

No. 13559

Supreme Court of Illinois

Cone

vs.

Newkirk.

71641  7

STATE OF ILLINOIS,
SUPREME COURT.
Third Grand Division.

No. 293.

1860

Over
75

New York

293 *Conc. New York*
to be submitted on the part
of the Dept on calling the
Cause - *Memoir for Dept*

293

182

Come
to
Newkirk

Submission

Filed May 16 1860

Leland

Clark

STATE OF ILLINOIS---THIRD GRAND DIVISION.

Supreme Court thereof, April term, 1860.

JOHN E. CONE
vs.
ADAMSON B. NEWKIRK. }

POINTS OF APPELLANT.

I. The bill shows ground of equitable relief.

Whitney vs. Roberts
22 Ill. 327.

2 Story's Eq. Jr., § 692-4 et seq.
Kinzie vs. Penrose, 2 Scam., 515.

II.

The answer not being upon oath is a mere pleading, and as such is to be taken most strongly against the pleader.

2 Daniell's Ch. Pr., 272;
4 Scam., 20; 4th Gilm., 429.

III.

The answer having set up affirmative matter as the true and only consideration of the assignment, the defendant is bound to show the sufficiency of the consideration in law, and to establish the fact that the assignment was made upon it; and failing in this, the equity of the bill is virtually confessed.

32 Ill. 147-33 Ill. 76
3 Wis. 432. 24th Ala. 39-8.

IV.

The answer claims that the defendant was *ipso facto*, by the relations of the parties, entitled to the assignment without any consideration, but disproves it by the fact stated, and the equities of the parties are to be tried upon this claim.

V.

There is no legal evidence that the contract between Wright and complainant was to be for the benefit of defendant; nor was it the duty of complainant, by reason of his being agent or attorney, to give the defendant, without reimbursement or security, the benefit thereof.

Perry vs. McHenry, 13 Ill., 227.
Bruce vs. Roney, 18th Ill., 69.

VI.

The defendant could not have made such a contract with Wright (i. e. upon such terms) in his own name, nor enforce the same against Wright, but upon the performance of the services by the complainant as therein stipulated. See sec. 119 Cr. Code, Purple's Statute, p. 330.

VII.

Upon the pleadings and proofs the complainant is entitled to the relief prayed.

JOHN E. CONE, Appel't, in pro. per.

293 - 1860

Come no. Wm. W. W. W.

prints of a p/p

Filed April 28. 1860
L. Leland
Clerk

Well I must make a bargain with Wright if one is made at all it seems - so now I shall do so on the best terms possible - But whatever I do in the matter I hope there will be no cause of regret. By having unlimited power I can accomplish the object and get the best out of it I can. I shall use the means I have to get the most out of it and make such bargain as will foot up the largest amount of figures - How I shall do - time and chance must decide as I am satisfied that no premeditation is of any service in treating with them. There is one thing however I might do. If all other things should fail - That is to be retained in and prosecute - settle or arrange the matter for them and give them all advantage of my knowledge of the matter - They paying costs and charges for a share - of what was recovered - of say about $\frac{1}{3}$ taking a conveyance to myself of that interest - We could easily enough fix the matter as between ourselves - If they trade with you, you will have to pay charges - If I trade with them as indicated - there will be no excuse for them to insist upon those terms. If I can make a bargain that way and thereby get a larger proportion of the property shall I do so. I should not like to take the responsibility without your consent. The above on the supposition stated -

State of Illinois }
County of Cook } ss.

I Walter Kimball clerk of the
Superior Court of Chicago in and for said County
do hereby certify that the foregoing is a true
copy of a certain letter on file in my office
in a certain suit wherein John C. Gore is
complainant and Adamson B. Newkirk,
is defendant -

In testimony whereof I hereunto
subscribe my name and affix the
seal of said Court at the City of
Chicago in said County this fourteenth
day of May AD 1860.

Walter Kimball Clerk.

John E. Cone

vs

Adams B. Newkirk

Exhibit No. 4 referred
to in abstract

Filed May 15, 1868

L. Leland

clerk

Agreement.

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

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

2nd

The party of the second part agrees to pay
the party of the first part the sum of five
hundred dollars per annum for his services

to be rendered as aforesaid in monthly payments
to wit forty one dollars and sixty seven cents in
each and every month during the continuance
of this agreement. Also to pay for all disbursement
made by party of first part in doing the business
aforesaid. as the same shall become necessary
from time to time -

3rd

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

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

John E. Cone (seal)

A B Newbirk (seal)

Rec^d Chicago Ap^l 17th 1854 of A B Newbirk, one
the within article of agreement one hundred
and forty eight dollars

#148

John E. Cone

Rec^d Chicago Sep. 29th 1854 of A B Newbirk
on the within contract Three hundred and
fifty two dollars

John E. Cone

State of Illinois }
County of Cook } 88

I, Walter Kimball clerk of
the Superior Court of Chicago in and for said
County do hereby certify that the foregoing
is a true copy of a certain agreement together
with the endorsements thereon on file in
my office in a certain suit wherein John E.
Cone is complainant and Adamson B. Newbirk
is defendant.

In testimony whereof I hereunto
subscribe my name and affix the
seal of said Court at the City of
Chicago in said County this fourteenth
day of May A.D. 1860.

Walter Kimball Clerk

John E. Cone

vs

Adamson B. Newkirk

Exhibit No. 1 referred
to in abstract

Filed May 15, 1860
L. Deland
Clerk

Supreme Court of Illinois—Third Grand Division.

APRIL TERM, A. D. 1860.

JOHN ^{Esq.} CONE,
vs.
ADAMSON B. NEWKIRK. }

POINTS OF DEFENDANTS IN ERROR.

The abstract of the record furnished by appellant is *insufficient, and incorrectly* sets forth the answer and the evidence.

The record shows the following statement in answer:

‘That defendant, believing the title of the said Wright to the lands in said contract mentioned, to be valid and legal;—and having a valuable tract of land of his own, the title of which was effected in the same

way, and which title was then in litigation, and the settling of which would settle the questions involved in the title to the lands, in said contract described, had been for a long time trying to negotiate for the purchase of the same from said Wright, and for that purpose went to Racine repeatedly, and spent some time there, and in all respondent spent much money and time in trying to buy the lands in question, *or in some way to get an interest therein* in the same, *and to close the matter the best possible way for your respondent's interest*; the said Cone was sent by respondent to Racine,—your respondent furnishing him money to pay and paying his expenses, and at the same time being under the salary and employment of respondent *and fully authorizing him to act in the premises, and while so acting and for respondent's benefit*, the contract in question was made; and shortly after complainant's return to Chicago, *the complainant, as in duty bound, and as he ought to have done, assigned the same to respondent*, and the same was placed on record with the ~~priority~~ and consent of said Cone;—and that *said Cone had not then nor has now any interest therein*; that respondent since then had been proceeding to get possession of said land, and that whatever complainant had done in the premises had been under the retainer and employment of defendant.”

The abstract as to G. W. I. Cone, states that Cone testified that witness “afterwards saw it, (the agree-

ment of copartnership,) in possession of defendant, who refused to execute it."

37 The record shows that Cone testified: "I afterwards saw it in the possession of defendant, and the defendant then said to me 'that he should not execute it,' saying that '*it was not written as he understood the contract,*'" &c. Except this, G. W. I. Cone's deposition is correctly stated in abstract.

43 The deposition of W. H. Bradley states, *Newkirk was security for costs* in the suit he testified concerning.

65 JOSEPH N. BARKER,—States that he had two or three conversations with Cone as to the purchase of the Wright land in which Cone said "that he had found this defective title; that he was negotiating for the purchase of the Patent title from a Mr, Wright of Wisconsin; that if he succeeded in getting it for a nominal sum, it would be the best thing for Dr. Newkirk he had ever got up, as the lands were valuable; that he, Cone, had gone two or three times for that purpose; *and that he went up and concluded an arrangement for one-tenth for prosecuting; that he had to take it in his own name as he could not effect an arrangement in defendant (Newkirk's) name.*"

Proves the Wright contract referred to in bill, and the assignment on the back of it. See exhibit. /

Date of Wright's contract, 21st Sept. 1854, assignment date Oct. 7th, 1854.

Ans to 8 & 19 entry

Proves the making of the \$500 a year contract, and the receipt of payments thereon. See exhibit.

Date of contract 20th March 1854. Receipt of \$350 on Sept. 29th 1854, (which was eight days after date of Wright's contract.)

Ans to 12, entry

Proves, letter exhibit *A*, wherein Cone speaks of his intention to make a contract in his own name, and to do so for Dr. Newkirk, and asks Newkirk if he shall do so. See exhibit.

*Ans. to 2, entry
do to 21 X entry*

Testifies that Cone occupied the same office with Newkirk from spring of 1854 until August 1855 (which was for nearly one year after assignment.)

WILLIAM REDHEAD,—Testifies, Cone and Newkirk occupied the same office from 20th March 1854 to middle of August 1855.

*ans. to 6 entry
" 7 "*

To the making of the contract of \$500 per year, in the spring of 1854, and heard Cone say in the summer of 1854 that he was working for Newkirk under that contract.

That Cone did work for Newkirk under that contract until August 1855. Witness occupied the same office with Cone and Newkirk.

" 8 entry

That Newkirk sent Cone three or four times to Racine, in the summer of 1854, to purchase the interest

of Wright in land on Plank Road, in section 6; also other lands at Brush Hill. I heard Newkirk give instructions to Cone at different times when Cone went to Racine.

Ans to 9, duly

That Cone left letter exhibit 4, (see exhibit,) for Newkirk, with witness at the office; and while Newkirk was reading it Cone came in; they talked the matter over. Heard Newkirk ask why he wanted to take the contract in his own name. Cone said, by so doing he could get a large proportion of the property for Newkirk. Newkirk told him to go on, and Cone said "If he should take the contract in his own name, he would assign it to Newkirk, and it would be all the same as if he had taken the contract in Newkirk's name." That one or two days after Cone returned from Racine, he said he had succeeded in getting one-tenth of the property for Newkirk, worth about \$30,000.

States farther, in regard to the same conversation in 52d cross-interrogatory.

States further as to the \$500 contract and over-drawing the salary by Cone.

Ans to 4th direct

States as to Newkirk's refusal to sign co-partnership agreement, because it would include the subsequent purchases from Wright. This was after the assignment of the Wright contract.

SEYMOUR—Testifies to a conversation in August, 1855, between Cone and Newkirk, in regard to the \$500 a year contract—"Newkirk said Cone was at work for him for \$500 a year, and had been for more than a year; and that he (Newkirk) had overpaid him, had paid some \$2,000; Cone said that was so, but he (Cone) wanted to know what he was to have for the future.

That in August or September, 1854, he met Cone in the street, who told him he was going out of town, asked where; said, as I recollect, *was going to Racine to see Mr. Wright on business for Newkirk.*

O'DONNELL.—Testifies that in the spring of 1855 Cone said he was working under a salary.

APPELLEE CONTENTS.

Prints.

1 That there is no equity in the bill, as "a court of equity will never lend its aid to divest an estate for a breach of a condition subsequent." 4 Kents Comts. p. 129, 130.

2 That appellant has entirely failed to prove the allegations of his bill as to fraud on the part of the defendant; and that there is no evidence to show that the agreement to go into copartnership, buy books, &c., was the *only consideration* for the assignment of the contract in question.

3 That the evidence shows that Cone was working for Newkirk under a salary of \$500 a year, at the time this contract was made, and for nearly one year afterwards, *both parties all that time occupying the same office.*

4 That the evidence shows conclusively that Cone took and entered into the contract with Wright for Newkirk, and for Newkirk's benefit, and that he was therefore in duty bound to transfer it to Newkirk; having done so, he cannot maintain this bill to set aside the assignment. Whether he took, as the agent of Newkirk, under the salary of \$500 per year or not, is immaterial; if the evidence shows that in taking and entering into the contract, he did so *for Newkirk*, or as Newkirk's agent, he was in duty bound to assign it to Newkirk, whether he received any consideration or not. And if he entered into the contract for *Newkirk's benefit*, and afterwards assigned it to Newkirk, it appears to us he could not sustain this bill upon the ground of want or failure of consideration. It is a settled principle of equity "That where a person undertakes to act as the agent for another, he can not be permitted to deal in the matter of that agency upon his own account, and for his own benefit, and if he takes a conveyance, in his own name, of an estate, which he undertakes

to obtain for another, he will in equity be considered as holding it in trust for his principal." 7 Paige Chy. Repts. p. 353, Parkest vs. Alexander 1 Johns. Chy. Repts. p. 394.

BARKER & TULEY,

For Deft. in Error.

298-182
John A Bone
vs
AB Harkins

points shifts in due

Filed May 15. 1860
L. Delmon
Clerk

SUPREME COURT OF THE STATE OF ILLINOIS.

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1860.

JOHN E. CONE,
vs.
ADAMSON B. NEWKIRK.

} *Appeal from Superior Court, Chicago.*

ABSTRACT OF RECORD.

RECORD.

Additional record filed within leave & objected to

1 This was a proceeding in Chancery, to have a certain writing of agreement delivered up, and an assignment endorsed thereon, cancelled, instituted by the Appellant against the Appellee.

2 Bill filed in the Cook County Court of Common Pleas, in October, 1855, alleging that Complainant, in Sept., 1854, made an agreement in writing with one Wright, of Wisconsin, by which said Wright, in consideration of the services of Complainant, was to convey to him, his heirs, etc., certain lands situated in and about the city of Chicago.

4 And that an agreement was entered into between said Complainant and Defendant, for an assignment to said Defendant, of the contract with Wright. That Defendant was to pay indebtedness of Complainant, amounting to about \$1,300, purchase for him law books to the amount of \$700, and enter into a partnership with said Complainant in buying and selling real estate, and dividing profits, etc. Also, that said Defendant was to employ Complainant as his attorney and counsel in all litigation then pending between the Defendant and other parties, and in all future litigations, when the title to or interest in land came in question.

4 And that in pursuance of this arrangement, Complainant made a schedule of his debts, a list of law books to be procured, and drew duplicate copies of the agreement, as to partnership and employment, in accordance with memoranda made by Defendant, and signed and sealed this said agreement, and delivered them to Defendant to be executed.

5 And that upon the assurance of the Defendant, the said agreement had been signed by him; and that he had already made arrangements to pay the debts of Complainant; and had ordered the books selected by Complainant; said Complainant endorsed upon the Wright contract an assignment to the Defendant, on the 7th October, 1854.

5 And that said agreement, so endorsed, was taken from the office jointly, occupied by Complainant and Defendant, by the Defendant, on the same day, without the knowledge or consent of the Complainant, and without delivery thereof to him, and filed for record.

6 And that the assurances of the Defendant, as to his signing the partnership agreement, was false; and that after filing said Wright agreement with the assignment aforesaid, the Defendant refused to pay the debts, procure the books, or sign the agreements; and that these undertakings of the Defendant was the only consideration of the assignment or agreement to assign said Wright contract.

7—8 The bill prays that the agreement between said Complainant and said Wright may be delivered up, and the assignment thereon endorsed, cancelled, and for other and further relief.

9 The answer (not under oath) admits the making of the Wright contract, to and with Complainant, but denies that its consideration on part of Complainant were professional services to be rendered to Wright. (See Wright Cont. p. 15 R.)

12 And denies that agreement for the assignment, set out in the bill. Also the consideration of the same, saying that what the bill alleges is false, but that the facts are truly set forth in the answer. And alleges that at the date of the Wright contract, and before and after Complainant was the attorney and agent of the Defendant, and bound to devote all his time to the affairs of the Defendant, who was paying a stated salary therefor under a contract, a copy of which is made an exhibit. (See p. 17 R.)

13 And that the Defendant had endeavored to buy of Wright the land mentioned in said contract, or some interest therein; that said Complainant was sent by him to Racine, as his agent, to close the matter; and while so acting, and for the Defendant's benefit, the contract in question was made, and by said Complainant, as in duty bound he ought, was assigned to the Defendant, and was placed on record with the privity and consent of said Complainant, and that said Complainant, had not then, nor has now, any interest in the same.

15 The contract between Complainant and Wright contains these clauses: "That the said Wright in consideration of the services to be performed by the said Cone, as herein after specified." (P. 14 R.) "Said Cone in consideration, etc., agrees to recover the property above described, sold under an execution from Municipal Court, etc., and for that purpose, prosecute to find judgment, any suit or suits which may be necessary for that purpose; and to use all reasonable diligence to accomplish the same, and to clear the title to the property aforesaid, as soon as the same can be done by due course of law." (P. 15 R.)

