amendment. immediately after the last term and so called at the Clerks office to get the papers to do so. but found that Mr Jennings had taken them, and deponent did not get said papers until some time afterwards when he got them for a few days from Mr Jennings, at which time he made said amendment and returned the papers to Mr Jennings, and informed him that said amendment had been made and pointed out the same. Deponent further state that he misunderstood Peter Bonhotal, agent of said Henry Bonhotal, Com. when he drew said Bill in regards to said matter so amended that said Peter Bonhotal is a Frenchman. and cannot speak the English language so as to be easily understood. and in fact it was impossible for deponent to properly understand all he said, and it was for this cause that said contract between said Colony and Bonhotal was not correctly set out at first. Deponent further states that he distinctly understood that it was on the last day of the last term, just before the motion to dissolve the Injunction was last argued that deponent presented authorities in regard to Complainants right to amend without injury and supposed that leave to so amend was granted on

16

89

the last day of said Term, until after deponent amended as above stated, when he examined the docket and found the order to amend was dated on the day before the last day of said Term, but deponent thinks it was a mistake. Deponent further states that he had no intention whatever of violating any rule or order of this Court. and as he understands the matter has not done so any particular

Sworn to before me
this 18th May 1863.
W. R. Rowley Clk.
By T. R. Bird, Deputy

T. A. Green.

To rebut which Defendant offered in evidence the following order of Court Towit:

Tuesday Morning. March 24th A.D. 1863.

Henry Bouchotab
vs
Alver Marble.

Injunction

Now at this day, came on to be heard the motion to dissolve the injunction herein. and the plaintiff having filed his amended bill and the defendant having filed his answer thereto. after hearing the evidence in the cause and the arguments of counsel the motion to dissolve this injunction is denied by the Court. but it is ordered that the writ of Injunction herein be so modified

as to include only all mineral in a tract from the original range struck or bounds by the Complainant herein and Joseph Price on the ground of Compliance, and the land thirty seven and one half feet on each side of said original range. and the defendant by his attorneys files affidavit and motion, for rule on the Complainant to furnish additional security on the Injunction bond given in this cause which motion after argument by counsel and the justification of one of the securities thereon, is overruled by the Court. and the defendant also files affidavit and motion for a rule upon the Complainant to file a new cost bond in this cause which motion after argument by counsel is sustained by the Court. and the Complainant is ruled to file another bond for costs in this cause on or before the first day of the next Term of this Court.

After which and argument the Court overruled said motion. to which ruling of the Court the said Defendant by his Solicitors then and there excepted and afterwards came on to be heard on application of Complainant for leave to amend his bill, without prejudice to the Injunction, which being the second application for leave was supported by the following affidavit to wit:

State of Illinois } In the Js Davies County
Js Davies County } Circuit Court
May Term. A.D. 1863

Henry P. Bonhotal
vs
Olivier Marble. } Peter Bonhotal

being first duly sworn deposes and says. that he is the agent of said Complainant. that said Com: was absent from the State in the army, at the time the above entitled suit was commenced, and is still so absent. that when deponent first stated the said case to the attorney for said Complainant deponent understood and stated to said attorney. that said Colonny was to have the right to work the said mine and mines claim mentioned in said bill on the terms therein stated until Complainant should return from the army that since the adjournment of said Court and since the first amendment to said bill under leave of this Court that the fact has come to the knowledge of deponent. that said Colonny was to have the right to work said mine and mines claims until all the mineral in said mine and on said mines claims should be exhausted or so long as it would be advisable to work said mine and mines claim, and then give up the same to Complainant

That deponent is the only agent authorized by said Complainant to attend to Complainants business in and about said cause that deponent is a Frenchman, and both speaks and understands the English language very imperfectly and was very likely to make mistakes and misunderstand the facts in said case. Deponent prays that Complainant may be allowed to amend his said bill in accordance with the above facts. which have wholly come to the knowledge of deponent since the adjournment of the last term of this Court. and since the expiration of the time allowed by this Court to amend said bill in the first place.

Pierre Donhotal

Sworn to before me
this 21st May. 1863.
W R Rowley Clk
By T. C. Bird deputy

Which motion after being heard and objected to and resisted by Defendants solicitors, was granted by the Court. and leave given to amend said bill. in accordance with said affidavit of said Donhotal without prejudice to the Injunction, to which last ruling of the Court. defendant by his solicitors then and there excepted, and prayed that their bill of exceptions to be signed and sealed. and certified by the Court

~~105~~ 94

which was accordingly done this 23d day of May 1863.

Benj R Sheldon. (Seal)

Endorsed.

Filed May 25th 1863.
W R Cowley Clerk
By T. R. Bird deputy.

And afterwards towit on the 26th day of May A.D. 1863. as part of the May Term A.D. 1863. of said Circuit Court. in the words of the proceedings thereof in the above entitled cause appears the following entry towit:

Henry Bonhotal
vs
Oliver Marble. } Injunction

The Complainant by his solicitor at this day comes and files his replications to the defendants answer in this cause, and doth also come the parties and files their issues to be tried by a jury herein which issues are certified by the Court.

The replications referred to in the last above recited entry are in the words and figures following towit:

State of Illinois } In the Jo Daviess
Jo Daviess County } County Circuit Court.
In Chancery } May Term A. D. 1863.

Henry P. Bonhotal
vs
Oliver Marble.

Replication of Complainant to answer of Defendant.

This replicant saving and reserving to himself all and all manner of advantage of exception which may be had and made and taken to the manifold errors uncertainties insufficiencies of all the answers of both original and amended &c. of the said defendant for replication thereunto saith, that he doth and will aver, maintain and prove his said bill to be true, certain and sufficient in the law to be answered unto by the said defendant and that the answers of the said defendant are very uncertain, evasive and insufficient in law to be replied to by this replicant without that, that any other matter or thing in said answers contained, material and effectual in the law to be replied unto and not herein, and hereby well and sufficiently replied unto, confessed, avoided, traversed or denied is true, all of which matters and things this replicant is ready to aver maintain and prove as this honorable Court shall direct, and humbly prays as in and by his said bill he hath already prayed

Henry P. Bonhotal
By T. A. Green, his Sol

Endorsed 107
96
Filed May 26th 1863.
Wm A Rowley Clerk
By J. R. Bird deputy

The issues to be tried by jury filed by the parties in this suit are in the words and figures following towit:

Henry A. Donhotal } In the Jo Daviss Circuit
vs } Court in Chancery
Alvin Marble } of the May Term A.D 1863.

The counsel for the said Complainant moves and the Counsel for the said defendant consents that the Court direct the four following issues of fact between the said parties, to be submitted to be tried by a jury without the formality of a feigned issue, towit:

1st. Whether the lead or range of mineral in controversy in this suit is the same lead or range of mineral owned by said Donhotal

2d whether the lead or range of mineral so in controversy is on ground entered within the boundaries of the miners claim of said Donhotal,

3d Whether said Marble became the owner

of ~~the~~ ~~defendant~~ all the interest of said Bouhotas in said lead or range of mineral owned by him and in his mines claim, or only acquired a working interest therein as set up in the bill.

4th Whether the lead or range of mineral in controversy was first discovered by running across drift from the old original lead or range of mineral of Bouhotas and Marble.

Johnson and Cumings for Defts
T A Green Sol for Com.

The Court thereupon directs that the foregoing four issues of fact between the parties be submitted and tried by a jury.

Benj R Sheldon.

Endorsed
Filed May 26th 1863.
W R Rowley Clerk
By T R Bird deputy

and afterwards towit on the first day of June A D. 1863. as yet of the May Term A D 1863. of said Jo Davis County Circuit in the record of the proceedings thereof in the above entitled cause. appears the following entry. towit:

Henry Bouhotal
vs
Oliver Marble. } Injunction

1498

Now at this day comes the defendant by his attorneys, and files affidavits and a motion, for a change of venue in this cause, also demurrer to amended bill of the complainants, and also files affidavits and a motion to set aside the finding of the jury upon the issues heretofore submitted in this cause.

The affidavits and motion for a change of venue, referred to in the last above recited entry is in the words and figures following to wit:

State of Illinois } In Circuit Court.
Jo Daviess County } May Term. 1863.

Henry A. Bouhotal } In Chancery.
vs } Bill for Injunction
Oliver Marble. } & Specific performance.

The affidavit of Oliver Marble defendant in above entitled suit shows as follows: That he fears that he will not receive a fair trial in the Circuit Court of Jo Daviess County in which said action is pending, on account that the Judge is prejudiced against him: and further shows that the cause of his fear is founded in transactions had in the present term of this Court, on the trial of certain

issues of fact submitted to a jury in which the rulings of the judge in the rejection of evidence offered by defendant and the admission of evidence offered by plaintiff admitting the map offered by plaintiff and rejecting that offered by defendant and also, and more especially in the instructions given by the court at the instance of the plaintiff on trial of the issues of fact by the jury, in which the court virtually decided the issues nominally submitted to the jury. That said trial commenced on the 28th day of May 1863. and the instructions complained of were given to the jury on the 30th of May 1863 and within less than ten days of this application. This affiant makes this affidavit in order that a change of venue may be granted in said cause, to some other ~~State~~ Circuit in this State, where he may have an impartial trial of the same. sworn and subscribed before me This 1st day of June 1863.

Wm R Bowley Clerk
By T R Bird deputy

Olivier Marbles.

Endorsed
Filed June 1st 1863.
Wm R Bowley Clerk
By T R Bird deputy.

The demurrer to amended bill referred to in the last above recited entry is in the

words and figures following towit: 10

State of Illinois } In Circuit Court.
Jo Daviess County } May Term A.D. 1863

Henry P. Bonhotal
vs
Oliver Marble } Bill for Injunction and Specific performance.

And the said Defendant by Johnson & Cummings his solicitors comes and demurs to the amended bill of said Complainant, filed herein and says that the matters and things in said bill ~~stated~~ contained, in manner and form as the same are therein alleged and set forth are insufficient in law for the maintainance of said Plaintiffs action thereof against him, wherefore by reason of the insufficiency of the same, said defendant prays judgment and that the Injunction herein most wrongfully granted against him be dissolved and that he be hence dismissed with his reasonable costs &c.

And for cause of demurrer shows as follows.

1st. Said amended bill does not describe any lands or premises sufficiently to enable the Court to enjoin Defendant as sought.

2d. Said amended bill does not make proper parties. Ann Comstock Colony being by said Bill a party in interest and not a party to said Bill. and for other

goods and sufficient reasons.

Johnson & Cummings
Sols. for Deft.

Endorsed.
Filed June 1st 1863.
W. B. Rowley Clerk.
By J. R. Bird dep'y.

And afterwards towit on the 2d day of June A.D. 1863. as of the May Term A.D. 1863 of said Circuit Court in the Record of the proceedings thereof in the above entitled cause appears the following entry towit.

Henry Bouhotal
vs
Oliver Marble. } Injunction

Now at this day comes the plaintiff by his attorney and files affidavit and motion to set aside the motion heretofore filed by the defendant for a change of Venue in this cause.

The affidavit and motion referred to in the last above recited entry. is in the words and figures following towit

State of Illinois } In Jo Daviess County
Jo Daviess County } Circuit Court. May Term 1863.

Henry P. Bouhotal
vs
Oliver Marble } T. A. Green being

first duly sworn says that he is Sol. for Complainants in the above entitled case. That no notice of the motion or petition for a change of venue by the defendant was given either to said Complainant & his attorney or agent before the application was made by defendant for said change of venue. Complainant therefore asks that no change of venue be allowed.

Subscribed & affirmed to before me this 2d day of June 1863.
W. A. Rowley Clk
By P. R. Bird Dep.

Endorsed
Filed June 2d 1863.
W. A. Rowley Clk
By P. R. Bird Dep.

Made afterwards to wit on the third day of June A.D. 1863. as part of the May Term A.D. 1863 of said Circuit Court. in the record of the proceedings thereof, in the above entitled cause, appears the following entry to wit:

Henry Bonhotal
vs
Olivier Mable
Injunction

Now at this day came on to be heard the motion heretofore filed by the defendants for a change of venue in this cause which motion after argument by counsel

is overruled by the Court. to which over-
ruling of motion the defendant by his
attorneys then and there excepts. And also
came on to be heard the demurrer heretofore
filed by the defendant to the amended bill
in this cause, filed June 1st 1863. which demur-
rer after argument of counsel is overruled
by the Court. To which overruling of
demurrer the defendant by his attorneys
then and there excepts. And upon
motion of the defendant he same is granted
him by the Court to file an answer to
said amended bill. to which granting
of leave the complainant by his solic-
itor then and there excepts.

And afterwards Towit on the 5th day of
June AD 1863. as yet of the May Term. AD.
1863 of said Circuit Court. in the record
of the proceedings thereof in the above
entitled cause, appears the following
entry Towit:

Henry Bonhotal
vs
Olivier Marble. } Injunction

Now at this
day came on to be
heard the motion heretofore filed by the
defendant to set aside the finding of the
jury upon the issues heretofore tried
in this cause, which motion after
argument by counsel is overruled
by the Court, to which ruling of the

Court the defendant by his solicitors then and there excepts. And it appearing to the Court that sufficient cause has not been shown to the contrary. On motion of the complainant by his solicitor it is ordered that a writ of attachment issue against the said defendant commanding him to appear and show cause why he should not stand committed for contempt of Court in violating the injunction in this cause. And the defendant by his solicitors files his answer to the complainants amended bill herein, and also files motion to dissolve the injunction in this cause.

The answer and motion referred to in the last above recited entry is in the words and figures following to wit:

State of Illinois } In Circuit Court.
Jo Daviess County } May Term A.D. 1868.

Henry P. Bonhotal
vs
Oliver Marble. } Bill for Injunction & Specific Performance

The answer of Oliver Marble defendant to the last amended bill of said complainant filed herein against him at the May Term Court May 22d 1868. Of said May Term. shews as follows

This respondent now and at all times hereafter saving and reserving to himself all and all manner of advantage to him accruing from the many errors defects uncertainties and imperfections in said last amended bill contained and so much of said last amended bill as he is advised is material for him to answer unto answering says.

It is not true as in said last amended bill erroneously supposed and alleged that the said Wise and the said Bonhotal ever made any agreement in regard to the mineral diggings now known as the "Marble Diggings" either for prospecting or otherwise and this Respondent utterly denies said allegations.

It is not true as in said last amended bill erroneously supposed and alledged that said Wise and Bonhotal struck mineral at all at any time in what are now called and known as the Marble Diggings and this Respondent utterly denies said allegation

It is not true as in said last amended bill erroneously supposed and alleged, that the said Wise and the said Bonhotal ever had an implied agreement with the owners of the land in regard to working what is now called and known as the Marble Diggings, and this Respondent utterly denies the same.

106
HH

It is not true as in said last amended bill erroneously supposed and alleged, that one Leonstock Colonny ever owned Bonhotals interest or any other interest now called or known as the "marble Diggins" in Rice Township Jo Daviss County Illinois and this Respondent utterly denies this allegation.

It is not true as in said last amended bill erroneously alleged and supposed that this Respondent ever bought of Leonstock Colonny a owning interest or any other interest in the mineral diggings now known as the "marble diggings" in Rice Township Jo Daviss County Illinois, and this Respondent utterly denies this allegation

It is not true as in said last amended bill erroneously supposed and alleged that the said Complainant ever owned or expended money on the mine now known as the "marble diggings" in Rice township Jo Daviss County Illinois, or ever had any thing to do with the same, except owning for an interest therein, and this Respondent utterly denies this allegation.

It is not true as in said last amended bill erroneously supposed and alledged that the mineral digging known as the "marble diggings" are on the lands owned by Nics Kamphouse and Elizabeth Kamphouse in Rice Township Jo Daviss County Illinois and this Respondent utterly denies this allegation.

It is not true as in said last amended bill erroneously supposed and alledged that this Respondent agreed to work said mine known as Marbles Diggings on shares, or to pay to Complainant any part of the proceeds of said mine, or had any other agreement of any kind with said Complainant or his agent in relation thereto, and this Respondent utterly denies this allegation

It is not true as in said last amended bill erroneously supposed and alledged that this Respondent is insolvent. and this Respondent denies said allegation

And To the specific Interrogatories this Respondent says.

1st It is not true that this Respondent bought out whatever interest said Colony had in said mine or lead known as Marbles Diggings, or that this Respondent made any contract whatever in regard to said mine nor known as "Marbles Diggings"

2d It is not true that this Respondent was to give Complainant the half or the fourth or any other share of the mineral taken out of said mine known as the "Marble Diggings", as is in said last amended bill erroneously supposed and alleged, and utterly denies any contract, agreement or understanding

in relation to said Marbles Diggings with said Complainant or his agent.

And this Respondent further answering shews. that the mine now called and known as the "Marbles Diggings" was never discovered or known or worked, until long after said supposed contracts between Wise and Bonhotal, Bonhotal and Colonay and Colonay and Marbles are alledged to have been entered into: That the same was discovered by Wise and this Respondent about the first of January 1863. long after Bonhotal had gone to the war. and that neither Bonhotal or Colonay had any thing to do with discovering or working the same. That if the said Bonhotal had any rights in any other diggings they cannot enter into controversy in this action: and this Respondent insists on ~~their~~ his legal rights in this suit and relies on the fact that the Marble Diggings were first discovered by himself and Wise and have been worked by them claiming in their own rights and not by contract or purchase or any other title than that of discovery. That the ground on which said mine known as Marbles Diggings was discovered, was when said mine was discovered neither occupied or worked by Complainant, any other person and that they entered and worked the same on their own account and have

paid rent to the owners of the land, who have recognized Respondent and said Price as their Tenants, and received rent from them for said ground; and further that said Complainants had no rights in said mine at the time of the Commencement of this suit. nor when said mine was discovered, nor at any time since the discovery of said mine; and this Respondent being fully advised, prays that the Injunction heretofore so wrongfully granted against him be dissolved and he be hence discharged with his reasonable costs. &c.

Johnson & Cummings
Solors for Defts.

State of Illinois }
Davis County } This day came before me Oliver Marble & made oath in due form of Law as follows. That the matters and things in the above answer stated as of his own knowledge are True, and those on information and belief, he believes to be true.

Subscribed & sworn before me } Oliver Marble.
This 5th day of June. 1862.
W. C. Rowley Clerk
By T. R. Boid deputy

And the said defendant by his solicitors Johnson & Cummings moves the Court to dissolve the Injunction heretofore granted against him, on filing the above answer.

Johnson & Cummings
Sols for Deft.

119

Endorsed
Filed June 5th 1863.
W. R. Rowley Clk
By J. R. Bird dept.

And afterwards towit on the 6th day of June AD 1863. as yet of the May Term AD 1863 of said Circuit Court in the words of the proceedings thereof in the above entitled cause, appears the following entry towit:

Henry Donhotal
vs
Olivia Marble. } Injunction

Now at this day comes the Defendant by his solicitors and files his bill of exceptions as to setting aside finding of jury upon the issues tried in this cause, which is certified by the Court. and the Complainant files Replication to the defendants answer to the complainants amended bill herein, and the motion heretofore filed by the defendant to dissolve the injunction herein having this day come on to be heard, after argument by counsel the same is overruled by the Court. to which ruling of the Court the defendant by his solicitor then and there excepts and files his bill of exceptions thereto which is certified by the Court.

The Replication to defendants answer to complainants amended bill referred to in the last above recited entry, is in the words and figures following to-wit:

State of Illinois } In the Jo Daviess
Jo Daviess County } County Circuit Court
May Term 1865.

Henry P. Bonhotal
vs
James King } Bill for Injunction & Specific Performance

Replication of Henry P. Bonhotal complainant, to the 3d and last answer of Oliver Marble, defendant.

This Repliant, saving and reserving to himself, all and all manner of advantage of exceptions which may be had and taken to the manifold errors uncertainties and insufficiencies of the said answer of the said defts for replication thereunto saith that he does and will maintain, aver and prove all the allegations of his said bill to be true certain and sufficient in law to be answered unto by the said defts, and that the said answer of defts is untrue, uncertain, evasive, and insufficient in law to be replied to by this repliant. Without that, that any other matter or thing in the said answer contained, material to be replied unto, and herein not hereby waived and sufficiently confessed to answered, traversed or denied is true, all of which matters and

and things, this repliant is ready to aver maintain and prove, as this honorable Court shall direct, and humbly prays, as by his said bill he hath already prayed

Henry P. Borhotal
By T A Green. his Sol

Endorsed
Filed June 6th 1863
W R Crowley Clk
By J R Bird depty

The Bill of Exceptions as to overruling motion to dissolve injunction, referred to in the last above recited entry is in the words and figures following towit:

State of Illinois } In the Jo Daviess Circuit Court.
Jo Daviess county } May Term. 1863.

Henry P Borhotal }
vs } Bill & Injunction
Alvin Marble. }

Be it remembered this day came on to be heard the motion of defendant to dissolve the injunction heretofore granted on Amended Bill of complainants filed in said Court May 22. 1863. and answer thereto and motion to dissolve the injunction filed the 5th day of June A.D. 1863. which Bill and answer and motion are in words and figures following towit. (Bill, answer & motion

heretofore copied in this transcript) 113 + 94

which motion after argument by Counsel ~~which motion after~~ was overruled by the Court. to which ruling of the Court in overruling said motion, said defendant by his Solicitors then and there excepted, and tenders this his bill of exceptions to be signed and sealed by the Court which is accordingly done.

Benj R Sheldon Seal

Endorsed

Filed June 6th 1863.

W R Rowley Clk

By J B Bird deputy.

and afterwards towit on the 2d day of September A.D. 1863, as by the Augusta Term A.D. 1863 of said Circuit Court in the record of the proceedings thereof in the above entitled cause appears the following entry towit:

Henry Bonhotal
as
Oliver Marble. } Injunction

This day comes the defendant by his Solicitors and files affidavits and motion for continuance of this cause. which motion is thereupon overruled by the Court, to which overruling of motion the defendant by his attorneys then and there excepts and files his bill of exceptions thereto, which is certified by the Court

1144

The affidavit and motion for continuance referred to in the last above recited entry is in the words & figures following to wit:

State of Illinois } In the circuit court of said county
Jo Daviess county } of the August Term 1863.

Henry. P. Bonhotal
vs
Oliver Marble. } Bill for Injunction & Relief

Oliver Marble being duly sworn. deposes as follows. That he is advised by his counsel, that he cannot safely go to trial at this terms of court without the testimony of Asa Hale, a witness who has been duly served with subpoena on the 20th day of August 1863. and has since as affiant is informed left the State so that process of attachment cannot be served on him. Affiant states that said Asa Hale was present when a contract with Comstocks Colonxy, spoken of in Plaintiffs Bill and deposition of said Colonxy, was made by this affiant in regards to the old Range of Bonhotal & Marble, which is the same contract and only contract ever made by this affiant with Colonxy about the old Bonhotal Range. That this affiant expects to be able to prove by said Hale that affiant purchased from Colonxy all the interest of Bonhotal & Colonxy in said old range and not the mere work

witness of Colonney in said Range. That this affiant knows of no other witness by whom he can prove the same facts and does that said witness is not absent by his procurement or permission; that this affidavit is not made for delay, but for a continuance, in order that justice may be done in the premises; and further this affiant expects to be able to procure the testimony of said Witness at the next term of this Court.