17 The pretended contract set up by Defendant, as the one under which the Complainant was to devote ALL HIS TIME to Defendant's business, and attached to the answer as an exhibit contains the following clauses: "John E. Cone * * * party of the first part, * Adamson B. Newkirk * * * of the second part." "To examine records in the office of said county, * and enter in a book, etc., * minutes or abstracts of the title to such tracts of land as in the opinion of said party of the first part are worth entertaining, etc. "And to do such other PROFESSIONAL business as the said party of the second part may require him, (the said party of the first part to do, in and about his, the party of the second part's) OWN BUSINESS, and not otherwise." "The party of the second part agrees to pay the party of the first part the sum of five hundred dollars per annum for his services to be rendered as AFORESAID."

32 G. W. I. Cone testified that he occupied office with Defendant from May, 1854, to August, 1855. Was considerably acquainted with the business transactions of the parties. Knew of the contract set up by Defendant, also, that a notice was made by Complainant and sent to and received by the Defendant in April, 1854, terminating said contract. That during the summer of 1854, numerous attempts were made by the Defendant and by Complainant for Defendant to purchase of Charles S. Wright, of Racine, Wis., certain lands in the city of Chicago, and other lands in Cook County, which attempts to purchase failed. Negotiations were kept up until and during the following winter. In latter part of winter saw Wright and Defendant together; then heard conversation in relation to purchase.

[NOTE.] The above is all the evidence in the case touching the assignment; there is a large amount intended by the Defendant to establish the existence of the contract set up in the answer as a defense, which the Complainant conceives to be irrelevant to the case, and therefore has omitted it in this abstract.

28 The Defendant filed his cross bill for the purpose of setting a judgment at law in bar of Complainant's equity, alleging that Complainant had recovered damages in said suit, for the breach of the agreements mentioned in the bill as the consideration of the assignment.

47 The answer to cross bill denies the bar, and sets out the declaration in the suit at law; also, alleges that the contract set up in answer to original bill, was adjudged terminated in April, 1854, before the date of the assignment.

To the answer to the cross bill no replication was filed. Upon the case thus made, the cause was heard in the Court below and decree entered dismissing the said original bill at the costs of Complainant, and the cause is brought to this Court on appeal, and said Complainant excepts to said decree of the Court below and assigns the following errors:

1st. The Court erred in dismissing said bill.

2d. The Court erred in not granting the prayer of said Complainant for the relief asked.

3d. That upon the pleadings the burthen of proof ought, by said Court, to have been cast upon the Defendant to support his answer and the bill to have been taken as virtually confessed, and said Defendant ought to have been held to strict proof of his affirmative allegations as laid, and said Court erred in not excluding the testimony of Defendant's witnesses, in this, that it did not support the allegations in said answer contained.

JOHN E. CONE, *in person*.

293

Come no Washinik

Abstract

Filed Apr 20. 1860
L. L. Smith
Clerk

No 293. Supreme Court. April Term
A.D. 1860.

John E. Cone.

vs

Adamson B Newkirk.

} Appeal.

Argument of Appellant.

§ 1 This is a proceeding in Chancery commenced by appellant against appellee, to have an agreement delivered up, and an assignment endorsed on said agreement (purporting to assign the same to said appellee) cancelled.

The material averment of the bill is - that the defendant (below). Came in to possession of this agreement without its being delivered to him by the Complainant, and was fraudulently filed in the office of the Recorder. The bill alleges that an agreement had been entered into between the parties, for an assignment of this agreement to the defendant, in consideration of certain executory agreements of said defendant, and that upon assurances of the defendant that he was proceeding to perform these agreements &c. Complainant endorsed upon the contract in question an assignment to the defendant. That said agreement so endorsed was taken from the office jointly

Seized as a bill of review upon the lower-officer's

occupied by the parties, ^{by the defendant} without the knowledge or consent of the complainant, and without delivery thereof to him. and filed for record.

And that the assurances of the defendant were false, and defendant refused to perform his undertakings according to the bargain to assign, after this and that they were the only consideration of the assignment, or of the agreement to assign - See Abs. p. 1. 2. also N. p. 6. Where the bill avers that the complainant never received any consideration for the interest assigned.

§ 2. The ground of relief disclosed is two fold. 1st The fraudulent procurement of the assigned agreement, 2nd The failure of the consideration; either being sufficient to entitle the complainant to the relief prayed to wit: to have the agreement delivered up and the endorsement of assignment to defendant cancelled. Upon the first ground there can be no question - as fraud renders all deeds void, And this Court held in the Case of King, ie vs. Penrose 2. Scam. 515. that the ~~that the~~ failure of an executory consideration avoided an absolute Conveyance of land; and this ground is under the Authority of that Case - also sufficient

§5. Proceeding upon the view of the case, above expressed the equity of the parties is to be determined upon the answer - and if it shall be found that upon the case thus made, the defendant is not entitled as matter of law and right, to the interest assigned, there is nothing in the way of Decreeing the relief asked by the Complainant.

§6. The material allegation of the answer is, that the contract made by Complainant with Wright, was for the defendant's benefit; and made while Complainant was acting as the agent of the defendant, for this purpose; and therefore the defendant is entitled to the interest in the Contract. Abs p 2. R. 12. 13. and that the Complainant had not ^{than} nor has ^{now} any interest in the same. This is the issue made, then, and we have only to determine to whom under the allegations and proofs this interest really belonged. One thing cannot be overlooked in this connection - Which is, that there is neither allegation nor proof by the defendant as to the consideration of this Contract of Wright. nor by whom advanced, but it is evident from the Contract itself that the consideration for Wright's Covenants to convey - were the services of Complainant, to be entirely, and

personally rendered by him, and that the Complainant covenanted to render these services - So that the question as to who advanced the consideration to Wright is put beyond all controversy - see abs. p 2, H 14, 14. and it does conclusively appear by the very answer of the defendant, and the exhibit is the Wright Contract, attached to and made a part of the answer, that the Complainant had an interest (to the extent at least of the value of the services to be rendered, to Wright) in this contract, and though it were true as alleged that defendant was to have the land mentioned - he could not claim it without compensation to Complainant, for this advanced consideration. The answer in this respect is clearly disproved, and as it goes to the very root of the defendant's claim of right, we are fully justified in saying that it is no bar to the relief sought. The answer it is true alleges that at the time of making this contract, that the Complainant, was by the terms of an agreement (also made an exhibit, and part of the answer) bound to devote all his time to the affairs of the defendant, see Abs 2, 12. from whence it is argued that the services to be rendered to Wright were due to defendant; But unfortunately for this assumption - the contract

the agreement mentioned conclusively refutes this assumption by an express stipulation: by which it is perfectly clear - that so far from being bound to devote all his time to the affairs of the defendant, the complainant was to perform only stipulated services and - (we here quote the words of the agreement) "to do such other professional business, as the (defendant) said party of the second part may require - him to do, in and about his the ~~said~~ party of the second part's own business and not otherwise." Far as to hold that under this agreement - the Complainant was bound at the request of the defendant, to perform for other parties valuable, and extended services and thereby entitle the defendant to the price thereof, would be to overturn the whole law of Contracts, and that too, for the purpose of allowing a party to reap where he had not sowed. This agreement then is out of the case - and it is unnecessary to look through the depositions to ascertain whether such a contract was in force or not. But we remark here - that the defendant having set up this contract, or agreement between the parties cannot be allowed to prove a different one and that the testimony of witnesses as to agreements

between the parties as to the terms of Complain-
-ant's employment are totally inadmissible.

We remark further that this claim of the defend-
-ant, to take the Wright Contract, without any
compensation to Complainant, under the
showing of the answer alone, is inequitable in
the highest degree, and is a very strong Circum-
-stance in itself going to establish the fact that
the assignment was fraudulently obtained
in the first instance, though it is only neces-
-sary to say here - that it certainly sufficiently
appears that he is not entitled to retain it
upon his own showing irrespective of the
proof in the case. For as no consideration
is shown - nor proof of delivery to him is
attempted, and it being manifest that the
Complainant has a valuable interest in
the agreement, there is no reason in law or
equity, why he should not have it returned
to him and the assignment cancelled.
Unless - Perhaps it may be retained by the
defendant - upon making compensation
for the services of Complainant - As to which
right we shall presently see - But before pro-
ceeding to that - it is proper to observe that
the conduct of the defendant has been such
in the premises - as in equity ought to bar him

equitable right, (if he ever had any,) to have the land, (agreed to be conveyed by Wright to complainant) upon payment to him of the value of the services to be rendered which were the consideration, advanced by the complainant.

This case in respect of this right of defendant to have the land, stands thus - if an agency existed - The agent paid the consideration ^{with his own} money - and took the conveyance in his own name - The principal had the right to the land by paying to the agent the amount of this money. And it makes no legal difference, that in this case services instead of money was - or was to be given by the agent for the land, for, as is too clear to admit of dispute, the services were personal and bound to be personally rendered, by the complainant. (See Wright Cont. Abs. 2 R. 15) and the fair value of these services when ascertained ~~are~~ is to be paid by the principal before he is entitled to hold or claim the land.

But if the principal refuses to pay the price advanced - he is to be held to have abandoned the purchase, and his right to insist upon it. Such was the doctrine laid down ^{by this court} in the case of Dollanbee vs Kibbreth et al. 17th Ill. 528.

and is consonant with reason and justice. But here the defendant claims as principal but insists that he is not bound to pay the agent for his advance - Such claim cannot be permitted, the case above cited - is in point here. It is a familiar doctrine of equity jurisprudence, "that he who seeks equity must do equity," and the application of this doctrine to this class of cases is obvious. If a party claims a purchase as being his own upon the equitable ground, that the purchaser was agent for him - equity requires that he shall before he is permitted to stand in the agent's place, pay to him the advances and in some legal manner substitute himself in the place of the agent's legal obligations and liabilities, so as to entirely compensate and release the agent in the premises - and wherever cases of this sort have arisen it has been thus held.

And this doctrine has a complete application in the case before us - and is as decisive here, as if the parties were changed and the defendant had come as a complainant, seeking to compel a conveyance to himself of this contract or of the lands therein described without offering to pay the price - This Court

would not in that case, decree relief, nor will it do indirectly what it would not directly do, merely because by some finesse or management upon the part of the defendant, he has been let into an apparent advantage by an instrument found in his hands - but having no valid consideration to support it. We have no difficulty in saying, that to do so would be a judicial sanction of apparent, and of even confessed fraud. But we will now proceed to the question as to the right of this defendant to have the land upon paying the full value of the services to be rendered by Complainant.

§7. The answer does not clearly set forth the ground of the defendant's right to have the land - it says that it ^{the contract with said} was made for his benefit See ¶ 12 & 13. But we propose considering the question in two views - 1st As an express trust to make this contract for the benefit of defendant. 2^{ed} As a right growing out of the relation of the parties as principal and agent. The evidence of defendant is an attempt to support both views. The answer does not pretend that a resulting trust, arose from use of money in buying the land, though it does allege that defendant paid travelling

expenses of Complainant at the time the Contract was made, but as these expenses did not enter into the Consideration of the purchase, nothing can be predicated upon this simple fact if fact it be.

As to an express trust: The allegation and proof is totally insufficient to establish the fact, for such trust cannot be supported created by parol, as has been decided by this Court in Case of Perry vs McHenry 13 Ill. 227. and in Bruce vs Money 18th Ill 69. And yet from the proof in this Case it appears that if any right to have the land existed at all, it was by virtue of an express trust alone, for the witness Redhead who it is apparent attempted to swear as strongly as he could for the defendant, and to fully meet the whole Case made by the defendant expressly says - "That Complainant proposed to take the Contract in his own name, and that defendant agreed to it" - (See Abs p 3. 84. and more fully dep - R 84 et seq.) and goes on to say that Complainant was to assign &c. From the testimony of this witness, it is fully established - Admitting his statement to be true - That the Complainant instead of going to make a contract for defendant, went

with the concurrence of the defendant for the purpose of making a contract for himself based upon his own services, but with an understanding that he would assign the contract so made to the defendant - but upon what terms or for what consideration is not stated. This testimony it will be seen - instead of supporting the allegation of the answer, that complainant was sent as agent of the defendant to make a contract for him, flatly contradicts this allegation. And clearly shows that complainant acted in good faith, and had perfect right to make the contract he did make, and for his own benefit. The case of Bruce vs Money above cited - is in point here - There it was alleged an agency existed, also an express trust, and an implied trust, yet though the agency was admitted the Court - holding no express trust was shown limited the remedy to the land covered by the money used; upon the doctrine of an implied trust, alone. Saying that the fact of agency did not vary the result. The doctrine as to right of principal to a purchase made in the name of his agent, is founded upon a supposed violation of duty - But we venture to say that the doctrine has never been held by any Court, to apply to a case where the agent was expressly authorized to take the

the purchase in his own name and has advanced his own money in payment of the purchase price.

It then satisfactorily appears, to us that neither as agent nor trustee - was the complainant, bound as is said in the answer - to assign the contract, to the defendant, and that the defendant could not have - any right - even upon tender of the full value of Complainant's services to him, to have a conveyance of the contract. Much less can he have it, and deny payment. It is perhaps true that if the assignment had been fairly and honestly obtained, in pursuance of this parol agreement to assign, that it would have been sufficient. but such is not the case here.

Having now disposed of the defence set up, and seen that it utterly fails. We will look for a moment, at the case upon a more general view - as presented by the pleadings and proofs.

§ 8. We have said above (§ 3.) that the complainant, is not bound to adduce proof in the first instance to support his bill, this

Position needs a little elucidation, as though the principle is correctly stated, yet its proper application, may be misapprehended, for it must be always remembered that the possession of a deed is prima facie evidence of delivery - and recital of consideration, in a deed to a deed are prima facie evidence of a consideration. But these prima facie showings may be rebutted both by direct proof or circumstances sufficient, to put the case upon actual proof of Both. In this case it is avowed by the answer that no consideration was given - or to be given - so that question is out of the case. As to the fact of actual delivery to the defendant of the assignment, the bill shows circumstances - which are admitted by the answer, (to wit joint occupancy of the office by the parties) which goes somewhat at least to weaken the presumption of delivery arising from possession of the paper by the assignee - And the extraordinary claim that it was delivered without consideration is a very pregnant fact, which of itself ought to put the defendant here upon actual proof of delivery to him - But the complainant has gone further, and proved that when he made the endorsement - he then declared

that he would not deliver it to defendant until all ~~the~~ was fixed up. See Abs. 2, 38. the next thing known it was placed upon record. We believe that taking the case altogether, the fact of actual delivery of the assigned agreement to the defendant is sufficiently disproved, as there is no other evidence to support the fact than mere possession of the paper, offered by the defendant; and there being no good or valid consideration to support the deed and the very claim of right to hold it, now set up by the defendant is of itself in perfect keeping with the truth of the allegation of the bill - that the paper was taken from the office without the knowledge or consent of the Complainant. This case is in every respect distinguishable from that of *Bryan et al. v. Washburn* 2 Gilman 557. Where the doctrine of delivery is fully discussed, and where the Judge in delivering the opinion remarked, p 568. "that the law presumes much more in favor of the delivery of deeds in case of voluntary settlements, than it does in ordinary cases of bargain and sale, &c." But how is the presumption in case of bargain and sale where the price is not paid, and the party in position to possess himself of a paper surreptitiously - By no means strong.

In reference to this question it is sufficient to say - that no precise rule as to proof of the fact can be laid down, but that whenever the circumstances altogether surrounding the transaction, are sufficient in themselves to fully account for the possession of the deed by the grantee without actual delivery by the grantor, and to hold that it was actually delivered would in effect give the grantee an interest without any compensation, the reason and justice of the case requires that the presumption of delivery, arising from possession - should be held to be rebutted. And the more especially so when the fact of actual delivery is put directly in issue, as is done in this case. We are of opinion that under the pleadings and proof the Complainant has adduced sufficient evidence to supply his claim to relief. As much indeed as the nature of the case would admit, or he ought to be held to furnish. One thing is evident, the real right and equities of the parties are sufficiently apparent and we feel no hesitation in saying what the decree should be - for any want of ~~84~~ Proof in the case.

9.
§. In concluding our examination of this case it is proper to observe one very prominent fact to which it is impossible to shut our eyes, and which is so prominent, as to cast its influence over the whole case - It is this, ~~that~~ that if the defendant succeeds, as he did in the Court below, he acquires a valuable interest without any equivalent being paid as he himself boldly avows, and that too at the expense of the complain-
=ant who upon his side loses this interest, and at a loss impossible now to be compensated for he cannot be put in Statu quo, except by the relief asked by him.

Ought not this Court, sitting as a Court of equity, whose boast it is to prevent wrong and injustice by granting relief against unconscionable claims under color of legal right, to interfere to prevent such results?

This fact we have mentioned, is equally apparent from the case made by the answer as by the case made by the bill, it stares us from every possible point of view from whence we may look at this case. We cannot allow that a Court of equity will ever pass a decree that shall accomplish an inequitable result, and such cases, ^{as this} demand a very careful con-

-sideration; before passing a decree upon the ground that the Complainant or defendant as the case may be - has failed in proof of the case made by him. The object of pleading and proof is to put the Court in possession of the facts - so that it can determine the very right and equity of the parties, and it matters not as to the side from whence it comes, so that the real merits of the case are fully before the Court.

We are aware of rules which would seem to imply that, causes in equity must stand upon the allegations and proofs upon each side - that a bill cannot be helped by an answer - or evidence to support the same - but a little more careful examination of these rules will disclose the fact "that they have never been applied to cases where the relief prayed, is shown to be deserved by the Complainant, and where a decree may pass according to the prayer of the bill by the facts disclosed in the whole case.

The rule we refer to is applied in all cases where the allegations of the bill show ground of particular relief; but is not supported by proof entitling the

complainant to this particular relief, in which case it is uniformly held that ~~that~~ even though the answer discloses a ground of equitable relief of a different nature and requiring a different measure of relief, and different form of decree the bill shall be dismissed - unless and this is a noteworthy saving) the Complainant shall by leave of the Court, amend his bill. Such is the doctrine of this Court as held in several cases. The reason of the rule is obvious - and the cases in which it properly applies easily determined. The decree must be in accordance with the prayer of the bill, if special relief is prayed, and in accordance with the allegations of the bill under a general prayer for relief.

In the case before us - We know of no rule of equity pleading or practice, requiring a dismissal of the bill, and we would pause long before saying it ought to be done, by reason of the existence of any such rule, in the face of the fact that right and justice can only be done by granting the relief asked, and that great and irremediable wrong would be done the complainant by dismissing his bill.

§ 10. The bare proposition before us is—

Whether the defendant, because he has got in his hands evidence of title to a very valuable property—for which he ~~has~~ never paid a dollar, and to which it is clearly manifest he is not entitled as against the just Claims of the Complainant, nor of any other person, shall be allowed to retain this evidence, to assert title under it? Our answer is this cannot be allowed. The proposition is an insult to equity, to common justice. The duty of the Court, having this remedial power to order the agreement delivered up, and the endorsement cancelled, is very plain. It has the power to place the paper in the hands of the party to whom in equity it belongs and thus promote right and justice, and when right and justice so requires, as is beyond all question here, it will do so.

§ 11. From the foregoing we think that the decree of the Court below should be reversed, and an order entered in this Court remanding the Cause to the said Superior Court of Chicago with direction that, a decree be therein entered for the

Complainant in accordance with
the prayer of the bill. And that said
Complainant The appellant recover
of said (defendants) appellee, ~~and have~~
~~execution~~ his costs both in the Court
below and in this Court, and have
execution therefore - And an order
of reversal, and for entering a decree
in the Court below is accordingly
prayed, by said appellant.

John E. Cone
app^t in pro. per.

Ottawa May 10th 1860.

The accompanying paper takes a more
birds eye and perhaps better view of
the case - I should like to have both read
but the other is perhaps sufficient

J. E. C.

293-

John E. Coe

vs

Adams on B New York

Argument of J. E. Coe.

293-1872

John E. Coe

vs

Adams on B New York

Argument of
J. E. Coe.

No 293.

Supreme Court Illinois
Third Grand Division

April Term 1860

§1

John E. Cone, appellant vs.

Ab. p.

1.

Adams on B. Newbick appellee.

Appeal from the Superior Court of Chicago - in Chancery.

The Bill was filed by Appellant to have a certain agreement delivered up and an endorsement thereon of a transfer to the defendant Cancelled, up on the ground that the transfer was fraudulently procured, and the Complainant had not received consideration of any sort for this transfer.

§2.

The defendant answered without oath, setting out by affirmative answer what he alleges to have been a full and true history of the case, and by exhibits making the Contract or Agreement, and endorsement of transfer to himself, and another agreement which he alleges to have been in writing and operative at the time, between himself and Complainant, part of his answer. And insists that the answer fully meets the case made by the bill and disproves the allegation of fraud.

Respondent as upon an appeal - at original hearing.

33. A replication was filed, and proof taken upon both sides. Afterwards the defendant filed a Cross bill setting up a judgment at law obtained by Complainant after defendant's answer had been put in to the Original bill, by which judgment the defendant claimed that the Complainant had recovered damages suffered by reason of the premises mentioned in the Original bill. Complainant answered the Cross bill denying the bar set up; and affirmatively averring that the Contract mentioned in defendant's answer to the Original bill, as being a subsisting Contract at the date of the transfer, had by that trial and determination, become res judicata and was not now open to proof or controversy. No replication was filed to this answer nor proof taken upon either side. The Court below dismissed the Complainant's bill, who brings the Case to this Court by appeal and asks a reversal of the decree of the Court below, and for relief in this Court.

§4. The facts as shown in evidence, are substantially as follows: Namely
The defendant being desirous of purchasing certain lands lying in and about Chicago, and belonging to one Charles S Wright, who resided at Racine in Wisconsin, had during the summer of 1854 employed the complainant, as his agent to purchase for him these lands, and that for this purpose complainant went several times to Racine, but was unable to make any purchase, and the defendant tried in person and was equally unsuccessful. These lands were claimed by other parties - the title being in dispute.

§5. The complainant being an attorney at law and engaged in this species of litigated business, after all attempts to purchase the lands of Wright had proved a failure, proposed to the defendant, to try to get retained by Wright to prosecute suits for the recovery of the land for him, and clearing up his title, and as compensation for such service to take his pay in land, to this the defendant agreed:

§6. It appears to have been an understanding between the parties at this time, that in case Complainant succeeded in making the contract as proposed, he would assign the Contract to defendant, though upon what terms or for what consideration, does not appear then to have been settled, but was left for adjustment after such contract should be made.

§7. In accordance with this arrangement Complainant went to Racine and there made a contract on the 21st day of September 1854 with Wright, in which Wright in consideration of the services to be performed by Complainant covenanted, and agreed to convey to him, his heirs, or assigns, the lands described - being one tenth of 160. acres in the City of Chicago, and of 240 acres of Country lands, describing the same specifically - And in consideration of Wright's covenants, Complainant covenanted and agreed, to recover the property therein described for Wright, and for that purpose to prosecute to final judgment, any suit or suits, which might be necessary for that purpose; and to use all reasonable diligence to accomplish the same, and to

clear the title to said property, as soon as the same could be done by due course of law.

38.

The Complainant returned to Chicago ^{or about} on the 22nd of September, and between that day and the 7th of October following, the terms upon which a transfer of Complainant's interest in the land to the defendant was to have been made; were so far settled that complainant wrote an endorsement upon the back of the contract with Wright upon that day purporting to assign, and transfer all his interest therein to the defendant.

The terms of the transfer, (as appears by the testimony of the Complainant's brother who was the only witness examined upon this question, on either side, and is all the direct evidence upon the subject), were, ^{briefly} as follows. That the defendant was to pay the debts of the complainant, and the parties were to go into a partnership, for the purchase of lands - defendant to furnish the purchase money necessary for that purpose Complainant to examine titles, direct what should be purchased &c. and the profits to be divided - the Complainant to have one third and the defendant two thirds. These terms have never been complied with on the part of

and the subsequent conduct, and present monstrous claim of the defendant, as set forth in his answer, to have this interest ~~and~~ ^{said} to be worth thirty thousand dollars, for nothing - Making it highly probable, the presumption of its actual delivery arising merely upon the fact of possession is fully rebutted; and the burden of proof is upon the defendant to show by extrinsic evidence the fact of actual delivery. There being no proof offered, nor even circumstance, as of payment of the consideration, or the like, shown to support the fact of actual delivery. The allegation of the bill in this respect must be taken as fully sustained by the proof. It is too evident to admit of doubt that the defendant procured the agreement ^{to be executed} by fraudulent promises of executory consideration, which has utterly failed, and that upon that ground alone the Complainant is equitably entitled to have the agreement delivered up and the assignment cancelled. Such was held to be the law in the case of *King v. Penrose* 2 Scam. 515. a case like this and directly in point upon this question.

§ 10.

But while every fact proved in the case is perfectly consistent with the allegations of the bill yet, the answer is not supported by a single particle of evidence in any particular whatever, but is disproved flatly in many very material respects. and that too by the very proof referred to in the answer, and set out, as exhibits as is seen at a glance.

§ 11.

The answer is particular to deny a fact not as averred in the bill, namely, denies that the consideration of the contract with Wright was professional services to be rendered by Complainant, though the bill says services - not using the word ^{Professional} services - Yet upon inspection of the contract with Wright, it is clearly manifest that purely professional services, as an Attorney and Counsellor at law, were to be rendered and no other kind of service, would or could be rendered under Complainant's stipulation. In this respect the answer makes an unnecessary statement, shown to be false in fact by the very document referred to to establish its truth. This is a matter of no consequence - further than - as showing the animus of this defense - and the character of the defendant.

§. 12. The defendant also avers in his answer that the Complainant was at this date bound to devote all his time to the affairs of the defendant under a contract, also made an exhibit, and alleges ~~that it~~ inferentially - that therefore the Complainant was bound to make this Contract with Wright, and perform for Wright the services mentioned therein upon his the defendant's account, and for the salary of five hundred dollars per annum, to be paid, as by the terms of the Contract set out. But when we turn to this Contract, and look at what the Complainant was to do under it, so far from being retained generally it appears that he was only to perform certain stipulated services - and then comes this Clause, to do such other professional business, as the defendant might require him to do in and about the defendant's own business, and not otherwise. It is clear enough, to any fair mind, that under this agreement. No land agency business - nor suits for other parties could be put upon the Complainant, and in this as before the proof attached to the answer, unqualifiedly disproves the averment.

§ 13. Under this averment as to the complainants being bound to make this contract with Wright because of the contract as alleged to have existed between him and the defendant. The defendant puts forward the claim of right to have this contract with Wright assigned to him without consideration, and without paying the value of the services the complainant agreed to render Wright. If the Court should have the curiosity to look at this contract alleged to have existed between the parties it will discover that it provided that either party might terminate ^{it} upon a months notice - and by the evidence that it was terminated in April 1854 several months before this transaction with Wright - But whether in force or not is nothing to this case - as the precious document itself too clearly demonstrates its utter insufficiency to establish a consideration for the assignment of the Wright contract. Or a duty, thus to do.

The defendant placed his great reliance upon this contract, and introduced, a great mass of evidence to show that it had not been

terminated; Which is entirely incompetent and impertinent for the reason above stated.

§ 14. The answer avers that the contract with Wright was made for the defendants benefit and that the Complainant had not then nor has now any interest in the same.

The evidence upon this subject has been noticed above, and is contained in the deposition of defendants principal witness William Pecked, from whose testimony; it appears that whatever arrangement was made to buy or take this agreement for defendants benefit, was simply a parol agreement and therefore insufficient to create an express trust - or give defendant any right to have the land - and it further appears that the Complainant advanced the purchase price to wit: his personal professional services, and which were to be paid for or satisfied in some manner before an Assignment, could be claimed, even were the agreement sufficient to create a liability to do so. See Perry vs McHenry 13 Ill. 227 Bruce vs Honey 18th Ill. 69. And in this

respect the answer is clearly disproved, for the Complainant had an interest in the Contract, when made - That is the right to the land agreed by Wright to be conveyed to him, and the defendant by his own showing, had neither legal nor equitable interest in it, which there was any power in law to enable him to assert, as it clearly held in the cases just above cited. in 13. & 18. Ill. R. and had the Complainant refused to transfer the Contract, the defendant could not even by bringing into Court a full value of the Consideration advanced have had a conveyance.

§15. The Conduct of the Complainant in the premises ~~was~~ not only free from reproach - but highly honorable. He did all his duty, required him to do, and more than the defendant could have compelled him to do, in agreeing to lose the benefit of his bargain and to transfer this large property upon consideration barely sufficient to pay him at a law rate of fees for the labor actually to be - and which has been ~~rendered~~ ^{done}

And for this conduct the defendant returns the basest, blackest ingratitude by endeavoring to cheat and defraud the complainant out of the mere pittance he felt in duty bound to take. For a Court sitting as a Court of equity, to allow such conduct to doak a party would be a gross libel upon the very foundation of its jurisdiction, and its high claims.

§16. From a careful view of all the facts and circumstances of this case no reason can be discovered why the complainant, should not have the relief prayed. The equity is clearly ~~and~~ with him - To deny the relief is to give legal sanction to a palpable fraud by which the defendant acquires a valuable interest without, merit or any possible consideration whatever - and the complainant will be robbed of what of common right ought to be, and justly is, his own. The parties can only be put in statu quo by decreeing the relief as prayed which is the proper remedy in this case.

§17. The Complainant having prayed for relief here as well, as a reversal of the decree of the Court below, may have an order here, that the Cause be remanded to the Court below with a direction to that Court to enter a decree there in accordance with the prayer of the bill that the agreement between Complainant and Wright be delivered up to him - and the assignment thereon endorsed to the defendant be cancelled, and for his Costs in both Courts - And such order is accordingly prayed -

John E. Dorce
Appellant -

The accompanying paper treat of the legal questions as to proof pleadings &c, with the view of answering the objections of the Judge before whom the Cause was heard below that the evidence was insufficient, and that though it was evident the defendant had the start of me but he could not help me this - Paper presents my own opinion of the Case -

J. E. Dorce

293
1/2

John E. Cone
vs
A. B. Newbirk

Argument
by J. E. Cone

United States of America
State of Illinois Cook County, Jr.

Read before the Honorable
Judges of the Superior Court of Chicago within
and for the County of Cook and State of Illinois at
a regular term of said Superior Court of Chicago,
begun and holden at the Court House in the City
of Chicago in said County, on the first Monday
being the fourth day of July in the year of our Lord
One thousand eight hundred and fifty nine and
of the Independence of the United States of America
the eighty fourth.

Present the Honorable John M. Wilson
Chief Justice of Superior Court of Chicago.
Van H. Higgins and Grant Lindrick Judges.
Charles Haven Prosecuting Attorney.
John Gray Sheriff of Cook County.

Attest

Walter Kimball Clerk.

Be it remembered that heretofore, to wit,
on the 22nd day of October in the year of our Lord
Eighteen Hundred and fifty five John E. Cone
filed in the office of the Clerk of Cook County Court
of Common Pleas his certain Bill in Chancery in
words and figures of follow, to wit,

1
To the Honorable John M. Wilson
Judge of the Cook County Court of
Common Pleas, In Chancery Sitting

2

Humbly complaining sheweth unto your Honor your Orator John C. Bone Attorney at Law &c of the City of Chicago County of Cook & State of Illinois; That on or about the 21st day of September in the Year of Our Lord one thousand eight hundred and fifty four; a certain agreement in writing was made and executed by and between Charles J. Wright then of the City and County of Racine and State of Wisconsin of the one part and your Orator of the other part whereby the said Wright (in Consideration of certain services of your Orator then after to be performed) did Covenant and agree to convey to your Orator or his assigns, one tenth of the following lands in said Cook County, to wit: The West half of the North East Quarter and the East half of the North West Quarter of Section six in Township thirty nine North of Range fourteen East of the third principal Meridian, also the West half of the South West Quarter of Section twenty six in Township thirty nine North of Range thirteen East of said Meridian, also the West half of the South

West quarter of section thirty one Township thirty nine
North of Range twelve East of said Meridian,
And the half of the South West Quarter of section four
in Township thirty eight North of Range twelve East
of said Meridian.

2 As in and by the said agreement, to which your
Orator craves leave to refer when produced to this
honorable Court will appear.