Sworn & Subscribed before me this 1st day of September A.D. 1863

Wm A Rowley Clerk
By T. R. Bird deputy

Oliver Marbles.

And the said defendant moves the Court for a continuance of said cause on the affidavit aforesaid.

J Phinson & Cummings
Sols for Defts.

Endorsed
Filed Sept 2d 1863.
Wm A Rowley Clerk
By T R Bird deputy.

The Bill of Exceptions referred to in the last above recited entry is in the words and figures following to wit:

State of Illinois } In the Circuit Court
Jo Daviess County } August Term 1863.

Henry A Bouhotal

vs

Oliver Marble.

Bill for Injunction & Specific Performance

Be it remembered, on this 2d day of September A.D. 1863 came on to be heard the above entitled cause on motion of Defendant for continuance and affidavit, which motion and affidavit are in words and figures following to wit: (Copied last above) which motion was overruled by the Court. to which ruling of the Court, said Defendant by his counsel, then and there excepted, and asks the Court to sign and seal this his bill of Exceptions to be a part of the Record in said cause which is accordingly done.

Benj A Sheldon [Seal]

Endorsed

Filed Sept 2d 1863.

W A Rowley Clerk

By P R Bird deputy.

and afterwards, to wit: on the 3d day of September A.D. 1863. as part of the August Term A.D. 1863 of said Circuit Court. in the record of the proceedings thereof in the above entitled cause, appears the following Decree & Entry, to wit:

Henry D. Bonhotal
vs
Oliver Marble. } Injunction

This cause coming on to be heard this day upon the amended bill, answers, replications, depositions and oral testimony in the cause, before the Court, and on the verdict of the jury on the issues submitted to them, and in the presence of the Counsel for both the complainant and Defendant and upon a full hearing and examination of the same, and the verdict of the Jury upon the issues submitted to them it appeareth to the Court from the evidence in the cause, and said verdict, that the said complainant was the owner of the one half of all the mining interest in the said mine and miners claim mentioned and described in the complainants bill, and that the said new lead or range South of the old lead or range on said miners claim, mentioned in said bill and answer, was on the ground in which complainant owned the one half of all the mining right and interest and it further appearing to the Court that said defendant was only the tenant of the said complainant, and that defendant had only purchased the mining interest of Comstock Colvocoresses in said mine and miners claim, which

ows as follows. The one half intrest of said Comstock Colonay had agreed to work the said intrest of complainant in the said mine and mines claim, and pay all the expenses of working the same and render to complainant after the deduction of the one sixth for ground rent the one fourth of all the mineral taken out of said mine and mines claim, after getting the first six thousand lbs of mineral taken out: and out of all the veins, lodes or ranges on the same, clear of all expense to the said complainant; and that said Colonay agreed to work the said mine and mines claim so long as the same would pay, or it might be advisable to work the same, and then deliver up the possession of the same to complainant. And it further appeared to the Court that defendant was entitled to three thousand nine hundred and ninety one lbs of the first six thousand lbs that said Colonay was to have before rendering to Complainant the said one fourth. And it further appearing to the Court that said Defendant and Joseph Price had taken out of said mine and out of the lodes and ranges on the said mines claim fifty seven thousand and five hundred lbs of lead ore or mineral, since the said defendant commenced working the said intrest of complainant on the terms and conditions above stated, and that

the one half of the said mineral mine the one sixth part for groundrent. fell to the share of Complainants interest in said mine and mines claim: and the one fourth of the same, or the one half of the half of said mineral belonged to the complainants. And it further appearing to the Court from oral testimony introduced on the hearing that all of said mineral was sold and delivered to Samuel Hughlett & Son of the City of Galena, and that Thirty nine thousand lbs of the same was sold for forty six dollars per thousand lbs. amounting to Seventeen hundred and ninety four dollars: and that Sixteen thousand lbs and fifty four dollars per thousand amounting to Eight hundred and eighty four dollars. And Two thousand lbs at fifty dollars per thousand, amounting to One Hundred Dollars. and five hundred lbs at the rate of fifty dollars per thousand, amounting to twenty five dollars. amounting in all to Two Thousand Seven hundred and Eighty three dollars minus four hundred and eighty three dollars and eighty three cents, being the one sixth for groundrent, which left twenty three hundred and nineteen dollars and seventeen cents: the one half of which fell to the share of complainants one half interest in said mine and mines claim amounting to Eleven hundred and fifty

nine dollars and fifty one cents; the one
one half of which belonged to Complainant,
amounting to Five Hundred and seventy
nine dollars and Seventy five cents
and it further appearing to the Court that
Deft. in addition to his share above stated
was entitled to three thousand nine
hundred and nineteen lbs of said
mineral of the first taken out of said
mine according to the terms of said working
lieuse of said Colony so purchased by
Deft, and that the same was sold for
forty six dollars per thousand lbs, the
same amounting to One hundred and
Eighty one dollars, as appeared from said
oral Testimony. And it further appearing
to the Court from said oral Testimony, that
said deft collected of the said Hughlett
& Son Seven hundred and ninety seven
dollars and ninety five cents, and that
there is still remaining in the hands of
said Hughlett & Son, the sum of three
hundred and sixty one dollars and
fifty six cents, and that said deft
hath received of said Hughlett & Son, thirty
seven dollars and nineteen cents more
than defts share of the price of said
mineral, and of money that belonged
to Complainant. It is therefore ordered
and decreed by the Court, that the said
Complainant is entitled to the one fourth
of all the mineral which shall be taken out

of said mine. or out of any of the lodes, veins or drifts in said miners claim. after the deduction of the one sixth for ground rents, clear of all expenses. And it is further ordered and decreed by the Court. that the Injunction herein as to complainants one fourth after deduction of the one sixth ground rent, of all the mineral taken out of said mines, or out of any of the lodes ranges or drifts on said miners claim. be made perpetual; and that the Injunction as to the residue or remainder of said mines be dissolved; after defendants shall deliver to complainants Thirty seven dollars and one nineteen cents worth of miners at the market price, or pay that amount to complainants in money. And it is further ordered and decreed by the Court that complainants is entitled to the said sum of Three Hundred and sixty one dollars and fifty six cents, still remaining in the hands of Samuel Hughlett & Son for mineral sold and delivered by Defts and Joseph Price from the said mine and miners claim. and defendants is enjoined from receiving it, And it is further ordered and decreed by the Court that Judgment be entered against the said defendants for Thirty seven dollars and nineteen cents, and if not paid within Thirty days from the close of this Term of Court, execution shall be issued to

John. C. Hawkins as special Commissioner who shall sell any of defts property which may be subject to execution and sale to satisfy the same, by giving the usual notice of the time and place of such sale, that is the same notice required under executions at common law. And it is further ordered and decreed by the Court that said defendant pay all the costs of this suit, and if not paid within thirty days from the last day of this Term, that execution issue therefor against him and be placed in the hands of John C. Hawkins as special Commissioner, to be executed the same as the execution above mentioned.

To the rendition of which decree the defendant by his attorneys then and there excepts and prays an appeal to the Supreme Court of this State, which appeal is granted, conditioned that he enter into and file with the Clerk of this Court within Twenty days from this date a good and sufficient appeal bond properly conditioned, with Charles R. Perkins as surety in the sum of Three Hundred Dollars. And the said Defendant at this day comes and files his bill of exceptions in this cause which is signed by the Court.

The Bill of Exceptions referred to in the last above recited entry is in the words and figures following, Towit:

State of Illinois } In Circuit Court
Jo Daviess County } August Term. 1863.

Henry P Bouhotal
vs
Oliver Marble. } Bill for Injunction & Specific Performance

Be it remembered that on this 8th day of September came on to be heard the above entitled cause on final hearing before the Hon B.R. Sheldon Judge &c. When after the overruling of defts motion for a continuance. Defts Counsel remarked, he supposed, nothing remained but to take a decree, the Court ~~the Court~~ suggested a reference be made to a master to take an account, both Complainants Counsel remarked it was simple and would save expence by examining the witness before who was present, before the Court. Thereupon the following oral evidence of the witness Houghlett, was introduced, and the following part of Complainants deposition on file, was read Towit, "I made an agreement with Henry P Bouhotal to work his half, for the fourth of the whole mines (that is half of his half) and for the first Six thousand pounds of mineral out of his half section I was to furnish all the necessary

expenses of working his half. After I got the first six Thousand I was to give him one fourth of the whole mine or the half of his half. Clear of all expenses excepting groundrent, which was one sixth; I commenced work sometime in May 1862, and continued to work until about December 1862. I think we found five thousand and twenty pounds of mineral in the old drift, I got one half of that amount except the ground rent. before I quit work."

Thomas Keighley Sworn: I am of the firm of Samuel Keighley & Son. We bought mineral from these diggings, from the Wise and Marble diggings on the Camphouse grounds. 39000 lbs. at $46 per M. and 16000 lbs at $54 per M and 2000 pounds at $50 per thousand and $ 500 pounds at $50 per Thousand; One sixth was reserved for ground rent; Marble received the money for the first 39000 lbs. and received one time $46.30 and at another time $54.60 on the balance, Marble received in all $848.40, and he has paid back $50.45, leaving whole amount drawn out by Marble the sum of $797.95. There is a balance in our hands on account of Marble the sum of $868.56 which has been in our hands since the commencement of this suit. Cross Exd. I don't know when the mineral came

proves, only what the Teamsters said. It came from the Camphouse grounds. This mineral I speak of was mineral in which none but Wise & Marble had an interest. Wise had no interest in the diggings in which Colonay is now interested. I saw 2 or 3 loads come away from the Wise and Marble diggings Wise and Marble came and settled for the mineral. I had an account for mineral from this mine, theirs of Wise and Marble. Wise had no interest in the other" No other Testimony at the time was formally read or offered. There are a number of depositions on file, which were read as evidence on the Trial of the Issues before the Jury The Court then granted Complainants a decree in words and figures following: (Decree copied last above).

To the granting of which decree the defendants by his attorneys then and there excepted. and prayed an appeal to the Supreme Court. and Tenders this his Bill of exceptions to be signed and sealed and made a part of the Record in this Case. which is accordingly done.

Benj. R. Sheldon. Seal

Endorsed

Filed September 3d 1863.

W. R. Rowley Clerk
By J. R. Bird Dep.

* Marble was interested in another mineral diggings on which Colonay had an interest on the Camphouse grounds.

And afterwards towit on the 4th day of September A D 1863. the said defendants filed in the Clerks office of our said Circuit Court. his appeal Bond in this cause in the words and figures following towit:

Know all men by these presents that we Oliver Marble and Charles R Dennis of the County of Jo Daviss and State of Illinois, are held and firmly bound unto Henry P Bonhotal also of the same County and State, in the penal sum of Three Hundred Dollars, current money of the United States, for the payment of which well and truly to be made, we bind ourselves, our heirs executors and administrators, jointly and severally by these presents.

Witness our hands and seals this Fourth day of September A D 1863.

The condition of the above obligation is such, that whereas the above named Henry P. Bonhotal, and on the Third day of September A D 1863. in the Jo Daviss County Circuit Court in the State of Illinois, recover a judgment against the above bounden Oliver Marble from which said judgment of the said Circuit Court, the said Oliver Marble has prayed an appeal and obtained the same to the Supreme Court of the said State of Illinois

now if the said Oliver Marble shall duly prosecute his said appeal with effect, and do shall moreover pay the amount of the judgment, costs, interest and damages rendered and to be rendered against him in case the said judgment shall be affirmed in the said Supreme Court, and shall further leave unmolested a certain sum of money (to wit) the sum of Three Hundred and Sixty one dollars and fifty cents ($361 50/100) now in the hands of Samuel Hughlett Sheriff &c in controversy in the suit of Henry D. Barhotal vs Oliver Marble, in said Court, until action shall have been taken by said Supreme Court upon the aforesaid judgment, Then the above obligation to be void, otherwise to remain in full force and virtue.