3 And your Orator further sheweth unto
your Honor, That at the time of the making of the
agreement above mentioned, your Orator was indebted
unto divers persons in divers sums of money amount-
ing in all to the sum of One thousand three hundred
dollars, as computed by your Orator; and which
indebtedness was pressing upon your Orator; who
at that time had no means available for ready
payment thereof; And that your Orator at the time
above stated was desirous of paying all of his indebtedness
and of procuring a small Law library of which he stood
greatly in need - having at that time no books and
depending entirely upon the Courtesy of the legal profession
for the use of books, in important examinations of law
questions which he was at that time making; and was
also desirous of establishing himself in a business which
would give him constant employment after the busi-
ness he had then in hand should be completed.

And that at this time your Orator was prosecuting land suits for; and occupying an Office with Dr. Adamson B. Newkirk of the City of Chicago the defendant herein after named.

4 And your Orator further sheweth unto your Honor that after the making of the above mentioned agreement; before the assignment thereof as herein after set forth: The said defendant well knowing the circumstances of your Orator and pretending great friendship for your Orator offered & agreed, in consideration that your Orator should there after assign to him the contract above set forth, to immediately pay off and Cancel all of your Orator's indebtedness, and procure for your Orator law Books to the value of seven hundred dollars and to enter into a Copartnership with your Orator in buying and selling real estate - and to employ your Orator as his Attorney and Counsel in all litigation then pending between the defendant and other parties and in all future litigation when the title to; or any interest in land should come in question: Which offer on the part of the defendant was accepted by your Orator.

And there upon your Orator at the request of the defendant made out a schedule of all your Orator's indebtedness, and a Catalogue of law books which he desired should be procured, and drew duplicate copies of the Copartnership agreement between the defendant and your Orator in accordance with Memoranda

furnished by the defendant; and signed and sealed the last mentioned agreement; and delivered the same to the said defendant to be executed by him.

And your Orator further sheweth unto your Honor That afterwards, to wit; on or about the seventh day of October, in the Year of our Lord one thousand eight hundred and fifty four. Your Orator confidently relying upon the friendship and good faith of the defendant in this behalf, and being assured by the defendant that the said Copartnership agreement had been duly executed; and that he had already made arrangements to pay your Orator's debt; and had ordered the books selected by your Orator, did endorse upon said first above mentioned agreement and assignment thereof under your Orator's hand and seal unto the said defendant.

As in and by the said endorsement to which your Orator craves leave to refer, when produced to this honorable Court will appear

And your Orator further sheweth unto your Honor; That ^{on} ~~upon~~ the same day on which the said endorsement of assignment was made and before your Orator had time to ascertain the truth of the statements of the defendant; he the said defendant took the said first mentioned agreement with the endorsement thereon written as aforesaid; from the Office jointly occupied by your Orator and the defendant; without the knowledge of your Orator.

And before the delivery of said agreement & assignment to the defendant by your Orator, and filed the same in the Recorders Office of said Cook County for record; & which is recorded in Book 81, of the Records on pages 549 & 550. As will appear in and by said record when produced to this Honorable Court, and to which your Orator craves leave to refer if it shall become necessary for him so to do, and your Orator further sheweth unto your Honor that the sole and only consideration of the assignment above set forth was the faithful performance of the agreements of the defendant in that behalf as above set forth and that the defendant never paid unto your Orator any money in consideration thereof the consideration therein expressed to the contrary notwithstanding; And your Orator further sheweth that at the time the defendant assured your Orator that the copartnership agreement aforesaid was duly executed - that the same had not been signed by the defendant, and that after the agreement first above mentioned had been fraudulently put on record by the defendant as aforesaid, The said defendant utterly refused to sign the said copartnership agreement; and refused to pay or cause to be paid any of the debts of your Orator, and to refuse to procure for your Orator the books as aforesaid, Or do or perform any of the things agreed to be done and performed as aforesaid.

And your Orator further sheweth unto your Honor that the property mentioned in the first above mentioned agreement is of great value to wit, the value of twenty thousand dollars, And that your Orator has nearly completed the services in consideration of which the said property was to have been conveyed to your Orator and that the said defendant has never paid any money ~~as~~ assigned ~~to~~ your Orator to any person whatever or been to any expense by occasion of said assignment, And that the said assignment was procured by said defendant from your Orator fraudulently and without any consideration whatever.

And that your Orator has never since the date of said assignment up to the present time received any consideration therefor.

7 To the end therefore, that the said Adamson B. Newkirk, may - (his answer upon oath being expressly waived) full, direct, true and perfect answer make to all and singular the matters herein before stated as fully and particularly as if the same were herein after repeated: And that the said defendant may answer the premises: And that the said agreement between said Wright and your Orator bearing date the twenty first day of September in the Year of our Lord One thousand eight hundred and fifty four and assigned to the said defendant by endorsement thereon bearing date the 7th day of October A.D. 1854 may be decreed to be delivered up to your Orator

to have the said assignment cancelled, and that your Orator may have such further and other relief in the premises as the nature of his case shall require, & to your Honor shall deem meet.

8 May it please your Honor to grant unto your Orator the writ of Summons according to the practice of this honorable Court against the said Adamson B -
 MackenK thereby commanding him personally to be and appear before your Honor in this honorable Court at a certain day therein specified, and then and there to answer all and singular the premises, and to stand to perform, and abide such order and decree therein as to your Honor shall seem agreeable to equity and good conscience and your Orator shall ever pray

John C. Bone }
 In proper person }

John C. Bone

And afterwards to wit on the fourteenth day of January in the Year of Our Lord One thousand eight hundred & fifty six came Adamson B. MackenK, & filed in the office of the Clerk of said Court his answer, in words and figures as follows to wit

1

The State of Illinois }
Cook County } S.S.

The answer of Adamson B. Newkirk to the bill in Chancery exhibited against him by John C. Bone in the Chancery side of the Cook County Court of Common Pleas within & for the County of Cook & State of Illinois

9. And now comes the said Adamson B. Newkirk &aving and reserving to himself all and all manner of exceptions & objections to the Bill in Chancery exhibited against him by the said John C. Bone and the many and manifold errors, defects & imperfections therein contained, answering says, it is true that the said John C. Bone is by profession an Attorney and Counsellor at law, and resides in the City of Chicago, County of Cook and State of Illinois it is also true that a certain agreement in writing was made between said John C. Bone and one Charles S. Wright of the City of Racine County of Racine and State of Wisconsin and which agreement provided for the conveyance to said Bone his executors administrators and assigns, of one tenth of the lands as in said bill described, a copy of which contract is hereto attached and for greater certainty made part of this his answer but he denies that said contract was based upon any professional service by the said Complainant to be rendered for said Wright.

It is also true that said Cone as he was bound to assigned said contract or agreement to your respondent a copy of which assignment is also hereto attached and for greater certainty made part of this answer, and which contract and assignment were duly recorded in the records of deeds in Cook County Illinois in Book eighty one page ~~five~~ ^{thirty} hundred & forty nine. And the same was delivered by the Complainant to the said respondent for that purpose, & when he so made the assignment and delivered the same to your respondent he well knew your respondent would as he had a right to do place the same on record, and the allegations in said bill to the contrary thereto are untrue & false.

10

The Respondent further answering that he has heard from said Cone that he was indebted and the same was pressing him, but the nature and extent thereof he does not know and said Cone has often in Respondent's presence wished that he possessed a good law library - and your respondent to enable said Cone to better attend to Respondent's affairs purchased certain books which said Cone used while he was in Respondent's office but whatever may have been the indebtedness of the said Cone the pressing nature thereof, the wish to procure a library the same had nothing whatever to do with the assignment of said Contract by Complainant

to the respondent, That all and singular the allegations in said bill in reference to the causes or considerations that led to the making said assignment are false and untrue, that he there agreed in consideration of said assignment to pay off the indebtedness of said Complainant, to purchase him a law library worth seven hundred dollars or any sum - or to enter into partnership with Complainant in buying and selling real estate and to employ Complainant as his attorney and counsel in all litigation then pending between defendant & other parties and all future litigation, when the title to, or any interest in land should come in question and all singular the allegations in said bill in reference thereto are untrue & false that the facts in relation to said assignment and the making of the original contract with W. right are correctly and truly herein after set forth, and anything and all things in said bill contrary thereto are untrue and in no wise in accordance with the facts, and all and singular the allegations in said bill that the said assignment was obtained by fraud are untrue, That it is true that the said Complainant occupied the office of this respondent and was also engaged in prosecuting certain suits for your respondent as herein after set forth and qualified and which litigation embraced the question involved in the title of the

Wright land as herein after set forth,
And the Respondent further answering says that
at the time said Contract was made and for a
long time previous thereto & since, the said Complain-
ant was in the employ of this respondent as his
Attorney and Agent and bound to devote all his
time to your Respondents affairs and your Respondent
was paying him a stated salary therefor - a copy
of the Contract under which he was employed is
made an ~~extract~~ ^{exhibit} hereto.

12.

That your respondent believing that
the title of Wright to the lands in said Contract
mentioned to be valid & legal, and having a value-
able tract of land of his own the title of which was
affected in the same way, and which title was then
in litigation and the settling of which would settle
the questions involved in the title of the lands in
said Contract described; had been for a long
time trying to negotiate for the purchase of the
same from said Wright, and for that purpose
went to Racine repeatedly - and spent some time
there - and said Wright came to Chicago and
your Respondent in all spent much money & time
in trying to buy the lands in question or in some
way get an interest in the same, and to close the
matter in the best possible way for your respond-
ents interest, the said Complainant was sent by
your Respondent as Respondents agent to Racine,

Your respondent furnishing him the money to pay
 and paying his expenses and at the time being under
 the salary and employment of your respondent;
 and fully authorizing him to act in the premises
 and while so acting and for your respondent's be-
 nefit, the Contract in question was made &
 shortly after said Complainant's return to Chicago,
 the Complainant as in duty bound and as he ought
 to have done, assigned the same to your respondent
 and the same was placed on record with the ^{privy} ~~party~~
 and content of said Cone and was intended as it
 did in fact ^{rest} ~~entirely~~ the said contract and claims de-
 manded in your respondent; and the said Cone
 has not then nor has he now any interest what-
 ever in the same and the same both in law and
 equity belongs to your respondent.

And your respondent since then has been pro-
 ceeding to get possession of said land, and faith-
 fully striving to carry out said contract,

And whatever the said Complainant hath done
 in the premises has been under the retainer and
 employment of your respondent, your respond-
 ent having paid & become responsible for all
 costs & charges & expenses incident to the same.

And your respondent having fully answered
prays to be hence dismissed with his costs &c

Barker Shumway	}	A.B. New York
Waite & Fonne		By H. F. Hartt Waite
Defend'ts Solicitors		his Solicitors

Exhibit "A." referred to in the annexed
answer

14. This agreement made this twenty first
day of September A.D. 1854, by and between Charles
S. Wright of the City & County of Racine and
State of Wisconsin of the one part & John C. Cone
of the City of Chicago County of Cook & State of
Illinois of the other part witnesseth.
1st That the said Wright in consideration of
the services to be performed by the said Cone
as herein after specified. covenants and agrees to
convey the title in fee simple to said Cone his

vacators administrators or assigns to one tenth of the following described lands: to wit;

The West half of the North East Quarter of section six Township thirty nine North Range fourteen East of the third principal Meridian, also the East half of the North West quarter of same section township & Range, also the West half of the South West Quarter of section Twenty six in township thirty nine North Range thirteen East of said Meridian, and the half of the South West quarter of section four in Township thirty eight North of Range twelve East of said Meridian all lying & being in the County of Cook & State of Illinois, the conveyance to be made as soon as the title thereto is fully established in said Wright

2nd. That the said Bone in consideration of the covenants of Wright as aforesaid covenants and agrees to recover the property above described, which said property was sold under an execution from the municipal Court of the City of Chicago N^o 1183. For that purpose prosecute to final judgment any tract suit or suits which may be necessary for that purpose and to use all reasonable diligence to accomplish the same and clear the title to the property aforesaid as soon as the same can be done by due course of law.

In witness whereof the parties

have hereunto set their hands & seals the day & Year above written

Charles S. Wright 

John C. Cone 

16 In consideration of One thousand dollars I hereby assign my interest in the above agreement to Adamson B Newkirk of the City of Chicago County of Cook State of Illinois. And said Newkirk hereby agrees to perform all the agreements or Covenants on my part to be performed by virtue thereof.

Witness my hand & seal at Chicago this seventh day of October A.D. 1854.

Signed - John C. Cone 

c1^o 54,025

State of Illinois }
County of Cook } S.P.

Filed for Record October
7th 1854 Recorded in Book 81 page 549.
L. D. Hoard clk.

Agreement, _____

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

1st — The party of the first part agrees to give
the party of the second part, the full and ex-
clusive benefit of all information he now has or
may hereafter (during the continuance of this agree-
ment) acquire of and concerning the title to real
property in the County of Cook aforesaid and
for that purpose will examine the record in the
Office of said County - and enter in a book to be
furnished by said party of the second part minia-
tures or abstracts of ^{the title to each tract or tract of} land situated in said County
to which there are adverse titles and interests - as
in the opinion of the said party of the first part -
are worth entering in said Book for the purpose
& best interests of said party of the second part,
and to do such other professional business as the
said party of the second part may require him
the said party of the first part to do in & about
his (the party of the second parties) own business
and not otherwise _____

17

2nd The party of the second part agrees to pay the party of the first part the sum of five hundred dollars per annum for his services to be rendered as aforesaid in monthly payments - to wit - forty one dollars & sixty seven cents in each and every month during the continuance of this agreement -

Also to pay for all disbursements made by party of first part in doing the business aforesaid as the same shall be necessary from time to time -

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

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

John C. Cone

Seal

A. B. Newkirk

Seal

~~And afterwards to wit on the fourth day of January~~
~~for the~~

And afterwards to wit, in the sixth day of January ~~came~~
in the year of our Lord one thousand eight hundred and
fifty seven came John E. Cone and filed in the office
of said clerk his Replication in words and figures
as follows, to wit,

In the Cook County Court of
Common Pleas & Chancery

19. The replication of John E. Cone complainant to the
answer of Adamson B. Newkirk defendant.

This repliant serving and preserving unto himself acc
and all manner of advantage of exception to the
manifest insufficiencies of the said answer for
replication thereunto saith that he will aver and
prove his said bill to be true, certain, and suf-
ficient in law to be answered unto, and that the said
defendant is uncertain, untrue, and insufficient to be
replied unto by this repliant; Without this, that
any other matter or thing whatsoever in the said an-
swer contained; material or effectual in the law to
be replied unto, confessed and avoided, traversed or
denied is true; All which matters and things this
repliant is, and will be ready to aver and prove
as the Honorable Court shall direct, and humbly
prays as in and by his said bill he hath

1

To the Honorable John M. Wilson
Judge of the Cook County Court of
Common Pleas in Chancery Sitting

Humbly complaining sheweth unto
your Honor your Orator Adamson B.
Newark of the County aforesaid -

135/John
21
That John C. Bone of said County,
the defendant herein after mentioned on the
22nd day of October 1853. filed his bill of complaint
in this Honorable Court, against your Orator
setting forth that on or about the 21st day of Sep-
tember 1854 a certain agreement in writing was
made and executed by and between Charles S.
Wright of the City and County of Racine and
State of Wisconsin of the one part and the said
defendant of the other part whereby the said
Wright (in consideration of certain services then
then after to be performed by said defendant for
said Wright) did covenant and agree to con-
vey to the said defendant one tenth part of the
lands in said bill described.

To Wit, the West half of the North East quarter
and the East half of the North West quarter of
Section six in Township thirty nine North of Range
fourteen East of the third principal Meridian.

And the West half of the South West quarter
of Section twenty six in Township thirty nine -

North of Range thirteen East of said Meridian -
And the West half of South West quarter of
Section thirty one in Township thirty nine North
of Range twelve East of said Meridian - and the
— half of the South West quarter of section four in
Township thirty eight North of Range twelve East of
said Meridian,

22 Also showing that at the time of the making
of said agreement the said defendant was indebted
unto divers persons in divers sums of money amounting
in all to the sum of One thousand and three hundred
dollars and that the said defendant was desirous
of obtaining a small law library, and was also
desirous of establishing himself in business which
would give him constant employment

Also showing that after the making of said
agreement between said defendant and said
Wright your Orator agreed in consideration that
said defendant would assign said agreement to
your Orator to pay the aforesaid indebtedness of said
defendant, and procure for the said defendant a
law library of the value of seven hundred dollars,
and enter into a Copartnership with said defend-
ant in buying and selling Real Estate and to employ
said defendant as Attorney and Counsel in all
litigation then pending between your Orator & other

faithful performance of the agreements of your Orator in that behalf as above set forth, and that your Orator never paid said defendant any money in consideration thereof, and that at the time your Orator assured said defendant that the said copartnership agreement was duly executed ~~and~~ that it had not been signed by your Orator and that after the said agreement was ^{so} put on record by your Orator, Your Orator refused to sign said copartnership agreement, and refused to pay or cause to be paid any of the aforesaid debts of said defendant, & refused to procure for said defendant the books aforesaid and to do or perform any of the things by him agreed to be done and performed as aforesaid.