Taken & entered into before me at my office in Salem this 4th day of September A.D. 1866.

Wm A Rowley Clerk
By T R Bird deputy

Oliver Marble (Seal)
C R Perkins (Seal)

Endorsed
Filed September 4th 1866.
Wm A Rowley Clerk
By T. R. Bird deputy

State of Illinois }
In Daviess County } I William R Rowley Clerk of the Circuit Court in and for said County do hereby certify the foregoing to be a full true and correct copy and Transcript of Records and proceedings in said Circuit Court in the above entitled cause of Henry P Borhotal vs Alexis Marble as far as the same has been tried upon the Chancery side of said Court. I further certify that the Records and Pleadings and depositions used in the trial of the issues before a jury herein are not included in this record. I further Certify that the Record and pleadings in proceedings in attachment for Contempts, are not included in this Transcript.

Any that the transcript includes the whole Chancery Record in said cause.

In Testimony whereof I have hereunto set my name and affixed the seal of said Circuit Court at my office in Galena this fifth day of January A.D. 1864

attest Wm R Rowley Clerk
By J R Bird deputy.

State of Illinois } ss. In Supreme Court.
Third Grand Division }

Oliver Meade } In April Term A. D. 1864.
as }
Henry P. Barbour } Joinder in Errors.

And the said Henry P. Barbour defendant in error, comes and says, that there is no error, either in the record and proceedings aforesaid, or in granting the decree aforesaid, in manner and form as above assigned; and therefore he prays that the said decree may be affirmed, and that his costs may be adjudged him. &

T. A. Green
Atty. for Appellee.

Wherefore he prays that said Judgment may be reversed set aside and taken for nothing And that such order and Judgment may be entered in the premises in pursuance to Law &

Cummings & Johnson
Attys for Appellant

And now at this day comes the Appellant and says there is manifest Error in the Record and proceedings of the Circuit Court in the above and foregoing Record

And Shows to the Court the following

1. The Court erred in granting Injunction, and particularly in doing so without defendant having notice of the application before the same was granted.
2. The Court erred in refusing to dissolve on motion, after filing answer denying allegations of the bill.
3. The Court erred in allowing the bill to be amended in a material point, making a new case by the amendment, after answer filed and motion to dissolve injunction.
4. The Court erred in refusing the motion to dissolve injunction after answer filed to the amended bill and affidavit, and exhibit thereto attached, denying the allegations of amended bill.
5. The Court erred in refusing to dissolve the injunction on motion and affidavit filed showing that the bill had been amended in vacation without leave.
6. The Court erred in granting leave to complainant, on motion and affidavit for that purpose, to file second amended bill, without prejudice to the injunction, and especially, inasmuch as the application wholly failed to show what amendment was to be made, and also that the matter of the amendment was unknown to complainant at the time of filing said original bill.
7. The Court erred in overruling demurrer to complainant's second amended bill for cause shown.
8. The Court erred in refusing application for a change of venue on affidavit filed therefor.
9. The Court erred in overruling and refusing motion to dissolve injunction on filing answer to second amended bill, denying all the allegations in said bill.
10. The Court erred in overruling motion for continuance on affidavit filed therewith.
11. The Court erred in the rendition of the decree complained of, and particularly in granting said decree without any proof.
12. The Court erred in rendering any decree for the complainant on so defective a bill.
13. The Court erred in not dismissing the bill on hearing, there being no evidence against the defendant.
14. The Court erred in not dismissing the bill for want of sufficient description of the premises to warrant a decree.

Wherefore he prays that said Judgment may be reversed set aside and taken for nothing And that such order and Judgment may be entered in the premises in pursuance to Law &c

Cummings & Johnson
Attys for Appellant

940

Ohio Marble

vs

H. P. Bowhotal

Record & Errors

Filed Apl. 9. 1864

L. Leland

Clk.

1.

Henry P. Donhotal } In the Circuit Court
vs } of Jo Daviess County
Oliver Hurlbut. } May Term A.D. 1863.

Bill for Injunction and
Specific Performance

Deposition of Comstock Kolonay a resident of the County of Jo Daviess and State of Illinois, aged about forty one years, a witness on the part of the plaintiff in the above entitled suit, now pending in the Circuit Court, in the County of Jo Daviess in the State aforesaid, produced, sworn and examined before William Farrar, a Justice of the Peace, in and for said County of Jo Daviess, on the 30th day of April A.D. 1863. at the City of Galena in said Justices office, in the Town of West Galena, in said Jo Daviess County, and in the presence of said Plaintiff and his Attorney, notice having been given to both parties of the time and place of taking such deposition

State of Illinois } ss.
Jo Daviess County }

Comstock Kolonay being duly sworn, deposes and says as follows.

Cr. Question by defendants Counsel.

Have you any interest in the result of this suit.

Ans. No.

Int. 1st State your age, place of residence and occupation.

Ans. 41 years. Rice Township in Jo Daviess County. & Farmer

Int. 2. Are you not also a Miner by trade.

Ans. I understand mining.

Int 3. Are you acquainted with the parties to this bill.

Ans. Yes.

Int 4. State all you may know in regard to Henry P Rowbotel Complainant and Joseph Rice, prospecting together in the Spring of Sixty two for mineral on the mineral land of Mrs Elizabeth Campbouse in Rice Township in County of Jo Daviess and State of Illinois. the said Mrs Campbouse being now Mrs Leuders.

Ans: Mr Price told me that him and Henry was going to prospect, next day: A day or two afterwards. I saw them both. and they told me that they struck a good prospect, two or three days afterwards again, I went prospecting myself there. and Mr Price came to that place and showed me the prospect him and Henry had struck. It is the same diggings now known as the Marble and Price diggings. I understood from Price that they were to work the diggings together. if Price did not sell out, Each one having a one half interest, and bearing half the expense.

Int. 5: State whether or not you ever worked Henry P. Donhotals, ~~interest~~ in said mine and miners claim. if so state fully and particularly, the length of time and all the terms and conditions on which you agreed to work said interest in said mine and said miners claim

Ans: I made an agreement with Henry P. Donhotals to work his half. for the fourth of the whole mines (that is half of his half.) and for the first ten thousand pounds of mineral out of his half interest I was to furnish all the necessary expenses of working his half. After I got the first six thousand. I was to

Objects Counsel objects to all statements of Price and other hearsay evidence in this answer. - Object to the whole answer as hearsay.

give him one fourth of the whole mine, or the half of his half. clear of all expenses excepting ground rent, which was one six th. I commenced work some time in May 1862. and continued work until about December 1862.

Int 6: State whether or not you sold out your working interest or any other interest in said mine and said miners claim; if so, state when, to whom, and on what Terms:

Ans: When I quit work there, or soon after, I sold out my working interest to Oliver Marble, I sold out all my Tools I had there. Lumber and Car. to said Marble, also some powder, for the sum of Twenty Dollars.

Int. 7. State how long it was after you quit work there, until you sold out to said Marble, and what your interest in Rail Road Car. Tools, &c were worth.

Ans: It was about two or three weeks. Mr Marble said that we should leave the diggings a week or Two, to go and prospect, he said no person would touch the mine till we would come to work again I thought my part was worth about.

Twenty dollars.

Int: 8: State whether or not yourself and Mr Marble ever worked said mine or mines claim together, if so state when, how long, and whose interest Mr Marble was working.

Ans. He and Mr Marble worked said claim together, Mr Marble was working a few days first and we both worked together until sometime in December 1862. Mr Marble was working the interest he bought from Mr Price. That was the half of the diggings.

Int 9: State whether or not you were ever employed by Henry P. Bonhotel as his agent to sell the interest of said Bonhotel in said mine and mines claim. If so, state all about the matter —

Ans: I never was employed to sell his interest whatever.

Int 10: State whether or not you know who was the said Bonhotels agent to look after his interest in said mine and mines claim

This answer objected to by Defts Counsel.

Ans: He told me that he left it to his father, Peter Donhotel.

Qust 11: State all you may know about the description of said mine and miners claim.

Ans: The main drift is about one hundred feet in length, East and West. then we run a North drift from the main drift, from twenty to twenty seven feet, we then started a drift on the South side, the last day Mr Hamble and I worked together. I suppose we run in a foot or foot & half. that was all the work that was done there until I sold out my interest to Hamble. I was in the drift in January or February. I seen then they were driving the South drift which we started. they pushed that about twenty six feet South, to another opening. After they struck the South opening they found big mineral; then they run the mineral and dirt out through the old drift until they run out about fifty thousand of mineral. I was on since, and the new drift is run out to the river, parallel with the old drift.

This question answered to by defendants Counsel as irrelevant & immaterial

Int. 12: State whether or not you are acquainted with the extent of a miners claim on the said mineral lands. if so. state all you may know about it.

Ans: The owners of the lands give Thirty seven and a half feet on each side of the range, and as far East as the mineral runs.

Answer objected to.

Int 13. State how you know.

Ans: I know the extent of the miners claims, by miners rules: every man having a lead there, claims Thirty seven and a half feet on each side.

Objected to by defendants Counsel, both question and answer.

Int 14: State whether or not the owners of the ground or their agents, have established any rule in regards to the extent of a miners claim on said lands.

Ans: Henry Cumphouse established the rule that each miner should have Thirty seven and a half feet on each side of their range.

Objected to by defts Counsel.

Int 15: State whether or not said Cumphouse established said rule before you sold out your interest in said mine

Ans: He established That rule a long

time before I sold out.

Int 16: State whether or not you have assisted at any time since the commencement of this suit, in measuring the distance from the original drift to the Southern drift of said mine or diggings. if so state.

Ans: I assisted in measuring the distance between said drifts: from center to center of each drift is twenty six feet. this measurement was made between the two shafts on the east side of the road. the mouths of the drifts is about twenty or twenty five feet from the shafts.

Int 17: From your knowledge of the drifts in said mine, is the distance between the two east and west drifts any greater where the Southern cross drift is run than where you measured

Ans: I cannot tell. I suppose them to be about the same.

Int: 18: State whether or not the miners claim immediately south of this mine and miners claim is occupied. and if so. by whom.

Objected to.

Ans. It is occupied. dont know the name.

9

Int 19. State whether or not the right of the said Henry A Bonhotel to said mine and miners claim was disputed by Joseph Rice or any one else, during the time you worked said mine for said Bonhotel

Ans. I never heard it disputed.

Int 20: State whether or not yourself and Mr Marble, during the time you worked together in said mine, had any conversation in regards to your interest in said mine, and as to the Terms and conditions upon which you were working the same.

Ans: Mr. Marble asked me how I was working said Bonhotels half. and I told him I was working his half for the fourth. after I would get the first six thousand. After the first six thousand, he would have the fourth clear of expenses. This was in the first and second week. we commenced working together. I mean by that. that I was to have half of his half. and he was to have his half. clear of expenses.

Int. 21. State whether or not you furnished your share of the expense

while yourself and said Marble worked said mine together

Ans: Yes. I furnished my share.

Int 22. State whether or not you told Joseph Wise a short time before you sold your interest in said mine to said Marble. That you were authorized by said Henry O. Donhotel to sell the entire interest of the said Donhotel in said mine and miners claim. State fully all you did tell said Wise in regards to said matter.

Objected to.

Ans: I never told Mr Wise any such a thing. I told Wise that I would sell my interest if I could: this was some time in November 1862. Mr Wise wanted to buy. and I told him all about how it was: I told him as to my interest. and he said he knew all about it. This is the only conversation I had with Mr Wise about selling said diggings or any interest in the same. from this time until I sold to Mr Marble.

Int 23: State whether or not at the time you and Marble quit working in said mine. and went out to prospect

as stated before in your deposition. That you intended to abandon and give up the said Henry A Bonhotel interest, or your own working interest, in said mine and miners claim.

Ans: I never intended to abandon either my own or his interest. I had a man engaged to go to work as soon as Marble was ready to go to work.

Int 24: State whether or not you quit work at that time and went out to prospect at the suggestion of said Marble. and what the said Marble said at that time. in regards to any one interfering with your rights in said mine.

Ans: Mr Marble said there was no danger of any person interfering with said mine until we would be ready to come back to work again.

Int 25: State whether or not you ever told Thomas R. Scott in the office of Esquire Farrer in the city of Salem. any thing about your selling your own interest and also the interest of said Bonhotel in said mine and miners claim. if so. state fully all you told him about the matter

Ans: He talked about the matter here. & Told him & had sold my interest to Mr Marble. for Twenty dollars. and he had paid me as much down and was owing me five dollars yet. and that was all I did tell him.

Int: 26: State whether or not you ever purchased Henry P. Bonhotels interest in said mine and miners claim or any part thereof.

Ans: He never offered to sell to me. & never actually purchased any of said Bonhotels interest, & would not give the price he was asking. namely. two hundred dollars. this was in May 1862.

Int 27: State fully and particularly what length of time you were to have said working interest in said mine and miners claim.

Ans: We did not have any particular time. so as it suited myself and the party owning the other half. he told me I could have it any length of of time. that I wanted it. so that he would get his interest clear. I was to have it

as long as there was any mineral there and I continued to work it, if it were for ten years.

Ent 28: State what you mean by suiting the other party.

Ans: I mean when I say the other party, that if agreeable said party and I would quit work and go prospecting and work the mine just as it suited us.

Ent 29: State whether or not the party working the other part of said mine had any right to interfere with your working interest in said mine and miners claim in any manner whatever.

Objection to by Depts Con.

Ans: He had no right at all to put me out of the diggings or interfere with my interest.

Ent 30: Did you ever at any time represent to Mr Hamble or any one else that you were the agent of said Henry P Donhoff

Ans: I never represented myself as his agent to anyone.

Int 31: State whether or not it is usual for miners when they run drifts into a hill, or sink shafts down into the ground to run smaller drifts in any and every direction, in search of mineral.

Ans: When they drift into a hill if the mineral gives out, then they drift into the sides; sometimes the mineral jumps to the side. It is usual to drift in every direction until the find it.

Int: 32. State whether or not you found any mineral in the original drift of said mine, if so. how much.

Ans. We found mineral in the original drift. I think we found five thousand and twenty pounds

Int 33: State how much you got in all up to the time you quit working said mine of the six thousand ~~dollars~~ pounds of the first mineral that you were to have.

Ans. I got half what was taken out except the ground rent

Int: 34. State whether or not yourself and

12-

Mr Marble intended running the South ern cross drift where the mineral was struck, before you sold out your mining interest to said Marble, if so, state your reasons for running in that direction

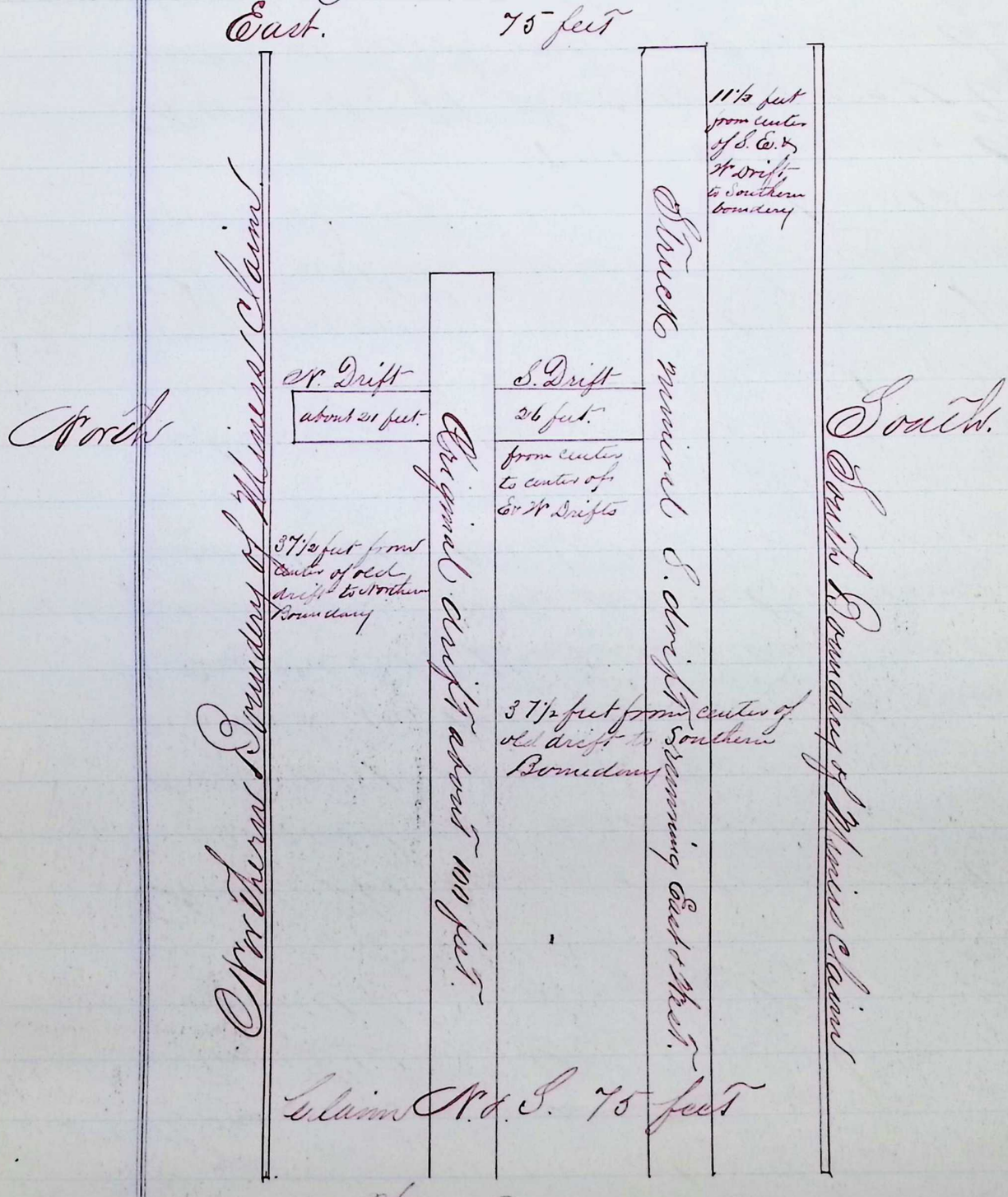
Ans: We intended to run it before I sold out, because we started the drift on that side, the reason we started in that direction, there was a crevice on that side, and we supposed that was where the mineral should be, and that was where the mineral was struck. It was crevice in the rock, the crevice leading south was about two inches wide all the way through, clear to the other opening It was that way as far as we went and I suppose it continued so clear through. When I run in the North drift the crevice was two inches, and when I run in the South drift it was the same as far as we went, there was also a crevice South of the original drift in the rock in the bluff, above where we supposed the mineral was.

Int 35: State whether or not the miners on that land do not usually run their drifts so as to strike opening or crevices in the rocks above?

Ans: Yes. they run in the ground so as to strike the openings above.

Int 36: Examine the draft of said mine and mining claim, hereto attached and marked Exhibit A. and state whether or not all the drifts and distances and directions marked on said draft are substantially correct.

Exhibit "A"



Ans: They are marked there correct as I see them, and as I understand them.

Int. 37. You state in your affidavit filed in the above entitled case on a motion to dissolve the injunction, that you quit work in said mine before the Northern drift was run. have you any explanation to make in this matter.

Objected to by defts. Counsel.

Ans: I don't recollect having stated so. and if I did it was a mistake

Int 38. What do you mean when you state in your answer to interrogatory 28. that yourself and the party working the other part of said mine had a right to quit work at any time in said mine, and go out to prospect. and what do you mean when you state that you had a right to work said mine just as it suited you.

Ans: I mean that me and Mr Marble, when we agreed to go and prospect, leave the diggings until we come back to work again. he wanted a week to go and try his prospect, and after that we were to come to work again in the South Cross

drift that we had started. We had a right to work the diggings just to suit ourselves.

Int 39. State whether or not under the contract you had with said Bonhotel, for working his interest in said mine, you had a right to quit work in said mine at any time, and abandon the same and go off to prospecting somewhere else, or whether or not you were only allowed under said contract to quit work in said mine for a few days at a time, and go out to prospect without forfeiting your working interest in said mine.

Objected to by defts Con.

Ans: I had no right to abandon the claim. I had a right to leave the claim and go prospecting for a week at a time and only return to work on said mine, in order to keep the claim good in said mine. If we did some work every week it would protect our claim except when water was high, we could not work. Mr Kamphouse said we need not to fear for our claim when the water was high.

Int 40: State whether or not the new South drift, running East & West

Objected to by Defts Con.

on said miners claim is within thirty seven and a half feet of the original drift. and also state whether or not all of said drifts connected together as they are. constitute but one mine or diggings.

Ans. It is inside of the thirty seven ~~and a half feet.~~ feet and a half. It is only twenty six feet south of the old drift. & think they are all one mine because they are all inside of the ground.

Cross Examination

Int 1. Are you related to the Plaintiff. If so. how.

Ans. I am his brotherinlaw

Int 2. How long have you been engaged in mining.

Ans. Between four and five years. part of the time mining, and part of my time farming

Int 3. Are you well acquainted with mining customs and mining terms.

Ans. I am acquainted with mining customs

and mining Terms.

Int 4. What do you mean by a mine.

Ans. Ground where th- find mineral

Int 5. What do you understand by a range.

Ans. What I mean by a range is whatever way mineral runs. I call that a range.

Int 6. In what does a range differ from a crevice.

Ans. There is no difference. A crevice is an opening in the rock: the range runs in the crevice.

Int 7. What do you understand by a drift.

Ans. The working of a crevice. It may be by commencing at the foot of a hill and running in, or by sinking a shaft and running from that on a level.

Int 8. Do you use the word mine and range or crevice as meaning the same thing.

Ans. What I mean by mine, is where they are working for mineral, a range of mineral

may be founds in loose dirt, or in a crevice in the rock, or in a flat opening.

Int 9. What difference if any, is there between a mine and a miners claim.

Ans. I call a mine, where there is different lodes struck, a claim is where one lode is struck, either by one or by more individuals

Int 10. In your answer to direct interrogatory four. You speak of Wrixe Donhotel striking a good prospect. What do you mean by a good prospect.

Ans. What I mean by a good prospect is where you go and sink a shaft and strike good mineral.

Int 11. Do you know of your own knowledge apart from statements of Wrixe and Donhotel, who struck the mineral spoken of in your answer to fourth interrogatory.

Ans. I was not present when it was struck and I only know from what they told me.

Int 12. You state in said answer that it is the same diggings now known as

the Marble and Wise diggings. will you explain whether you mean by that, it is the same range now worked by Marble and Wise. and out of which the fifty thousand pounds of mineral was taken.

Ans. It is the same range.

Int 13. Were you present when Wise and Bonhotel made their agreement about working said prospect, or do you rely wholly on what the told you as to the terms,

Ans. I was not there when they made the agreement. I only know what they said.

Int 14. You speak of the sale of tools, lumber and car to defendant Marble. will you specify what tools, what kind and amount of lumber. state fully.

Ans. There were mining tools: Crow Bar. One Shovel, 1 Drills, One Hammer. the lumber was plunks laid down for a walk in the drift. 2 x 4 & Cantling laged down for a Track, the whole length of the drift. these with the Car was all. except two Gadds. which I forgot to mention.

Int 15. What interest had you in those tools. the whole or lesser interest.