24

And, showing that the aforesaid real estate was of great value, to wit, of the value of twenty thousand dollars and that said defendant had performed or nearly completed the services in consideration of which the said property was to have been conveyed to said defendant & that your Orator had never paid any money as assignee of said defendant to ~~any~~ person whatever or been to any expense by occasion of said assignment and that said assignment was procured by your Orator fraudulently without any consideration whatever, and that the said defendant had never received any thing for it.

And by said bill praying that said agreement made between said defendant &

said Wright bearing date the twenty first day of September 1854, and assigned by said defendant to your Orator as aforesaid upon the 7th day of October 1854 may be ~~decided~~^{decided} to be delivered up to said defendant & to have said assignment cancelled, and also praying for answer and process.

25 And your Orator being duly served with process of summons appeared and put in his answer thereto, to which answer the said John E. Bone, the defendant, herein, replied, and issue being thus ^{joined} ~~joined~~ the proofs were ordered to be closed upon the part of your Orator on or before the first day of March 1858 as by the said bill, answer, replication and other proceedings in said cause ~~now~~^{now} remaining in this Honorable Court, reference being thereunto had will more fully appear.

And your Orator further sheweth unto your Honor that previous to the filing of the said defendants said bill of Complaint to wit upon the 27th day of August 1854 the said defendant commenced an action upon the common law side of this Honorable Court against your Orator, in assumpsit claiming dollars damages of your Orator for services before that time rendered, by said defendant for your Orator and for the breach by your Orator of divers

contracts made with said defendant, and issue being
^{joined} ~~joined~~ in said action at law, said cause came on for
trial upon the sixth day of October 1856, and thereupon
a jury of twelve lawful Men was empanelled and
sworn to try the matters and things in the said issue.
^{joined} ~~joined~~.

26. And the said defendant offered
in evidence, testimony tending to prove that the said
defendant went two or three times to Wisconsin to buy
the - Wright - property for your Orator and upon the
trial of said suit at law the said defendant sought
to recover the value of his, said defendant's services in
the purchase of the Wright property, and the evidence
in relation thereto was submitted to the consideration of
the said jury upon the trial of said action at law.

And your Orator further sheweth that the Wright
property herein before mentioned is the same real estate
said first mentioned agreement and in said defendant's
said bill of Complaint described and none other

And your Orator further sheweth unto your
Honor that the said defendant also offered evidence
upon the trial of said action at law tending to prove
that your Orator had promised to pay the indebted-
ness of the said defendant which was exist^{ing} at the
time of the assignment of the said agreement to
your Orator and that your Orator had promised

to purchase a law library for said defendant, and the evidence in relation thereto was admitted by the Court and was submitted to the consideration of the jury in the trial of said action at law.

27

And your Orator further sheweth unto your Honor that afterwards the aforesaid jury rendered a verdict in said action at law in favor of the said defendant John C. Bone against your Orator for the sum of Eighteen thousand two hundred & fifty dollars damages and judgment was thereupon rendered against your Orator in said Cook County Court of Common Pleas upon the 8th day of October 1856. for the aforesaid sum of eighteen thousand two hundred and fifty dollars damages & his costs.

And your Orator further sheweth unto your Honor that your Orator praying an appeal from the judgment aforesaid to the Supreme Court of Illinois which appeal was allowed and the case passed to the said Supreme Court, and afterwards, at the April Term 1857, of said Supreme Court, the judgment aforesaid was affirmed and the cause remanded for execution, and the said defendant did afterwards upon the 14th day of June 1857. take out of and the seal of said Court a writ of execution for the sum of Eighteen thousand two hundred and fifty dollars damages and costs taxed at fifty two dollars & five cents

including the costs of your Orator which execution was directed to & delivered to the Sheriff of Cook County whereby the said Sheriff was commanded to make the aforesaid sums of money of the property of your Orator & afterwards upon the 22nd day of August 1857 said execution was returned into said Court by said Sheriff fully satisfied as by the declaration, pleas & other proceedings and the record of said action at law now remaining in said Court will appear reference thereto being had

28.

And your Orator further sheweth unto your Honor that by the said judgment in the said suit at law, the said defendant recovered damages sustained by him if any for the alleged breaches of the several promises in said defendant's bill of complaint alleged to have been made by your Orator at the consideration of the said assignment of said Wright agreement by said defendant to your Orator, & by the satisfaction of said judgment as aforesaid was thereby satisfied.

And your Orator further sheweth unto your Honor that your Orator's aforesaid answer to said defendant's said bill of complaint was filed in said Court upon the 14th day of January 1856, and issue was thereon ^{joined} ~~joined~~ before the trial of said suit at law and before the judgment therein.

And your Orator further shows unto your Honor that under the circumstances aforesaid he is unable to put said judgment in issue or to use the same as a plea in bar to said defendants said bill of complaint and that the said suit in Chancery has not been heard or determined but is still pending

29. And your Orator will hoped that in consequence of said judgment by him recovered as aforesaid against your Orator, that the said John C. Cone would not have proceeded with his said suit in Chancery against your Orator, but the said J. C. Cone combining and confederating &c. notwithstanding the said judgment by him so recovered as aforesaid against your Orator, threatens and pretends in his said suit in Chancery & bring the same on for hearing in due course,

All of which actions and doings are contrary to equity and good conscience and tend to the manifest injury and oppression of your Orator

In consideration whereof and for as much as your Orator has no remedy without the assistance of a Court of equity

To the end therefore that the said John C. Cone, may full true and perfect answer make

to all and singular the matters herein set forth, (and was
under oath being hereby expressly received) and that
the said judgment so recovered by said defendant as
aforesaid against your Orator, may be declared
by this Honorable Court a sufficient bar to any further
proceedings by the said John B. Cone in his said
suit in Chancery against your Orator and that the
said bill of the said Cone therein, may under the circum-
stances be forth with dismissed with costs, and that
your Orator may have such other and further relief in
the premises as the nature of his case shall require &
as shall be agreeable to equity and good conscience.

30

And may it please your Honor to grant unto
your Orator a writ of summons issuing out of &
under the seal of this Honorable Court, to be directed
to the said John B. Cone commanding him by a
certain day therein to be inserted, to be and appear
before this Honorable Court, and then and there to
answer the premises and further to stand to and
abide such order and decree therein as shall be agree-
able to equity and good conscience.

And your Orator shall ever pray,

Adamson B. Muokirk
by L. H. Hyatt his Sol^r

L. H. Hyatt
Sol^r for Orator

And afterwards to wit on the fourth day of January
in the year of our Lord Eighteen Hundred and
fifty seven said day being one of the days of the
January Term of said Court the following among other
proceedings was had and entered of Record as follows
to wit.

John E. Cline

vs

David

Adamson & B. Newkirk

On motion of Complainant in his
own proper person it is ordered that proofs in this cause be
closed by first day of March next.

And afterwards to wit on the twenty
sixth day of February Eighteen Hundred
fifty eight there was filed in the office
of said Clerk certain depositions in said
cause which said depositions are as
follows to wit

Deposition of G. W. A. Cow

In Cook County Court of Common Pleas.

John C. Bone
vs.
Adamson & B. Newkirk

} In Chancery

Deposition of G. W. I. Bone aged years
a witness in the above entitled suit taken by John
Justice King & Esq. a Justice of the Peace of the County of
Cook & State of Illinois at his office in the City of
Chicago in said County in the presence of the said
Plaintiff on the part of said plaintiff

Sp 4, 00

Cook County I. I.

George W. I. Bone being duly
sworn deposes and says as follows. viz.

1st Interrogatory:

What is your name occupation
and place of Residence.

Answer,

My name is Geo. W. I. Bone I am an
attorney at Law My place of Residence is in the
City of Chicago Illinois.

This examination is adjourned to Friday ~~March 20th~~
the 20th inst. at 9 o'clock A. M..

March 20th 1857. This examination resumed^{ed}.

2nd Interrogatory.

Are you acquainted with the Plaintiff & Defendant in this suit if Yes how long have you known them or either of them?

Answer.

I am acquainted with both the Plff. and Defendant am the Brother of the Plaintiff have known the Defendant 4 Years have been personally acquainted with him three Years

3rd Interrogatory:

How and under what circumstances have you been acquainted with the Defendant

33.

I occupied the same Office with the defendant from May 1854 to August A.D. 1855.

4th Interrogatory.

What do you know of the business transactions between the Plaintiff & the Defendant during the time you have known the defendant and if you know anything state fully what you know in relation thereto.

Answer.

I am considerably acquainted with the business transactions between the parties from March 1854. to August 1855 I know that in March

1854, the plaintiff was employed by the defendant to
examine purchase & litigate titles to certain lands in
the city of Chicago. I think in April following the
Plaintiff went into the office with the defendant and
occupied an office with the defendant until about the
middle of August 1855. I know that at the time or
before the Plaintiff's commencing business for the de-
fendant there was a written contract made between
them a copy of which is contained in the answer of the
defendant in this suit. I know that upon a Saturday
evening somewhere from the 15th to 20th of April 1854,
or about 3 or 4 weeks after the plaintiff had commenced
business for the defendant the Plff^t sat down and wrote
a notice which he ~~said~~^{read} to me directed to the defendant
and notifying the defendant of the termination of said
written contract, on the following Monday I was re-
quested by the defendant to go to his office where I
went & the defendant there told me that he had re-
ceived the said notice together with a note or letter both
of which I think the defendant took from his pocket
& read the same to me, the defendant said to me
that he had not intended to hold the plaintiff to the
terms of the contract & requested me to say to the plain-
tiff that if the plaintiff would go on with his the
defendant's business he should be paid what was right
and reasonable, the Plff^t did go on with the defend-
ant's business, the title to certain lands in Section 18.
Town 39 Range 14 was purchased by the defendant

and suit was brought by the plaintiff as attorney for the defendant, against Rosella Chapron for the recovery of a part of the same. And I know that from time to time during the summer of 1854 - numerous attempts were made by the defendant & by the Plffs for the defendant to purchase of one Charles S. Wright of Racine Wisconsin the title to certain Lands in the City of Chicago and other lands situated in the County of Cook, the said lands in this City being a One hundred and sixty^{one} tract in Section 6, Town 39, Range 14, East of third principal Meridian all of which attempts to purchase as aforesaid failed.

35

Negotiations between the defendant and said Wright for the purchase of the lands as aforesaid, were kept up however until & I think during the winter of 1854 & 1855, some time in the latter part of the winter in 1855, I saw the said Wright in the office of the defendant he was in conversation with the defendant in relation to the negotiations of purchase of lands above mentioned and I heard Wright then & there say that he had concluded not to sell the lands in question unless he could get his price for them. He Wright said that he had made an agreement with the plaintiff to litigate the title by which the plaintiff was to receive one tenth of the lands recovered & that he could get along without selling and thought he might as well make the speculation himself as any body, the defendant refused to give

the price asked by the said Wright & as far as I know the negotiations aforesaid here ended.

The agreement between the said Wright and the Plaintiff spoken of by the said Wright in his conversation with the defendant as aforesaid was a written agreement. I have seen and read the agreement I think it is dated about the 21st of September 1854, it is now recorded in the Recorder's office of Cook County, Illinois, sometime shortly after the making the last mentioned agreement the Plaintiff as attorney of the said Wright brought suit in the name of the said Wright against one Nathan Allen of the City of Chicago in the United States circuit Court for the district of Illinois for the recovery of a part of the lands last mentioned and for the purpose of testing the title to the whole of said lands, and I know further that sometime in the fall of 1854 either in September or October & after the date of the contract between Wright and the Plaintiff there was an arrangement partially concluded between this Plaintiff and defendant by which this Plaintiff was to assign the last mentioned contract to the defendant & devote all of his time & legal knowledge to the examination & litigation of land titles which the defendant should purchase - and the defendant was to devote his time to purchasing titles where he was directed so to do by the legal opinion of this Plaintiff together with his own judgment & the defendant was to furnish money necessary for the purchases

and was to pay and cancel the indebtedness of this plaintiff and an agreement was reduced to writing between the plaintiff and the defendant for a copartnership whereby this plaintiff was to have one third and the defendant two thirds of the profits arising out of the purchase & recovery by litigation or otherwise of Real Estate that the parties should purchase, which draft of written agreement I afterwards saw in the possession of the defendant and the defendant then said to me that he should not execute it saying that it was not written as he understood the contract & asked me if I did not understand the agreement to exclude the Wright matter that he understood that any subsequent purchase that he might make of the Wright lands was to be excluded from the partnership. I told him that I understood it otherwise, pending this conversation the plaintiff came into the office where this conversation took place the plaintiff & Defendant then commenced conversation the plaintiff claiming that the agreement was to include all purchases made after the date that it was agreed upon whether from Wright or anybody else, the defendant said that the agreement was all right except the including purchases that might be made of Wright and that he would not sign the agreement, before this however I saw the plaintiff write an assignment of the agreement between Wright and this plaintiff before mentioned to the defendant. I told the plaintiff not to sign the

assignment until the agreement between him and the defendant had been first executed, Plaintiff said he should not deliver it (the assignment) until the said agreement between him and the defendant was all fixed up. I did not see the assigned agreement afterwards until I saw it at the Recorder's office on Record, but the agreement of Partnership ~~entered into~~ was never executed nor any copartnership entered into nor did the defendant pay any debts of the Plaintiff so far as I know & believe.

5th Interrogatory,

88

Have you stated all you know in relation to the assignment of the Contract between this Plaintiff & Wright to this defendant? if not now state fully what else you know in relation to said assignment or the delivery thereof to the said defendant

Answer,

I have stated all that I now think of except that at a conversation between this Plaintiff and defendant had sometime in August 1855, in my presence I heard the Plaintiff say to the defendant that he (the defendant) had taken the assigned contract with the assignment out of the office without his (the Plaintiff's) knowledge or consent and filed it in the Recorder's office for Record

and that he (the plaintiff) had never received any thing as a consideration therefor and that he (the plaintiff) should take legal measures to set said assignment aside. — The Defendant replied go ahead and do your best. I can think of nothing further in relation to the assignment

George W. I. Cone. —

39
I do hereby certify the above and foregoing depositions of George W. I. Cone was sworn to and signed by the deponent before me and in my presence and that the said deposition was taken by me on the 17th & 20th days of March A.D. 1857. at my office in the City of Chicago County of Cook & State of Illinois, between the hours of 9 O'clock A.M. & 6 O'clock P.M., in the evening of said days

GIVEN under my hand and Seal this twentieth day of March A.D. 1857.
John King  (Seal)
Justice of the Peace

In Cook County Court of Common Pleas

John C. Cone

— vs. —

Adamson B. Newkirk

In Chancery

Judicial fee

\$ 3.00

Deposition of William H. Bradley aged ^{Years & Days}
Witness in the above entitled suit taken by John H. [unclear]
a Justice of the Peace of the County of Cook & State
of Illinois at his Office in the City of Chicago in said
County in the presence of the said Plaintiff on the
part of said Plaintiff.

40

Cook County S.S.

William H. Bradley being duly
sworn deposes & says as follows (viz):

1st Interrogatory:

What is your Name occupation
and place of residence:

Answer - My Name is William H. Bradley
am Clerk of the Circuit Court of the U States
for the Northern district of Illinois & I reside
in the City of Chicago Illinois

2nd Interrogatory:

Are you acquainted with the Plaintiff and Defendant in this suit or either of them if ~~you~~^{you} how long have you known them or either of them

Answer -

I am acquainted with the plaintiff but am not acquainted with the defendant in this suit have known the plaintiff since April A.D. 1855.

3rd Interrogatory:

471 What (if you know) has been the business of the plaintiff during the time you have known him:

Answer.

He has been practising as an Attorney and Counsellor at Law

4th Interrogatory:

Do you remember anything in relation to a certain suit depending in the United States Circuit Court for the Northern District of Illinois - brought by Charles G. Wright late of Racine in Wisconsin against Nathan Allen of the City of Chicago for the recovery of certain real Estate situated in said City of Chicago in which a large amount of property was involved

-ord-?