Ans. I had one half of the whole.

Int 16. Had you any interest in more than one of those drills

Ans. Yes. I had.

Int 17. In your answer to Int 7. direct, you speak of Marble proposing to go a prospecting. was it a joint prospecting and where was it done

Ans: I had no interest in his prospecting. he said he wanted to go and try his prospect.

Int 18. Do you mean to state in said answer No 4. That your share of the tools lumber and car were worth twenty dollars. or did that include your whole interest —

Ans. That included my whole interest.

Int 19. Had your mining prospect with Marble in the Marble & Donhated dejgnings up to the time of the sale to Marble paid expenses of working.

Ans I did not pay any more than expenses

up to that time.

Int 20. How long before the sale to Marble was the last mineral raised in those diggings

Ans. It was between a month and a month and a half.

Int 21. How much mineral if any, was raised by you and Marble, after the month of August 1862.

Ans. I could not say, I did not keep the run of it. we raised some a good while after that.

Int 22. Was any mineral raised by you after you commenced running the North drift, and if so how much.

Ans. We raised some after we was running the North drift, but not in the North drift. I suppose about fifty pounds. We took it out about eight or nine feet west of the North and South crevice, we took it out of the bottom of the old drift from under water.

Int 23. You state in your direct examination that you never was employed as the agent of Henry & Donhotel, did you never tell any one that you were authorized by him to sell his half of the diggings

25-

Ans. I never told any one.

Qnt 24. You state also that you never purchased the interest of Henry. P. Donhotel. did you never tell any one that you had purchased his interest or that you owned the whole interest of Donhotel.

Ans. I never did.

Qnt 25. Did you ever in substance tell Joseph Wise, Chester Williams Rubin Dye. or Owen Perry. that you had bought Donhotels interest. or that you owned the same. or that you had authority to sell the same. or that you could sell to whoever purchased of you. the whole title to Donhotels half of the diggings or that you had arranged with Donhotel so that you could sell the whole to them. or any one purchasing from you. and give a good title to the purchaser. State what if anything you did state. in relation to that subject.

Ans. I dont know Ruben Dye. or Owen Perry. I never did tell any of them that I bought Donhotels interest, or that I owned the same. I never told any person that I had authority to sell Donhotels interest. nor did I ever tell any one that I could sell the whole

title to Bonhotels half of the diggings. nor that I had arranged with Bonhotel so that I could sell the whole and give a good title to the purchaser. I don't think I said anything to any one except Mr Wise and Mr Marble. I told Mr Wise. I would sell my interest for twenty five dollars. Car. lumber. tools, and my interest in every thing.

Int 26. Are you positive that you never claimed in conversation with any of the persons above mentioned, that you were the owner of, or had control of Bonhotels interest in said diggings.

Ans. I am certain that I never told any person that I was the owner of or had control of Bonhotels interest in said diggings, further than the mere right to work the same.

Int 27. Did you or not, make any such representations of ownership or authority to said Marble. - What did you represent to said Marble as to ownership or authority.

Ans. I don't think I ever told Mr Marble that I owned more than the fourth. that is my working interest

Int 28. Did you or not ever tell either of the persons named in crop interrogatory 25. or Thomas R Scott. after said sale to Marble. That you had sold the whole thing to Marble. or that you had sold the Donhoted diggings to Marble. or that Marble was now the owner of the whole diggings, or statements to that effect.

Objected to by Plaintiffs Com.

Ans. I did not state any such thing. all I told to Mr Scott was that I had sold my working interest to Mr Marble. and that is all I did tell him — Mr Price asked me how much I had sold my interest to Marble for. I told him. I sold my working interest for twenty dollars. this included tools, lumber and car. Mr Price told me he wanted to buy half back. in order to get his money back. That is all I told him after the sale. I never talked with any of the others since the sale.

Objected to by Pltfs Com.

Int 29. You spoke of starting the south drift before the sale to Marble. state particularly what work was done and how it was done.

Ans. We put in two or three blasts - with these blasts we went in about 6 feet or foot and a half.

Int 30. Did it seem solid rock except the crevice? 28

Ans. It was not very hard or very soft. we could not work it with the picks. we had to blast it.

Int 31. Were you in the mine after that, and how soon after.

Ans. The first time I was in after they had not done any work. Mr Price was in there with Mr Marble. and Price told me. he was looking for the best place to start in. the next time I went in there they had worked a little on the south drift. what me and Mr Marble had started. the last time I was in the drift was along this Spring (I think sometime in April 1863.) I saw they had run a new drift to straighten out the outlet. this was an East and West drift.

Int 32. What was the appearance of the cross drift before spoken of. was the sides solid wall rock. or did you see signs of the crevice spoken of in your direct examination, all the way through from the old to to the new drift. ~~fully~~ state fully

Ans. I was in with a candle. I did not take much notice till I come unto the new opening. running East & West. then I

some good looking mineral. It loosed like Solid rock, on each side of the South cross drift.

Int 33. State whether at that time the new crevice had been worked further East. than this cross drift & so. how far.

Ans. The crevice was in eight or ten feet past the cross drift running east.

Int 34. In your direct examination, did you mean to say that they had struck mineral in the cross drift.

Ans. They struck the mineral immediately when the struck the East & West crevice in the East & West crevice.

Int 35. State your means of knowledge in regard to striking the mineral

Ans. I heard from different persons that they had struck a big lode when they struck the East and West crevice and this is all I know except what I seen myself in February 1863.

Int 36. In your direct examination you state that they run out about fifty thousand pounds of mineral, through the old drift how do you know that fact.

Ans: A man that was working in there told me so.

Int 37. Who was that man

Ans. Joseph Garrow.

Int 38. How do you know the fact stated in your answer to direct interrogatory No. 12.

Ans. I heard it said by Mr Kamphouse. the agent for the Township of. lands.

Int 39. How do you know Mr Kamphouse was the agent.

Ans. Mrs & Miss Kamphouse told me ~~so~~ he was.

Int 40. When and how was the rules upon you established

Ans. I think he put notices up to that effect. some time in the summer of 1862.

Int 41. In answer to interrogatory No 13. you state that every man having a lode there claim thirty seven and a half feet on each side. Now state who claims as above stated

Ans. William Loomis. Davis & Brownell. Coughlett. Marsden & Rise. Witman & Co. Gaffney & Dorichter. I heard Marsden was going to make different arrangements dont know whether he has or not.

Int 42. Who was the man spoken of in your answer to direct interrogatory No 23. as engaged to work for you.

Ans. Paul Morello

Int 43. State whether or not Mr Noble furnished twenty eight days labor more than you did. in working said diggings before you sold out to him. or state any less amount than that furnished by him more than you.

Ans. At first I was ahead of him. then he put a man there when I could not work or get a man. and that put him ahead of me. I think it was four or five days he was ahead of me during the time, then when we settled. I paid him for that.

Int 44. You stated in your direct examination interrogatory 35. that mines run in the grounds so as to strike the opening above. is that always the case.

Ans. They always sink or drift to strike the crevice in the bluff.

Int 45. Was there such a crevice in the bluff over the original drift in the Marble & Bonhotte diggings?

Ans. There was.

Int 46. When was the five thousand and twenty pounds of mineral raised in the old drift.

Ans. Can't tell exactly. we sold mineral at different times. It was mostly raised from June to August in 1862.

Int 47. Was the range in which it was struck the same as now worked by Rice & Marble.

Ans. It is the same range.

Int 48. Is the old drift and the new drift spoken of in your direct examination the same range, or are they two separate ranges.

Ans. I would call it all the same range because it was struck from the same drift, and is on the same ground.

Int 49. Is the new drift a separate & distinct

99.

crevice from the old drift, or merely a continuation of the same crevice.

Ans. I don't think it is the same crevice. Only the mineral jumped from one to the other.

Int 50. How do you know the mineral jumped from one to the other

Ans. Because the mineral was struck in the old drift first, and was run farthest West, then when we got on the end of the mineral in the old drift, the other drift made the mineral from there; that shows it jumped across as I think.

Int 51. Is that the only reason for calling it the same mine.

Ans. The reason I call it the same mine is because it is on the same ground within thirty seven and a half feet on each side of the old drift.

Int 52. Did the cross drift running South cross an East and West crevice.

Ans. It crossed no opening crevice. It might have crossed a tight seam but I saw none.

Int 53 If the south cross drift had crossed an East and West crevice, would that be considered by miners, proof that the mineral had not jumped as you before stated.

Ans. When the mineral jumps, it is found in the first open parallel crevice. that is generally the case.

Int 54. Would you call a crevice three fourths of an inch wide an open crevice.

Ans. I would call that a tight seam.

Int 55. Do you know, whether or not this North and South crevice, which you followed North, and which was afterwards followed South from the old drift to the new, is generally found along under the face of the bluff, in all the diggings in that neighborhood

Ans. I could not say its the same, but there is a North and South crevice along under the face of the bluff in that whole neighborhood

Int 56. Did you notice whether or not the same North & South crevice appears

on the South wall of the new crevice a few feet East of the mouth of the cross drift.

Ans. I never took notice whether it did or not.

Int 57. State whether or not in the old drift the East & West crevice barred up at or near the crossing of the North & South. State fully

Ans: In the old drift the crevice barred up right at the crossing of the North & South

Int 58. Is that the reason why the North drift was run.

Ans. That was the reason.

Int 59. After completing the north drift, how far did you work the old drift East from the crossing of the North & South, and in what kind of rock.

Ans Morelle worked it for me, and he said it was ten or twelve feet. it was tolerable hard rock to blast.

Int 60. Did the crevice still continue in the face of the East & West old drift.

Ans. There was nothing but a light seam, and that was the reason we drifted.

Sworth, to striking out ~~and~~ the open crevice.

Int 61. Is the reason why you sold out to Marble, the facts last above stated.

Ans. That was not the reason. The reason I sold out, me and Marble we did not agree exactly about working them mines together.

Int 62. Are you still positive that you never represented to the persons above named or any one else, that you were authorized to sell or had sold to Marble any more than the working interest in said mines above described by you.

Objection by Pltff's Com.

Ans. I am certain I never told any body that I sold any more than my working interest

Int 63. Are you as positive in this as in any other part of your Testimony.

Ans. I dont think I ever told any body such a thing. I am sure I never told any body that I sold any more than my working interest

Int 64 Have you paid or agreed to pay any part of the expense of prosecuting this suit or to become responsible to any other party therefor

Ans. None whatever.

Int 65. Have you made any contract with the attorney for the plaintiff to pay or receive any part of his fees for prosecuting the same.

Ans. I have not ~~not~~.

Int 66. Have you any private understanding with the plaintiff that you are to receive an interest in said diggings if this suit is successful. or that you are to be benefited in some way thereby.

Ans. No. not one cent. I have no interest at all.

Rexamination

Int 1. You state in your answer to cross interrogatory 9. that a mines claim is when a lode is struck by one or more individuals. State whether or not the striking of a lode on said mineral lands. entitled the persons striking the same. to thirty seven and a half feet of ground on each side of said lode or drift. and also state whether or not there may not be more than one crevice or lode on the said mines

Objected to by Defendants

claim. and also state particularly what extent of ground you mean by a miners claim on the said lands.

Ans. When they strike a lode or mineral on one place on said ground, they are entitled to thirty seven and a half feet on each side of the same. there might be more than one crevice or lode struck on the same miners claim. I mean by a miners claim thirty seven and a half feet on each side of where the strike the mineral first

Int 2. State whether or not the crevice running South where said cross South drift runs was really a crevice or seam. or a seam crevice. State expaciliy what kind of a seam or crevice it was.

Ans. I would call it a small crevice, it is only a couple of inches wide, a seam is a kind of a split in the rock. you cannot get into it. a crevice has dirt in it.