(over)

6th Interrogatory:

Was there any counsel other than this Plaintiff engaged in the argument or otherwise in the said suit of Wright vs. Allen.

Answer,

There was no other counsel either ~~aiding~~ or assisting on the part of the Plaintiff either in the trial or argument of the cause.

Wm H. Bradley.

43.

I do hereby certify that the above and foregoing depositions of William H. Bradley was sworn to and signed by the defendant before me and in my presence and that the said deposition was taken by me on the 14th day of March A D 1857. at my Office in the City of Chicago County of Cook and State of Illinois between the hours of 9 O'clock A. M. and 6 O'clock P. M. in the evening of said day.

Given under my hand & Seal this
day of A D. 1857.

John King  (Seal)
Justice of the Peace.

44

And afterwards to wit on the eleventh day of March
in the year aforesaid came John E. Cane and filed
in ^{the} office of the Clerk aforesaid his answer to the
crip bill herein in words and figures as follows to
wit,

1
49
The answer of John C. Bone the defendant to the cross bill of Adamson B. New Kirk filed in the case of John C. Bone against said Adamson B. New Kirk - in the Cook County Court of Common Pleas, this defendant reserving to himself all right of exception to the said cross bill, for answer thereto saith - That this defendant admits the filing of his bill of Complaint in the Cook County Court of Common Pleas against said complainant as charged in said cross bill setting forth and showing the matters substantially as in said cross bill charged & stated as will more fully appear by said bill now on file in this honorable Court and to which this defendant for greater certainty refers: and asks that the same may be taken as a part of his answer in this behalf.

And this defendant further answering saith that the said Complainant was served with process and appeared and put in his answer (to said original bill filed by this defendant) on the 14th day of January 1856, and that this defendant on the 7th day of January A.D. 1857, filed a replication thereto and proceeded to take proofs on his part, which were closed on or about the 20th day of March A.D. 1857, and the said Complainant neglecting to take proofs in the case - this defendant for the purpose of speeding the cause at the Term A.D. 1857 of this honorable Court moved for an order for the defendant to

close proofs, and an order was entered that the proofs should be closed by the first day of March A.D. 1853, as will more fully appear by the papers & records in said cause now on file in this Honorable Court and which this defendant prays may be taken as a part of his answer in this behalf.

46 And this defendant further answering saith that previous to the filing of this defendants bill of Complaint (but not on the 29th day of August 1854 - as the complainant in his said cross bill falsely alledged) this defendant commenced an action on the common law side of this Honorable Court against said complainant in assumpsit for work labor &c and not for damages for the breach of a contract or any contracts made with said complainant (as he has in & by his said cross bill falsely alledged) which will more fully and at large appear by the declaration of this defendant filed in said Common law suit on the 31st day of August A.D. 1853. a copy of which declaration is hereto attached marked "A" and which this defendant prays may be taken as a part of his answer in this behalf.

And this defendant further answering saith that said complainant filed his pleas in said common law suit on the 17th day of September 1853. - a copy of which pleas, are on file in this Honorable Court (which this defendant refers and prays they may be taken as a part of this answer) by which

as above stated being joined the said cause came on for trial upon the 6th day of October A.D. 1856. and a jury was empannelled and sworn to try the issues joined as aforesaid.

98 And this defendant further answering saith That by the said judgement in the said action at law (set up in said cross bill) this defendant did not recover any damages or compensation for the breach of the several promises in said defendants said bill of complaint alledged to have been made by said complainant (in said cross bill) as the consideration of the assignment of said Wright agreement by said defendant to said complainant, Nor was by the satisfaction of said judgement as aforesaid thereby satisfied, as is falsely alledged in said cross bill, as will more fully appear by the pleadings and proceedings in said action at law & by the record thereof now remaining in this Honorable Court and to which this defendant refers and prays the same may be taken as a part of this answer.

And this defendant further answering saith that said complainants answer to said defendants bill was filed in said Court upon the 14th day of January 1856, but that issue was not joined thereon until the 7th day of January 1857, and after the trial of said suit at law & after the judgement

in this behalf most eloquently sustained.

51.

John C. Bone

John C. Bone
In Pro. Per

Exhibit referred to in foregoing answer.

 A

State of Illinois }
Cook County } S.D.

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

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

52

John C. Cone plaintiff in
this suit by G. W. I. Cone his attorney comes & complains
against Adamson B. Newkirk defendant in a
plea of trespass upon the case upon promises.

For that whereas the said defendant on the
sixteenth day of August A.D. One thousand eight
hundred & fifty five, at the City of Chicago County
of Cook & State of Illinois was indebted unto said
plaintiff in the sum of fifty thousand dollars lawful
money of the United States for the work and labour
skill, care, diligence and attendances of the said
plaintiff by the said plaintiff before that time done
performed & bestowed. as the Attorney & Solicitor of & for

the said defendant and upon his retainer, in and about the prosecuting, defending & soliciting, of divers, causes, suits and business for the said defendant, and for fees due and of right payable to the said Plaintiff in respect thereof, and also for other the work and labor ~~which~~ care diligence and attendance of the said Plaintiff before that time done performed & bestowed in and about the examining of the records of the public offices abstracting the title to lands, and drawing Copying and engraving of divers conveyances, deeds & writings, for the said defendant and in and about other the business of the said defendant and for the said defendant and at his special instance and request.

And also for divers journeys and other attendance by the said Plaintiff before then made performed and given in and about the said business and other the business of the said defendant, and for the said defendant and at his like special instance & request, & being so indebted to the said defendant in consideration thereof afterwards to wit; on the day and year last aforesaid at Chicago aforesaid undertook and then and there faithfully promised the said Plaintiff to pay him the said last mentioned sum of money when he the said defendant should be thereunto afterwards requested.

And whereas also afterwards to wit on the day & year
last aforesaid at Chicago aforesaid in consideration
that the said plaintiff, at the like special instance
and request of the said defendant had before that
time done performed bestowed & given other work
and labor, skill care diligence and attendance, the
attorney and solicitor of and for the said defendant
and upon his retainer in and about the prosecuting
defending and soliciting of divers other causes suits
and business for the said defendant, and had also
at the like special instance and request of the said
defendant before that time done performed & bestowed
other his work and labor, skill care diligence and
attendance in and about the examining other
public records, and abstracting the title to other lands
and drawing copying and engraving of divers
other conveyances deeds and writings for the said
defendant and in and about other the business of
the said defendant and for the said defendant and
had also at the like special instance and request
of the said defendant before that time made per-
formed and given other journeyes and attendances
in and about other the business of the said defendant
and for the said defendant, he the said defendant
undertook and then and there faithfully promised the
said plaintiff to pay him so much money as he then
for reasonably deserved to have of the said defendant
when he the said defendant should be thereunto after.

wards requested, And the said plaintiff avers that he therefore reasonably deserved to have of the said defendant the further sum of fifty thousand dollars of like lawful money, to wit, at Chicago aforesaid whereof the said defendant afterwards to wit on the day and Year last aforesaid there had notice.

45 And whereas also the said defendant afterwards to wit on the day and Year last aforesaid at Chicago aforesaid was indebted to the said plaintiff in the further sum of fifty thousand dollars of like lawful money of the United States for the work & labor, Skill care, diligence & attendance of the said plaintiff by the said plaintiff before that time done performed & bestowed as the attorney of and for the said defendant and upon his retainer in and about the acquiring by purchase for and in the name of said defendant of the title to divers pieces and parcels of land of great value to wit of the value to said defendant of two hundred and fifty thousand dollars and also for divers journeys & other attendances by the said plaintiff before then made performed and given in and about the said business and other the business of the said defendant and for the said defendant and at his like Special instance Request, and being so indebted he the said defendant in consideration thereof afterwards to wit on the day and Year last aforesaid undertook & then and there faithfully promised the said plaintiff to pay him the ^{said} last mentioned sum of money when

he the said defendant should be thereunto afterwards requested.

56 And whereas afterwards to wit on the day and year last aforesaid at Chicago aforesaid in consideration that the said plaintiff at the like special instance and request of the said defendant had before that time done performed bestowed & given other his work & labor, skill care diligence & attendance as the attorney of and for the said defendant and upon his retainer and about the purchasing for said defendant other large & valuable pieces & parcels of land of great value to said defendant to wit the value of two hundred & fifty thousand dollars, and had also at the like special instance and request of the said defendant before that time made performed & given divers other journeys and attendance in & about other the business of the said defendant & for the said defendant, he the said defendant undertook and then and there faithfully promised the said plaintiff to pay him so much money as he therefor reasonably deserved to have of the said defendant when he the said defendant should be thereunto afterwards requested; And the said plaintiff avers that he therefor reasonably deserved to have of the said defendant the further sum of fifty thousand dollars of like lawful money, to wit; at Chicago aforesaid whereof the said defendant afterwards to wit, on the day and year last aforesaid then had notice.

54.

And whereas also the said defendant afterwards to wit on the day and year last aforesaid at Chicago aforesaid was indebted to the said plaintiff in the further sum of fifty thousand dollars of like lawful money, for the work & labor, care & diligence of the said plaintiff by the said plaintiff before that time done performed & bestowed in and about the business of the said defendant and for the said defendant and at his special instance and request and being so indebted he the said defendant in consideration thereof afterwards to wit on the day and year last aforesaid at Chicago aforesaid undertook and then & there faithfully promised the said plaintiff to pay him the ^{said} last mentioned sum of money when he the said defendant should be thereunto afterwards requested.

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

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

48 And whereas the said defendant to wit; on the day and year last aforesaid at Chicago aforesaid was indebted to the said plaintiff in the further sum of fifty thousand dollars of like lawful money for so much money by the said plaintiff before that time lent and advanced to the said defendant at his special instance and request, also for so much other money by the said plaintiff before that time paid laid out and expended, to and for the use of the said defendant, at his like special instance and request, also for so much other money by the said defendant before that time had and received to and for the use of said plaintiff, and being so indebted he the said defendant to wit, on the day and year last aforesaid at Chicago aforesaid, undertook and then and there faithfully promised the said plaintiff to pay him the last mentioned sums of money, when he the said defendant should be thereunto afterwards requested

Nevertheless the said defendant not regarding his said several promises and undertakings but contriving and fraudulently ^{tending} ~~inducing~~ craftily and subtly to

deceive and defraud the said plaintiff in this behalf hath not as yet paid the said several sums of money or any or either of them or any part thereof to the said plaintiff (although often requested so to do) but the said defendant to pay him "the said sum" hath hitherto wholly neglected and refused, and still doth neglect and refuse to the damage of the said plaintiff of fifty thousand dollars and therefore he brings his suit

G. W. Stone
Plaintiffs attorney.

Particulars of Plaintiffs demand

For services as attorney from the sixteenth (16) of March A.D. 1854 to the 15 th day of August A.D. 1855	\$ 52,000. 00
For Money advanced during the above specified time	\$ 500. 00

(over)

Items of Service

To Service in purchasing the W 1/2 N.E. 1/4 Sec 18, T 39 R 14. \$2000.00
To Service in purchasing lots in block 64 Sch. Sec. add. to Chicago \$300.00
To Services in examining records in Bankrupt cases at Springfield \$1000.00
To Services in the matter of Thibault & ~~F~~ at St. Louis. \$2000.00
To Services in the Matter of the Beauchien property at Detroit \$2000.00
To Services in the Matter of the Campbell property in Ill & \$500.00
To Journeys to Wisconsin \$1000.00
To Services in making general examination of the public Records ^{of Cook Co} \$2000.00
To Services in defending suit of Wahlhuber vs. Adams \$500.00
To Services in prosecuting suit of Newkirk vs. Chapman \$10000.00
Total Amount \$52500.00

Q.D.

(Upon the back of this declaration are the following
endorsements)

"8267. book Co. Ct. of C. P. September Term A2,
1855, John C. Cone vs. A. B. Newkirk

Nav. Filed August 31st 1855

W. Kimball Clk.

J. W. I. Cone Atty

John C. Cone
Defendant

And afterwards to wit on the fifteenth day of March in the year of our Lord one thousand eight hundred and fifty eight said day being on of the days of the February Term of said Court. The following among other proceedings was had and entered of Record as follows to wit,

John E. Case

vs

Wm B. Newkirk

61.

Adams vs B. Newkirk

This day comes said Complainant by himself in person and files herein his motion on which it is ordered that this cause be set for hearing at April Term next.

And afterwards to wit on the nineteenth day of March in the year aforesaid said Defendant and filed in the office of the Clerk aforesaid certain depositions in words and figures as follows to wit.

State of Illinois)
Cook County)^{ss}

Cook Co Court Com Pleas
In Chancery

John B Cone }
Vs } Dependents depositions
Adamson & Newkirk }

62 The Depositions of Joseph A
Parker, William Beddard, Henry T O Sey-
mour and Phineas O Donnell, witnesses
produced and sworn on the part and be-
half of the defendants in the above entitled
cause at the office of S C Faine Freer,
Master in Chancery of Cook County, State
of Illinois upon the several interrogatories
and Cross interrogatories herein following.
propounded by the Solicitor of the said def-
-endant and the Complainant in proprius
personum.

Interrogatories propounded to Joseph A Parker
produced and sworn on the part of the said
defendants.

The Complainant in proprius personum objected
to the witness Parker being sworn in this cause

1st Int. — What is your name age and occupation and place of residence, and are you acquainted with the parties to this suit, or either of them, and how long have you known them, or either of them.

Ans. — My name is Joseph M. Parker, I am 33 years of age, an Attorney at Law by profession and reside in Chicago. I am acquainted with both the parties to this suit, I have known the complainant about five years, and the defendant about twenty years.

Q3. 2^d Int. — Do you know any thing about the business relations between Plaintiff and defendant during the years 1854 & 1855, if you state what it was. (Int objected to by Compl)

Ans. — Yes Sir I think I do — In the Spring of 1854, Defendant engaged Compl^t as I was informed by both of them to look up defective titles, and aid in the purchase and perfecting such titles at a salary of Five Hundred dollars a year. I know that for some time he was at work under such an agreement, as he stated himself to me.

3^d Int. — Down to how late a period do you know

that he declared that he was at work under such an agreement. —
(Dnt objected to by Complt)

Ans — I know from conversation with Mr Cone that he was at work under such an agreement until some time after the trial of the case of Newkirk Versus Chapman, which I think was in June 1855, and after that case had been appealed to the Supreme Court. —

64. 4th Dnt. — Do you know any thing about the negotiations between the defendant and Wright and the Plaintiff for the purchase of the Wright property, and what are your means of information
(Dnt objected to by Complt)

Ans — I did know about that negotiation. My information was from both parties in conversation together in my presence, and from Complt. Separately when alone.

5th Dnt. — What did you know, or do you know about that negotiation. —
(Dnt objected to by Complt.)

Ans— Mr Cone stated to me, that he had found the owner of certain defective titles, one of which lies on the North Western Plank Road. I think that he was in negotiation for the purchase of the Patent title with the owner a Mr Wright of Racine, I think at any rate of Wisconsin. That if he succeeded in getting it for a nominal sum, it would be the best thing for Dr Newbirk the defendant, that he had ever got up, as the lands were very valuable. — He stated that he was going to see the owner of these lands, to perfect the purchase if possible. I know from himself in these conversations, that he went two or three times, he did not at first succeed, afterwards that he went up and concluded an arrangement for one tenth, as he stated for prosecuting, that he had to take it in his own name, as he could not effect an arrangement in the defendant's name

65
Cth Int— Do you know of defendant getting Complainant's money for the purpose of going to Wisconsin to conclude this contract. (Int objected to by Compt.,)

Ans- I do not of my own knowledge. -

7th Int. - Is there any other thing which you now think of relative to this transaction, which you have not testified to. -

(Int objected to by Comp^{ts}.)

Ans. - I do not know of any thing else.

66

8th Int. - Are you acquainted with the hand-writing and Signature of the Complainant, if you examine the paper now here shown to you purporting to be an agreement between the parties to this suit, dated March 20th 1854. State in whose hand writing the said Instrument, and whether it is signed by the Complainant, and make the said Agreement an Exhibit and part of your answer to his Interrogatory. -

(Int objected to by Comp^{ts}.)