Int 3. State whether or not it is usual for mineral to jump from one crevice to another parallel crevice. and what you mean by the mineral jumping. And also state whether or not when the mineral does so jump from one

parallel crevice to another mountain, you still call it the same range of mineral

Ans. If one crevice closes up, it is apt to jump to the next crevice, and that is what makes me think it is the same range of mineral, because it is on the same ground.

Qust. 4. State whether or not when yourself and Marble went out to prospect, just before you sold out your interest to him he went entirely away from the said Miners Claim on which you were working, whether or not he did any prospecting on the same miners claim.

Ans. I do not know where he went prospecting. he did no prospecting at that time on that same ground.

Qust 5th. State whether or not yourself and Marble talked of running the said cross South drift, and intended doing so before you sold your interest to said Marble.

Ans. That was the intention when we quit work that day, to run that South drift to the next opening—

Qust 6. State why you run the North drift first.

Ans. We run the North drift first because it was the nearest to the seam in the bluff above. then when we come to that seam it was right, then we concluded to run on the South side of the old drift until we strike the other opening, and then we started the drift.

Rights Counsel objects to all this answer, not as foreign to the question.

Int 7. What opening do you mean.

Ans. I mean the opening South of the old drift. there is a seam about twenty six feet from the old drift in the rock above.

objected to by Rights Counsel.

Int 8. State how many seams or crevices there were in the rocks in the bluff above in said mine, on said miners claim from the Northern to the Southern Boundary of said claim, including seventy five feet in all.

Rights to by Rights Counsel for question & answer.

Ans. There is one where the struck the mineral first, on the top of the ground it is a kind of a small cave running East & West, and on the North side there were two small seams running above the ground running East. and then on the South side about Twenty or Twenty six feet from the original drift, there were a

seam in the bluff above running East. All the seams run in the same direction East & West

Ent 9. Why was it that you and Marble could not agree as to the manner of working said mine

objected to by defts Counsel.

Ans. Because Mr Marble wanted to have his own way. and when I wanted just a man there he could not agree with him more than two or three days. the men told me they could not work with him, because he was always quarrelling with them on account of not doing work enough. and at the same time they were doing more work than he was himself. he was doing that just to bother me. that was the reason I wanted to sell. my interest to somebody.

objected to by defts Counsel.

Ent 10. State whether or not the mineral in the old drift run out about the same distance East ~~and West~~. that it commenced in the new.

Ans. It made about the same distance the mineral give out in the old drift when we struck the North and South crevice the East and West crevice bared up. and as soon as they

struck the other, east and west crevice in running the South cross drift they struck the mineral right off.

Int 11. Had you quit work entirely in the olde drift before you run the North drift. State whether or not you run the olde drift any further East after you run the North drift, before you commenced the South drift, and what was the distance from the East end of the olde drift to the said North and South cross drifts

Ans. I cannot say exactly. I was not working there myself at that time. I had men working there for two weeks we did not run it any further after. I could not say positively I suppose it to be eight or ten feet.

Recross examination.

Int. 1 Do you mean to be understood as saying that the mineral in the new drift commenced at the North and South crevice and ran thence East. State what you do mean exactly.

Ans I did not see any west of the crossing of the North and South crevice.

Int 2. Say whether there was or was not J. or State that you dont know whether there was or not J.

Ans. I dont know for certain whether there was or was not J. I did not see any.

Constantine Colonsky.

State of Illinois } I the subscriber
Jr Davis County } a Justice of the Peace
of the said County
do hereby certify that the above deposition was taken by me at the time & place mentioned in the Caption thereof. and that the said witness was first duly sworn. and that the said deposition was first carefully read to the witness and signed by him.
Dated this 2d day of May A.D. 1863.

Wm Farrar.
Justice of the Peace.

Endorsed.
Filed & opened in open Court.
May 25th 1863.
Jr R Rowley Clk.
By T. R. Bird depty.

State of Illinois } I, William R Rowley.
Jo Daviess County } Clerk of Circuit Court in
and for said County do
hereby certify the foregoing to be a true
and correct copy of the Deposition of
Cornstock Colonny, filed in the Circuit
Court of said County, to be used as
evidence in the Injunction suit of Henry. P Bonhotel
vs Alvin Marble. — As the same appears
on file among the papers in said suit in
my office.

Witness my hand and the seal
of said Circuit Court at my office
in Galena this 19th day of April A.D.
1864.





Wm R Rowley Clk.
By T. R. Bird deputy.

State of Illinois } In the Circuit Court
Jo Daviess County } of said Jo Daviess Co
May Term A.D. 1863.

Saturday Morning May 30th A.D. 1863.

Henry P. Borhotel }
vs } Injunction
Alvin Marble. }

Now at this day came came again the jury heretofore impannelled to try the issues in this cause, and after hearing the remainder of the arguments of Counsel, they retire to consider of their verdict. and after due deliberation they return into Court with the following verdict to wit:

We the jury find the first issue for the defendant. viz that the lead or range of mineral in controversy in this suit, is not the same lead or range of mineral owned by Henry P Borhotel.

We find the second issue for the plaintiff. viz that the lead or range of mineral so in controversy is on ground embraced within the boundaries of the miners claim of said Henry P Borhotel.

We find the third issue for the plaintiff. viz that Alvin Marble did

not become the owner of all the interest of Henry P. Donhotal in said lead or range of mineral owned by said Donhotal and in his mines claim, but only acquired a working interest therein as set upon the Complainants bill filed in this cause

We find the fourth issue for the defendant or that the lead or range of mineral in controversy was not first discovered by running a cross drift from the old original lead or range of mineral of Donhotal and Marble.

And the defendant by his attorneys moves the Court for a new trial of the issues in this cause

State of Illinois } I Wm R Rowley Clerk
Jo Daviess County } ss. of the Circuit Court in and for the County of Jo Daviess in the State of Illinois do hereby certify the foregoing to be a true and correct copy of the Record Entry reciting the verdict of the jury upon the trial of the issues submitted to them in the suit of Henry P Donhotal vs Alvin Marble. as the same appears of Record in my office

Witness my hand and the seal of said Court at my office in Galena this 11th day of April A D 1864.

Attest W R Rowley Clk
By T R Reed dep'ty.



State of Illinois } In the Jo Daviess 47
Jo Daviess County } ss. County Circuit Court
March term A.D. 1863

Henry P. Bonhotal
vs
Oliver Marble

Chancery Side
Bill for Injuction & Specific Performance.

Peter Bonhotal being first duly sworn deposes & says: That deponent is acquainted with the parties to said Bill. That the complainant is the son of deponent. Deponent further says that the statements in the answer of said Marble dft. that the said Bowstock Bolunkey mentioned in said Bill and answer was the agent of the said complainant and authorized by said complainant to sell and dispose of complainants interest and right in and to the said mine and mineral claim mentioned and described in said Bill, are wholly false and untrue, that on the contrary, the said Bolunkey never was in any manner, authorized to act as the agent of said complainant in regard to said mine - that said Bolunkey has no right whatever in and about said mine only to work the same on the terms and conditions mentioned in said Bill, which deponent has heard read. That is said Bolunkey was to work complainants interest in said mine and after

the first sixthousand lbs of mineral falling to the share of complainants interest, said Bolunkey, was to give complainant one half of all the mineral taken out of said mine that should fall to complainants interest in the same, less the one sixth for ground rent.
Deponent further states, that said complainant appointed and authorized deponent to act as complainants agent in regard to every thing connected with said mine until said complainant should return from the war, and that no one else was authorized to act in that capacity for said complainant. That at the time complainant left he supposed the said Bolunkey would work said mine as above stated until complainant would return, and that deponent was fully authorized and empowered by complainant to look after complainants interest in said mine and see that the said Bolunkey should honestly and faithfully comply with the terms on which he agreed to work said mine for complainant, and deliver to deponent as agent of complainant, complainants full share of said mineral or the money for the same as said mineral might be sold from time to time
Deponent further states that the averment in defts answer, that complainant

had abandoned his interest in said mine is also wholly untrue, and that said complainant considered his interest in said mine very valuable, and never dreamed or intimated such a thing as abandoning the same. Deponent further states that it is also untrue as stated in defendants answer, that said defendant had to furnish one cent of the necessary expenses of carrying on said mine, which the said complainant should have furnished - that said Colunkey was to furnish said expenses and deponent is informed and believes that said Colunkey did fairly and honestly furnish said expenses.

Deponent further states, that it is also wholly untrue as stated in said defendants answer, "that the mine now worked by said Marble and Wise, is not the same mine in which said complainant has an interest, And deponent further states that the said mine now worked by said Marble & Wise and known as the "Marble Digging" is the indentical same mine in which complainant has an interest as alledged in said Bill and that the drift out of which said Marble & Wise are now taking mineral is a short drift running Southward from the main drift of said mine, and not only on the miners claim to which said Wise and complainant

acquired the exclusive right to mine as stated in said Bill, but is a part of the very drift in which said complainants worked and the said Bolunkey after him, and merely an extension of said drift in a different direction as is usual for miners to do. Deponent further states that it is wholly untrue as alledged in defts. answer that said Bolunkey at any time whilst working said with said defts. refused to furnish deponents share of money and labor to work said mine, and that said Bolunkey did furnish from time to time his full share of said expenses

Pierre Bonhotal

Subscribed and Sworn
to before me this 18th day
of March A.D. 1863
William Farrar J.P.

51

State of Illinois } In the Jo Daviess County
Jo Daviess Co } ss Circuit Court A.D. 1863. March
Term thereof.—

Henry P. Bonhotal } Chancery Side. Bill
vs } for Injunction &
Oliver Marble } Specific Performance.

Paul Morello, being first duly sworn deposes and says, that deponent is well acquainted with both complainant and deft. to said bill. That deponent is forty four years of age and a miner by trade. That deponent was present at the time said complainant made the bargain with the said Comstock Columkey to work the one half interest of Complainant in the mine and in the mines claim mentioned in said bill which deponent has heard read, and known as Marble's Diggings in the land of Mrs and Elizabeth Kamphouse in Rice Township, Jo Daviess County Illinois. Deponent further states, that the said Complainant gave said Columkey distinctly to understand, and that it was distinctly understood by and between said parties, that said Columkey was to work complainants interest in said mine and that Columkey was to have the first six thousand lbs. of mineral that should fall to the interest of the complainant, to defray the necessary expenses of open-

ing and starting said mine, after which
the said complainant was to have the
one fourth of all the mineral taken out
of said mine after paying one sixth
for ground rent, and said Columkey
was to pay all the necessary expenses
of working said mine for and in
consideration of the said six thous-
and lbs. of the first mineral falling
to complainants share and in fur-
ther consideration of said contract.
That is the said Complainant was
to have one half of all the mineral,
except the amount above stated and
ground rent, that might fall to com-
plainants share of said mine.
Deponent further states, that said Bon-
hotal, Complainant, charged said
Columkey that in case he should re-
fuse at any time to work said mine
and comply with his said contract
that said Columkey should deliver
up said mine to complainant, but
said Columkey was to have the right
to work said mine until complain-
and should return from the war or to
have said mine worked as aforesaid
And deponent further states that he
knows of his own knowledge, and
from the declaration of both the said
Complainant and said Bonhotal
that the said Columkey was not at

any time the agent of said Complain and to sell or dispose of complainants interest and to said mine, and that Peter Bonbotal father of complain and was complainants only agent in said matter. Deponents States that said Wise & Complainant com- menced working in mine the same day and struck mineral the fires day to deponents own knowledge.

Deponent further states, that deponent worked over one month in said mine for said Columky in November and December last, and that the mine now worked by said Marble and Wise is the same mine in which complainants had one half interest, that the drift in which the lead was struck, which is now being worked by said Marble and Wise is a small drift running from 20 & 26 feet South started from the South side of the main drift about 80 feet from the mouth of the same. That the main drift of said mine runs East and West into the hill and that there are two small drifts one running North & the other South from said drift as drawn off and sworn to by deponent in an other affidavit.