Ans. - I am acquainted with the hand-writing of the Complainant and his signature. - I have examined the paper referred to in the interrogatory. -

The body of the said agreement and the signature purporting to be that of the Complainant, are the genuine hand-

-writing and signature of said Complainant,
said agreement marked Exhibit 1, by the
Master in Chancery. —

9th Int. — Have You Examined the Endorse-
-ments on the back of Exhibit No 1, if so
in whose hand writing are they, and
whose signature is affixed thereto,
(Cont objected to by Comp^{ts})

Ans. — I have Examined the Endorsements
on the back of said Exhibit. — There are
two of them, The body of the Endorsements
are in the hand writing of defendant the
signature in hand writing of Complainant.

67

10th Int. — Have You Examined the paper marked
Exhibit No 2, purporting to be a bill of
services by the Complainant rendered for
the defendant, dated August 13, 1855,
and if so, in whose hand writing is it,
(Cont. objected to by Comp^{ts})

Ans. — I have Examined said paper, it is
in the hand writing of the Complainant,
it is not signed. —

11th Int. State what is on the back of

Exhibit No 2, and in whose handwriting it is.

(Dnt objected to by Comp^{ts})

Ans. The abbreviations, "Acct. of J. E. Cone Endorsed Aug 13th 1855". — It is in the Complainant's handwriting.

68 12th Dnt. Have You Examined the paper marked Exhibit 3, if so in whose handwriting is it, and by whom signed, paper purporting to be a letter from Complainant to the defendant, dated April 30th 1855.

(Dnt objected to by Comp^{ts})

Ans. I have Examined that paper, it is in the handwriting of Complainant and signed by him.

13th Dnt. — Have You Examined the paper marked Exhibit 4, purporting to be a letter directed to the defendant without date, if so in whose handwriting is it.

(Dnt objected to by Comp^{ts})

Ans. I have Examined that paper, it is in the handwriting of Complainant.

14th Qnt. Is the paper marked Exhibit 4 directed to any person, and if so to whom, and in whose hand writing is the said writing in the said direction. —

(Qnt objected to by Compl^t)

Ans. — It is directed to "Dr A P Kirk
Chicago Ill" The word "present" under
the direction or superscription, is Complainant's handwriting. —

Q9. 15th Qnt. Have you examined paper marked Exhibit 5 purporting to be a letter from Complainant to the defendant, if so, in whose handwriting is it, and by whom was it signed, and to whom directed, and in whose handwriting is the direction.

(Qnt objected to by Compl^t)

Ans. I have examined that paper, The body signature and direction are all in the handwriting of Complainant. It is directed to "Dr A P Kirk"

16th Qnt. Have you examined paper marked Exhibit No 6 purporting to be an agreement dated 21st day of September 1854 made between Charles S Wright and the

Complainant, if so in whose hand writing is the body of the instrument, and by whom is it signed. —
 (Int objected to by Comp^{ts})

70.

Ans. I have examined that paper. The body of the agreement is in the hand writing of Complainant, and it is signed by him as one of the parties. — The name of Charles S Wright is also signed to the paper. I do not know his signature, that is to say I do not know Charles S Wright's signature to be genuine. —

17th Int. Have you examined an instrument upon said agreement, purporting to be an assignment of said agreement from the complainant to the defendant, dated 7th day of October 1854, if so in whose hand writing is said assignment and by whom is it signed. —
 (Int objected to by Comp^{ts})

Ans. I have examined an instrument upon said agreement purporting to be an assignment. — It is in the hand writing and is signed by the Complainant. —

18th Qnt. What Endorsements appear upon said agreement prior to the filing of it for record, and in whose handwriting are the several endorsements. —

(Qnt objected to by Compl^t)

Ans. There are four endorsements upon said agreement first thus "A. T. D. Newkirk due 5/ in pencil. I do not know in whose handwriting this endorsement is. — The next in-

dorsement is thus ("Agreement Sept 21st 1854"

The next "Charles S Wright
with

John B Cone"

The next is "Assigned
To

A T D Newkirk"

The three last endorsements are in the handwriting of Complainant.

Cross Ex

1st X What do you mean by defective titles as used in your answer to the 2^d Qnt?

Ans. I mean such titles as were subject to attack from some defect, as I gathered from Complainant.

2^d X What trial do you mean when you speak of the trial of the Suit of Newkirk Versus Chaperons. —

Ans. I mean the trial in the Common Pleas Court of Cook County. —

3^d X When was that trial?

Ans. It strikes me I was in Error as to the time, I think it must have been in 1854. I have no distinct recollection as to the time. —

72.

4th X Have you testified before in Suits between the parties to this Suit, in relation to the subject of your present Examination.

Ans. I have testified before in the case of Cone vs Newkirk, I think partially upon the same subject matter.

5th X Upon that occasion did you tell all you knew, in relation to the business transactions of the parties. —

Ans. I answered all questions put to me and stated all that I then recollected in

relations to the matter.

6th X Did you in the month of March ^{A.D.} 1856 have a conversation with the Complainant in the Court House in Chicago, and in that conversation did you not tell the Complainant that you never knew any thing of the business arrangements between the complainant and defendant until after complainant had ceased to be employed by the defendant, and that you were astonished when you heard of the contract alledged by Newkirk to exist between them.

7th And, I don't recollect any such conversation, I could not have stated so I am sure.

7th X When, and where did you ever have any conversation, with the complainant, as to the business arrangement between the parties.

Ans. In the Spring of 1854 in the Office No 54 Clark Street - I can't fix the date more definite.

8th X How do you happen to have distinct recollection, as to what was said nearly four years ago.

Ans. It made a strong impression upon my mind at the time, and being soon after Complainant went into Newkirk's office, and it has been the subject of conversation since that time, not with the Complainant however.

9th & Would you not after such lapse of time be liable to be mistaken, as to the language used, and by whom it was used.

74

Ans. I could not give the language, I only recollect the purport— I might be mistaken as to the language, not as to the substance I don't think I would be likely to have forgotten who used the language, as there was no one present but Mr Cone & myself.

10th & What did Mr Cone tell you on the occasion referred to in your answer to Cross Int-7

Ans. He was speaking of the reason of his making the contract with Dr Newkirk— That he was out of business, and thought he would make the arrangement for a year or two, and after that he might be able to do better. He stated at that time that he was under a salary of \$500 a year, that it was small, but he thought he could live on it. That the business

used to be the getting up of defective titles, I cannot give the precise language, this was the purport.

11th Q How came about this conversation

Ans. I cannot recollect

12th Q Had you been informed by Newkirk of the fact that the complainant was in the defendants Employ prior to this conversation, and of the terms of such employment.

79. Ans. I had been informed by Newkirk of the employment, and of the terms.

13th Q Did you ever hear the complainant expressly state at any subsequent time that he was in the Employ of the defendant under a salary, and what that salary was if so, when and where, and what that salary was.

Ans. I did hear Cone state in another conversation, subsequently, that it was unnecessary for defendant to employ counsel to try the case of Newkirk vs Chaperone in the Supreme Court, when he had an attorney employed

by the year, who understood the case better than any man he could employ - In this conversation there was nothing said about the rate of Salary.

14th X At what time was the last conversation mentioned by you. -

Ans. I cannot state the date. It was sometime after the trial of the case of McKirk vs Chaperone in the Common Pleas Court, and before the trial in the Supreme Court.

76 15th X Are you one of the Attorneys of Record in the case of Cone versus McKirk, held in the Cook Co Ct of Common Pleas, in the fall of 1856 & are you one of the Solicitors of Record in this case.

Ans. I believe my name in the papers in the suit in the Common Pleas Court, but it was not placed there by my consent. I had nothing to do with the placing it there. My name also appears as one of the Solicitors in this case, which was also without my authority. -

16th Were You present at the trial of the
Common law Suit in 1856, if Yea, did the
Plaintiff on that trial offer any Evidence
to Support any claim against Dr McKim
for Services in relation to the Wright
property.
(But objected to by defendants Sol^{er})

Ans. I was present at that trial most of
the time — I do not recollect the Evidence
adduced on that trial.

77 17th Did You not upon that time take down
the Evidence given on behalf of both
defendant and Plaintiff in writing.

Ans. I took down the most of it not all.

18th Now does it happen that You better
remember casual conversations, than the
Statement of witnesses in Court in a cause
in which You are interested, and in which
You wrote out the Evidence

(But objected to by defendants Sol^{er})

Ans. I cannot state a reason why some-
things make a stronger impression on
my mind than others. — and I did not

charge my mind witho what was sworn to, it being witten down.

19th X You have had frequent conversations with ^{this} defendant concerning these matters, during the last two Years, and have heard his version of the Story, a great number of times, have you not?

78 Ans. I have had frequent conversations with defendant, within the last two Years, and have heard his version of the matter in controversy several times.

20th X Would it not be possible for You to take the Statement of the defendant so often repeated, as the Statement of the Complainant, and instead of recollecting what was said by ^{the} Complainant, three or four Years ago, that the subsequent statement of the defendant might Exist in your Memory, as the Statement of the Complainant, You remembering the fact of a Meeting between Yourself and the Complainant as You Stated.

Ans. I dont think it is possible that I could have made that mistake, The

Interrogatories propounded to William Redhed, a witness produced and sworn on the part of said defendant.

1st What is your name, age, occupation and place of residence, and are you acquainted with the parties, Complainant and defendant in this suit, or either, and which of them, and how long have you known them or either of them. —

80

Ans. My name is William Redhed, I am 27 Years of age, I am Merchandizing at present. I know the complainant in this suit have known him since the Spring of 1854, I also know the defendant have known him about five years

2 When did you first commence to work for Dr. Hooker, how long did you work for him, and in what capacity were you employed. —

(Unt. objected to by Complainant)

Ans. I commenced July 7th 1852 and worked for him till April 14. 1857. I was a man of all work. —

3^d Were you accustomed during the whole of 1853 & 1854 to sit in Dr Newkirk's office to answer questions for him.
(Int objected to by Compl^{ts})

Ans. I was accustomed during those years to sit in Dr Newkirk's office, to answer questions and transact business - I spent about three fourths of my time in the office

86 4th Did the Complainant occupy during any portion of that time the same office with the defendant, and if so how much of that time, and in what manner.
(Int objected to by Compl^{ts})

Ans. He did occupy the office from about the 20th March 1854, until the middle of August 1855 or thereabout. He was employed by Dr Newkirk to transact business for him

5th Did you ever see the contract marked Exhibit 1. now shown to you, and if so, when did you first see it.
(Int objected to by Compl^{ts})

Ans. I did see it about the 20th of March 1854.

6th Did you ever hear the complainant say anything about how he was working for Dr Newkirk, if so, when and what, (Int objected to by Compl^{int})

Ans. Yes Sir - I was present when the Contract was made and heard it read. The first I heard him speak on the subject, was when the contract was made, at which time I heard him agree to work for Dr Newkirk for \$500 a Year. Afterwards, I think in the Summer of 1854 I heard Mr Cone telling somebody, I don't know who, that he was working for a Salary of \$500 a Year, that he had a portion of the time for himself, that is if he had any other little business to attend to. I have heard Mr Cone converse about it, and how he was getting along, but I don't remember particulars.

82 7th How long did Mr Cone work for defendant under that contract, If you know. (Int objected to by Compl^{ts})

Ans. From about March 20th 1854 till about the middle of August 1855

8th Do you know any thing about Mr Cone going to Racine to make a contract with one Wright, for some lands for the Doctor. If so, what and when. —
(Int objected to by Compl^{ts})

83
Ans. I do know of his going there to make a contract with Wright in behalf of the Doctor for some lands. It was the summer of 1854. — The Dr sent Mr Cone three or four times to Racine that summer to purchase the interest of Wright in a certain piece of land laying on the Milwaukee Plank Road in Section C. There were other out-lands at Brush Hill. I heard Dr Newkirk give him instructions at different times when he went to Racine, what to pay. When Cone would come back they would sit down and talk it over. —

9th Did you ever see the paper now shown to you marked Exhibit 4, and if so, under what circumstances did you see it & what did you hear Complainant say about it.
(Int objected to by Compl^{ts})

Ans. I saw this paper or one that contained

name, that he would assign it to Dr
McKirk, which would be all the same
to him as if he had taken it in his name.
That was the substance of the conversation.

10th Did Cone at that time give any reason
why he could probably make a better trade
to take the contract in his own name,
if so what.
(Int objected to by Compl^t.)

85
Ans. Yes Sir. There was something about
his being detained to prosecute this suit,
providing they got it. That Wright would then
pay costs and charges. I don't remember
any thing distinctly now. They had a general
talk, and talked the whole matter over.

11th Do you know whether the defendant
furnished to Compl^t money to go to
Racine with.
(Int objected to by Compl^t.)

Ans. I do know that he did.

12th Now you present when Mr Cone returned
from Racine, and if so did you hear any
conversation between the Complainant and

7

Any persons relating to the Wright purchase,
If so; what was said.

(But objected to by Compt^{le})

Ans. - I saw him ~~the~~ next day. - one or two
days after he returned. I asked him how
he had succeeded. He said he had
succeeded in getting a small portion.
That he had secured about one tenth of the
property for Newkirk. I then asked him
what that would be worth. He said about
\$30,000

86
13th Did you ever see the paper now shown to
you marked Exhibit 5. if so, about what time
did you first see it, who gave it to you.
(But objected to by Compt^{le})

Ans. I have seen that paper. I first saw it,
about the 12th or 15th August 1853, immediately
after he returned from the Supreme Court.
Dr Newkirk handed it to me. -

14th Did you ever see paper now shown to
you, marked Exhibit 2, if so when, and who
gave it to you.
(But objected to by Compt^{le})

Ans. I have seen it. — I first saw it on the 13th August 1855, about ten minutes after it was written. — I saw it written. — after it was written and Mr Cow had gone out Dr Newkirk handed it to me.

Crop By

1st X Upon whose account are you keeping a Store. —

Ans. On my own. —

2^d X When did you commence the business.

87 Ans. Last Spring. —

3^d X When did you leave Newkirk.

Ans. April 14. 1857

4th X Were you able to read in April 1854.

Ans. Yes Sir. —

5th X Who generally got the Doctors mail from the Post Office, while you lived with with him. —

Ans. I sometimes did, I cannot say who
Else did.

6th Was Strunk in the habit while you lived
with him, of setting you to watch people and
to remember things to testify to concerning them.

Ans. I don't know that he was.

88 7th How does it happen then that you remem-
ber so distinctly what transpired during the
Season of 1854.

Ans. I have nothing particular by which I
remember it, only I remember it. I don't
remember it from any instructions at all.

8th How does it happen that you recollect,
the Exhibit, marked Exhibit 4, now shown you.

Ans. I remember it from hearing it read out
in my presence, and a general conversation
which took place at the time about it.

9th Do you remember the conversation refer-
red to in your last answer, as well as you do
the contents of the paper Marked Exhibit 4.

Ans. I do.

10th Have you given all that conversation in answer to any interrogatory heretofore propounded. —

Ans. All that I can now remember.

11th How long did the conversation last.

Ans. I hardly think I could tell

89.

12th Where was this conversation, and what time of day did it occur. —

Ans. It occurred in No 17 Metropolitan Block, I think in the afternoon. —

13th How long ago was this. —

Ans. It was in September 1854.

14th Do you remember all the conversations you heard between complainant and defendant, during time they occupied the same office

Ans. No Sir, Not the details.

15th X How does it happen then that you remember so distinctly those conversations which relate to this particular suit. —

Ans. Well it was rather exciting about this getting the property, and I remember those conversations, that took place at that time.

16th X What interest had you in the matter.

Ans. None. —

90

17th X Did you ever see Charles S Wright of Racine, if so, when, where, and how many times. —

Ans. I have seen him several times, I saw him in Newkirk's office several times, I met him once on State Street. I saw him at Newkirk's on or about the 20th September 1854. I don't remember when I saw him on State Street. I recollect the said Wright being at Newkirk's office on the above date, or about that time, by the date of the Contract Exhibit C. He was at Newkirk's at the time that paper was executed. There was two contracts made, one made in Wisconsin, which was destroyed as I

Understood, and this one marked No 6 was made in Newkirk's office. -

18th X Did you see the contract marked No 6, made and Executed. -

Ans. I did not see it Executed

19th X Why do you say that this contract marked Exhibit 6 was made in Newkirk's office, and that Wright was present when it was made. -

91

Ans. I say so because I know so.

100

20th X How do you know so.

Ans. I know so from conversation I heard between Cone, Newkirk & Wright.

21st X What was said in the conversation referred to in your last answer, and by each of the persons you have named

Ans. I could not swear to what was said,

22nd X Do you know of the complainant going to Racine for Newkirk in the winter of 1855

January or February 1855.