Deponent states that it is not true as alledged in defts. answer that the said Marble had to furnish more than his share of the expens- es of working said mine. And that the said Columky did faithfully and honestly

furnish his full share of said expenses from time to time whilst said Colunkey and Marble worked said mine and up to the time said Colunkey sold his right to work said mine to said Marble. And Deponent further states that it is not true that Complainant abandoned his interest in said mine. Deponent further states that deponent is well acquainted with said Marble's circumstances and that said Marble is wholly bankrupt and irresponsible, and that he could not get credit for any thing at all hardly in Galena when he worked said mine with said Colunkey, That dep. has no interest in the result of this suit

Paul Morello

Subscribed and sworn to before me this 18th day of March A.D. 1863.

William Farnan J.P.

55

State of Illinois } ss
Jo Daviess Co.

In the Jo Daviess Co.
Circuit Court.
March term A.D. 1863.

Henry P. Bonhotal

vs.

Oliver Marble

Abraham Western
haver being first duly sworn deposes
and says that he is well acquainted
with both parties to said Bill. That he is
a miner by trade, that he is thirty seven
years of age, that he is working at the
mining business for the said Joseph
Wise near to the mine mentioned and
described in said bill and known as the
Marble Diggings. That deponent was pres-
ent at the time the said Joseph Wise and
complainant commenced said mine a
prospecting for mineral where they after-
wards found said mine, and that both the
complainant and said Wise told de-
ponent that the said Complainant,
Bonhotal and said Wise were each
to have one half of said mine - this
was the day they commenced said dig-
gings, and deponent states that he
frequently heard said Wise say after-
wards that said complainant owned
one half of said mine. Deponent fur-
ther states that said Wise told him he
sold his half of said Diggings to said
Marble for 75 dollars and that Marble
could not pay for it and said Wise took

back said interest some time in January 1863. Deponent further states, that he has often been in said mine and that the mine was worked by said Marble & Wise and it is the identical mine in which Complainant owned one half- that the main drift was 95 or 100 feet in the hill East and West, and a small drift runs from the main one about 21 feet North and one 20 to 26 feet to the South started from each side of the main drift about 80 feet from the mouth of the main drift- that it was in the drift running South that a large body of mineral was struck- that said Wise & Marble took large quantities of mineral out through the main drift, before they straightened the out let by running a drift parallel with the main drift. That the drawing attached to these affidavits is strictly correct. And Deponent further states that the said Colunkey was only working said Diggings on the shares for said Complainant, and that said Colunkey was not the Agent of said Complainant to sell said Diggings as alledged in the defendants answer.

Subscribed and Sworn to before me this 18th day of March A.D. 1863.

William Farrar, J.P.

Abraham his X mark Westenhaver

( ) ( ) ( )

9-7.

State of Illinois } To Jo Daviess County circuit Court
Jo Daviess Co. } March term A.D. 1863

Henry P. Bonhotal } Bill for Injunction and
vs } Specific Performance
Oliver Marble }

Amos Fuller being first duly sworn deposes and says, that that he is well acquainted with both the Complainant and defendant to said Bill, am fifty three years of age, have followed mining a good deal— Deponent further states that he is acquainted with the Diggings and mineral claim known as the Marble Diggings in Rice Township, Jo Daviess Co. Illinois, and described in Complainants bill; and deponent states that said mine or diggings are the very same in which the said Complainant, Henry P. Bonhotal, has or claims one half interest— that said diggings are the same now worked by said Marble, deft, and the said Joseph Wise; and that said mine and miners claim is correctly described in the drawing attached to these affidavits.

Subscribed and Sworn } Amos Fuller
to before me this 18th day }
of March A.D. 1863.

William Farrar, J.P.

State of Illinois } To the Circuit Court of Jo
Jo Daviess County } Daviess Co. March term A.D.
1863.

Henry P. Bonhotal } Bill for Injunction
vs. } & Specific Performance.
Oliver Marble }

James Berard being first duly sworn depose, and says, that he is about sixty years of age that he is a miner by trade - that he is acquainted with both parties to said suit. and also with Joseph Wise. That deponent was present when the said Complainant and said Joseph Wise first commenced diggings for the mine now known as the Marble Diggings, and worked at this time by said Mabble and Wise, and that the said Complainant was present and assisting said Wise to dig when they first commenced prospecting for said mine - I was there when the said Wise and Bonhotal brought their tools and laid them down before there had been a lick struck by either and that I understood from the parties each was to have one half of said mine - they found mineral the first day - Deponent further states that the mine now worked by said Marble and Wise is the same mine where said Wise & complainant commenced prospecting and in which complainant claims the one half interest

55.

Deponent further, that he saw said Marble sometime after the said Comstock Columkey quit working in said mine, and said Marble told deponent that he had bought out the said Columkey's interest in said mine and was working the same.

Deponent further states that he has mined on said land and that he has always been allowed fifty feet on each side of the main drift or lead, and that is what the miners all claim.

Subscribed and Sworn to before me this 19th day of March A.D. 1863

William Farrar, J.P.

James his X mark Bevard

State of Illinois } In Jo Daviess County Circuit
Jo Daviess Co } Court. March term A.D. 1863

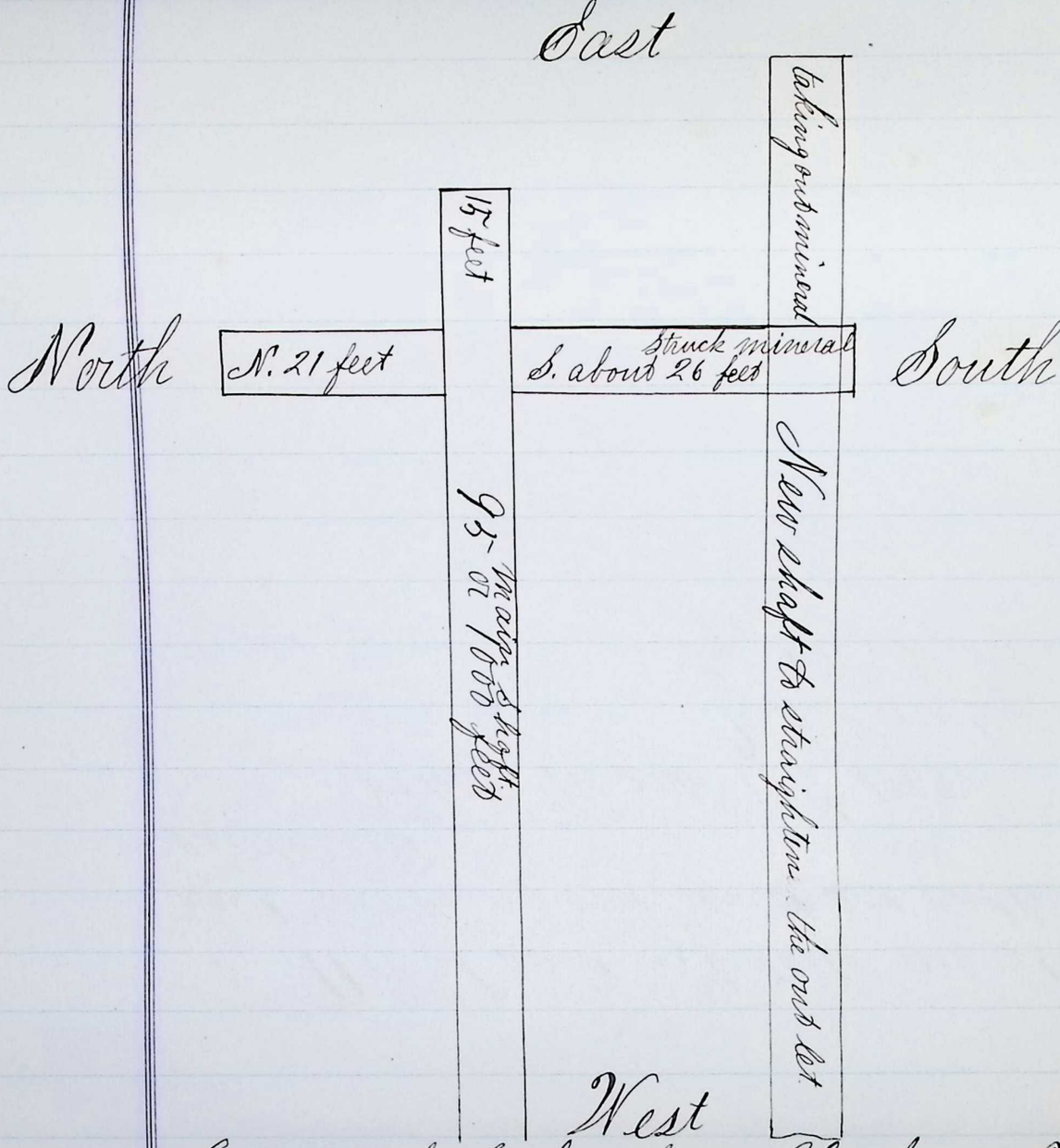
Henry P. Bonhotal } Bill for Injunction and
vs } Specific Performance
Oliver Marble }

H. Kamphouse being first duly sworn deposes and says that he is the duly appointed agent of Mrs. C. Kamphouse and Elizabeth Kamphouse for managing and letting or or renting the said mineral lands owned by said Mrs. Kamphouse and her daughter, Elizabeth, in Rice Township Jo Daviess Co. Ills. and the same land that the diggings known as the Marble Diggings, and now worked by said Marble and Wise. That deponent has a regular drawn plan for miners claims on said land, and the miners are entitled to thirty seven and one half (37½) feet on each side of their leads being 75 feet in all

H. Kamphouse

Subscribed and sworn to before me this 19th day of March A.D. 1863

William Farrar, J.P.



Comstock Columkey, Abraham Westerhaver, Paul Morello, & Peter Bonhotal being first duly sworn deposes and say, that the above drawing as it is marked off represents exactly the mine known as Marbles Diggings and mentioned and described in said bill, and said Wise and Bonhotal, complainant were entitle to the exclusive mining rights of thirty seven feet and one half on each side of said main drift- and that the drift running South from said main drift from 20 & 26 feet is where said Wise and Marble struck the

said large lead and that the same was in the same mine and on the mines claim of the said Wise and complainand and the mine in which said complainand has one half interest and which interest the said Balunkey worked on the shares for said Complainand and which the said Marble is now working.

Subscribed and Sworn to before me this 19th day of March A.D. 1863
William Farrar, J.P.

B. Balaunky
Abraham his X mark Westenhaver
Paul Morello
Pierre Bonhotal

All of said affidavits are attached and made as one, and are collectively endorsed

Filed March 19th 1863.
W.R. Rowley, Clerk.
By J.R. Bird, depty.

State of Illinois } I. Wm R Rowley
Jo Daviess County } Clerk of the Circuit
Court in and for
said County. do hereby certify the fore
going to be true and correct Copies of
the affidavits of Pierre Bonhotal
Paul Morello. Abram Vesterhaven,
Amos Fuller. James Reard and
H Kamphouse. as the same appear
on file in my Office in the papers in
the suit of Henry R Bonhotal vs
Alvin Trimble. for Injunction —



Witness my hand and the
seal of said Court at my
office in Galena this 19th
day of April A.D 1864.
Wm R Rowley Clk.
By T. R. Bird Dep.



I do hereby certify that the fore-
going affidavits were read on the hearing of
the Motion to dissolve the injunction in the
above entitled cause
Report April 19. 1864.

Benj. R. Sheldon
Reporter 14th Jud. Cir. Ill.

140

Bonhotel

v

Marble

Amended Record

Filed Apl. 23. 1864.
L. Leland
Clk

Jus Journal #12.