Ans. I don't remember I know he went there, three or four times

23^x Do you know of the defendant going to Racine, to try to make the purchase of this property from Wright.

Ans. I do.

24th X Did he succeed.

92 Ans. He did not.

25th X What time did the defendant go to Racine to attempt to make this purchase.

Ans. I think it was in July or August 1854.

26th X Do you know of the defendant trying to make a contract of purchase from Wright after the contract marked Exhibit C was made.

Ans. I think he did make him some offers for it through Mr Cone.

27th X Do you remember the time when the suit of Charles S. Wright versus Nathan Allen involving the question of title to the land in contract marked Exhibit C was tried.

Ans. I remember the suit, but not when it was tried.

28th X Do you know who this Chas S Wright was in this city at that time.

Ans. I believe I saw him in the Court House at the time.

93

29th X Did you not see him in Newkirk's office several times during the progress of that trial

94

Ans. I don't remember.

30th X If you had seen him in Newkirk's office, would you have remembered it, as well as you remember the circumstance of his being here when, you say the contract marked Exhibit C was made.

Ans. I do not know

31st X Did you hear Newkirk and Wright in Newkirk's office in this City, in the early part of the Spring of 1855, have a conversation concerning the litigations, in which they were both interested, and in which Wright as an excuse for not desiring to sell to Newkirk, said to Newkirk that he (Wright) was as able to take the chances, as any body else.

94

Ans. I did not hear that conversation

32nd X Did you not swear upon the first trial of the case of Cone vs Newkirk, in the Common Pleas Court, That you heard such a conversation as referred to in the last cross interrogatory, and that on that occasion pretend to give a history of the same. —

Ans. I don't remember that I did swear to that

33rd X If you had so testified, could you not now recollect that fact, as well as any of the fact of which you have been testifying.

Ans. I presume I could.

34th X In the second trial of the case above
referred to, did you not in answer to the
question, whether you had, had any con-
versation with Newkirk, volunteer to say,
that you had, had no conversation with
Newkirk about the contract.

Ans. I think I did.

35th X You and Newkirk have frequently
conversed about what you could swear
to in relation to the business transactions
of these parties, have you not.

95
Ans. I have not.

36th X Have you ever conversed with
Newkirk in relation to this subject.

Ans. I have.

37th X How often.

Ans. Once only

38th X Where

Ans. On the morning I was to testify

before I don't know, what day it was, upon reflection, it was a week ago last Friday.

39th Upon whose money are you now doing business.

Ans. My own. —

40th Where did you get it.

Ans. — Various places — Dr Newkirk paid me for my services for about five years, upon which I commenced business.

96.

41st Did you settle up with Newkirk, and did he pay you any thing before you testified in the suit of Cone vs Newkirk above referred to.

Ans. He always used to pay me when I wanted, We had not settled, and have not to this day.

42nd How much money did Newkirk let you have to go into business with

Ans. I bought about \$600 worth of goods.

and he went my Security for them, as I sold them I paid for them, He paid one of my notes, amounting to about \$600. and I have paid him back three or four hundred dollars of it. -

43th X During the time you were at Newkirk were you not under Medical treatment by him, for a disease of the Eyes, for the greater part of this time. -

Ans. Not for the greater part of the time. He treated them probably for a Year. -

97 44th X Did you pay him any money for this treatment. -

Ans. I did, I paid him \$20 I remember

45th X What was your business for Newkirk while in his employ

Ans. I took care of his horse & buggy, made fires, and swept out the office, staid in the office while he was out making calls, collecting.

46th X Did you hear any conversation

between Plaintiff and Defendant in August 1855 in relation to a settlement, about that time, I don't know that I remember but ~~one~~ conversation between them on that subject about that time.

and upon several different days about that time.

98

Ans. I did hear a conversation between them in relation to a settlement about that time, I don't know that I remember but one conversation between them, on that subject about that time.

47th X Was that about the time ^{that} you first saw the bill, shown to you and marked Exhibit

2

Ans. I think it was.

48th X What is the second item of charge in said bill.

Ans. It reads as follows. "consideration of Assignment of Contract \$2000"⁰⁰

49th X What did Newkirk say when this bill was presented to him.

Ans. I don't remember what.

50th Did he say anything.

Ans. I don't remember.

51st Was any settlement had between the parties, at that time, and a balance struck.

Ans. I don't know

52^d What sort of a contract was, contemplated, between Newkirk and Wright in the conversation which you testify to as being had at the time when the paper marked Exhibit 4 was read as you say by Newkirk, that is to say the concluding part of it.

Ans. Mr Cone stated to Newkirk something like this, That if all should fail he might be detained to prosecute it, then they would expect to pay the costs and charges, but if he should take it in Newkirk's name, then Newkirk would have to pay the charges. He stated that he (Cone) was so dog poor that they would

not expect him to pay the charges

53th X How many times have you heard the paper marked Exhibit 4 read

Ans. Once thoroughly, and the other times partly.

54th X When was the last time that you heard the paper read thoroughly.

Ans. A week ago last Friday.

~~55th~~ 55th X Has not Newkirk frequently told you, what particular Evidence, was necessary in the Suits between these parties, and cautioned you to remember distinctly such and such matters, reading them to you.

Ans. No.

56th X Did you not state upon oath in the trial of the case of Cone versus Newkirk, that you knew the amount of money that Newkirk had paid to Cone, that you had frequently paid money to Cone for Newkirk, and that the whole

amount of money so paid was \$2043.

Ans. I believe I stated on that trial upon oath that I knew the amount of money paid to Cono by Newkirk, that I had frequently paid money to Cono for Newkirk, I believe I stated the amount in all paid to Cono, and that it was something over \$2000.

101 57th Did you not hear frequent conversations between this Plaintiff and Defendant in relation to the business matters between them which would be as likely to affect your memory, as those as to which you have testified. —

Ans. I think I have.

58th Do you remember the other conversations, as well as those to which you have testified.

Ans. I might if my attention was called to them.

59th Did you hear about the month of September 1854 any conversation between

Plaintiff and defendant in regard to a contract between them, by which they were to become partners in the purchase and litigation of titles to lands in this city.

Ans. I heard something to that effect.

Qth Did you during the time Plaintiff & defendant were in business together, hear any conversation between them to the effect that when the land litigations were concluded, that the parties were to divide the profits between them.

102

Ans. I did not.

Qth How do you know that the complainant was at work under the \$500 contract from March 20th 1854 to August 13th 1855.

Ans. From knowing the fact that he entered into a contract to that effect, and I know nothing to the contrary.

Qth Did you ever hear the defendant say that the Plaintiff was at work for \$500 per year, and that was all that the Plaintiff was to have for his services, at any time before the attempt to settle in August 1855.

Ans. I did hear him say that he was paying him \$500 a year before the attempt to settle. - I did not hear him say that Plaintiff was to have no more

63rd X Did you ever hear the Defendant claim of the Plaintiff, that he the Plaintiff was indebted to the defendant, at any time after the April 1854.

Ans. I heard him state that ~~the~~ Plaintiff had overdrawn considerably, the amount of his salary. - This was in the Summer of 1854.

103

64th X Did he claim that his over draft should be paid back again

Ans. I dont remember that he did

65th X Did you not during the summer & fall of 1854 frequently hear the Plaintiff tell the Defendant that he the Defendant had agreed to furnish Plaintiff, money as much as should be necessary for his current expenses, let it be more or less, and that the defendant upon such occasions would invariably reply that he always had and expected to furnish what money should be necessary for the current expenses of the Plaintiff, but that he desired the Plaintiff

to be as economical as possible, until after the question of title to the land in Section 18 should be established, and then he did not care how much money Plaintiff should use

Ans. I did hear the Plaintiff tell Defendant several times, that he defendant had agreed to furnish Plaintiff with money sufficient for his current expenses, and I heard the Defendant reply that he always had, and expected to furnish Plaintiff what money should be necessary for his current expenses. ^{Defendant} ~~The Plaintiff~~ did on these occasions, request the Plaintiff to be as economical as possible. I don't remember that in these requests, he would refer to the establishment of the title to Section 18. I never heard him say, that when the title to that land was established he did not care how much money Plaintiff used.

66th Did you hear in conversations between Plaintiff & defendant, during the latter part of the winter in 1855 and along to June 1855, The Defendant frequently say to Plaintiff that in case they succeeded in establishing the title to land in Section 18 & Sec 6 that both Plaintiff and Defendant would be independent, and not obliged to practice their

professions any more, unless they saw fit.

Ans. I don't remember any such conversation.

67th Would you not be as likely to remember such conversations, as any to which you have testified

Ans. I would if I heard them.

68th Did you ever see a man by the name of James Kinzie, and another by the name of Nelson Millett both of Wisconsin in Newkirk's office together in the fall or winter of 1854, 55.

105

Ans. I don't remember that I did.

69th Did you ever see a man in Newkirk's office about that time by the name of Bates,

Ans. I don't remember that I did.

70th Did you about that time see a man in the Doctors office by the name of Wm H Stow,

Ans. I have seen Stow in Newkirk's office but could not swear to the time.

71st X Did you hear a conversation between the Defendant and said Stow in relation to the purchase together of a tract of land said to be owned by one William Bennett, in which conversation the defendant told Stow that this Plaintiff, was an equal partner, with him the defendant, in this business of buying up these titles.

Ans. I did hear a conversation between Newkirk, in relation to the purchase together by them of a tract of land said to be owned by William Bennett. — I did not hear the Defendant say Plaintiff was an equal partner with him.

106

Resumed

1st Int^g — When you speak of Dr Newkirk endeavouring to buy the Wright property, after the contract was made between Wright and Cone, what did you mean by it.

Ans. I know that Newkirk endeavoured to buy Wrights remaining interests, after he had sold the tenths to Cone.

2^d Int. You have before stated, that you heard something about a contract, between Plaintiff & Defendant relating to a partnership for the purchase and litigation of title to lands

in this city, in your answer to the 59th Q^{nt}?
what were those conversations as near as you
can remember.

(Q^{nt} objected to by Comp^{ts})

Ans. In the fall 1854. Dr Newkirk proposed
giving Mrs Cone one third of all the net
profits arising from adverse claims, which
they might buy up after that date. The con-
tracts were written, and was handed to New-
kirk to sign. The Doctor stated then, that
he wanted a clause put in the contract so
as to exclude the Wright matter, for he
was trying to purchase it at that time,
that is Wright's remaining interest.

107.

3^d Q^{nt}. Was this conversation in which they first
agreed upon this Partnership, before, or after
the assignment by Cone of the Wright contract.
(Q^{nt} objected to by Comp^{ts})

Ans. It was some time after.

4th Q^{nt}. Did Newkirk at that time object
to signing the agreements written by Cone upon
the ground, that as written they would include
the Wright property, stating that the interest
in the Wright property had been acquired

before the contract of Partnership was made
and that it was agreed that said Partnership
should apply only to such lands, as they
might purchase after the making the agreement
(But objected to by Compt^{rs})

Ans. He did object to signing the agreement
of Partnership as drawn, stating that if
he signed the contract as written it would
include the remaining interest of Section 6
which he was then trying to purchase. He
also stated that he wanted the contract to
include all new matters which they might
buy up, after that date, The Wright matter
excluded.

Cross Ex Resumd

Q^d X Do you know when the first conversation
between the parties in relation to the contract
just above referred to was had.

Ans. It was in the fall of 1854.

Q^d X Was the first conversation which you
heard in regard to the matter, the one in
which Newkirk refused to sign the contract.

Ans. I think the first conversation between
Cono & Newkirk was at that time, that I heard.

74th X Do you know whether the written contract
Kirkirk refused to sign, was signed by
the Plaintiff.
Ans. I believe it was.

75th X Do you know what afterwards became
of those papers.

Ans. Como told me that he burned them.

76th X Did you see the Plaintiff put the
papers in the stove.
Ans. No.

109.

77th X Do you know what the terms of that
contract were.

Ans. Yes.

78th X Do you know the date of the contract
as written

Ans. No.

79th X How long after the trial of the trial of
the case of Chaperone against Kirkirk
was this conversation,

Ans. I don't remember when that case was tried, now

80th X How do you know this conversation was after the time, the Wright Contract to Cone was made,

Ans. Because I remember distinctly the time the Wright Contract was made, and I know the time the partnership was talked about it was cold weather.

110.

81st X Do you remember all the conversation, that was had about the Partnership at the time spoken of by you.

Ans. I remember the substance of the conversation.

82nd X How long after the time the Wright contract was made, was it assigned to McKink, and where was the Plaintiff during the intermediate time.

Ans. I was not present at the assignment. I don't know who Plaintiff was.

Sworn to and subscribed before me
this 27th day of February 1858
L C P Greer
Master in chancery

William Redhed

Interrogatories propounded to Henry
B Seymour on the part and behalf of
defendant.

(The complainant objects generally to
the Examination of the said witness)

1st Int. What is your name, age, occupation,
and place of residence, and are you ac-
quainted with the parties to this suit or either
and which of them, and how long have you
known them or either of them.

(Int objected to by Compl^t)

Ans. My name is Henry B Seymour, I am
34 Years of age. I reside in Chicago. I am
a Scrivener, I know the complainant,
have known him about Eight Years, and
I know the defendant, I have known him
since the Spring of 1834.

Examination adjourned to March 1, 1838
at 9, O-Clock A.M.

2^d Int. Do you know anything of a contract
between the Compl^t and Def^t, if so, state
what you know in relation thereto.

(Int objected to by Compl^t)

Ans. I know in a conversation between the parties, which took place about the middle of August 1855 at Dr Newkirk's office, that Newkirk said to Cone, that he Newkirk had a written contract with him (Cone) that he (Cone) was to work for him (Newkirk) for \$500 a year, and that he had worked something more than a year, and that during that time he had paid him considerable more than that amount, amounting to something more than \$2000.

112

Cone said that, that was so, or that was right or something to that effect, he said that he did not care so much for what he had done, but that he wanted to know, what he was to have ~~in the future~~ for what he did, in the future, before he did any more. - He said Newkirk had promised to sign an agreement, that he had drawn up for him to sign. Newkirk said that Cone knew very well the reason he had not signed it. That the agreement as drawn up by Cone did not exclude the Wright matter, that, that was old matter, and that if he succeeded in purchasing the property from Wright, that it was not excluded in that agreement, and that, that was the reason he did not sign it. He said he

had told him if he would draw up a new agreement, not including that matter he would sign it, but for some reason he had not done it. —

3^d Do you know George Washington Irving Cone.
(Ant objected to by Compl^t)

Ans. I don't know any person calling himself that.

4th Do you know S W I Cone.
(Ant objected to by Compl^t)

Ans. Yes.

113.

5th Is he brother of the Plaintiff
(Ant objected to by Compl^t)

Ans. I have always understood he was

6th were you present at a conversation between him and defendant, soon after the conversation by you above referred, if Yea, State the substance of that conversation.
(Ant objected to by Compl^t)

Ans. I was present at a conversation between him and defendant, next day after the conversation between the parties. — I cannot

and are you still an intimate friend of
the Plaintiff
(Not objected to by Compt.)

Ans. I had been acquainted with him at
that time about five years, I had been at
work on Mr Hoes Astral books with
Mr Cond, we were always good friends,
and have continued so far as I know.

9th Have you been for the last year a consid-
-erable portion of the time employed in the
office of the Plaintiff and his brother S. W.
-S Cond (Not objected to by Compt.)

115

Ans. I was in the office employed by
S. W. S. Cond to keep the books of the Chi-
-union Wood & Coal Co about six weeks
that was all

10th Do you know any thing about the
Plaintiff going to Racine to make the contract
for the Wright property, If so, what.
(Not objected to by Compt.)

Ans. Well it must have been in August
or September 1854, I met Plaintiff in the
street, he said he was going out of town.

I asked him where. — He said as I recollect he was going to Racine to see Mrs Wright on business for Newkirk

11th Do you know any thing in relation to a Partnership said to exist between the Plaintiff and S W C Cone his brother (Int objected to by Compl^t)

116. Ans. In the winter (latter part) of 1855 or fore part of Spring, in a conversation I had with S W C Cone, we were talking about this old land business. I asked him if he had any interest in it. He said he had an Equal interest with John. During the conversation he said they were in Partnership, and he read an Article showing they were in Partnership in business. —

12th Int. Did you ever have any conversation with Plaintiff after he returned from Racine, about the Wright purchase. (Int objected to by Compl^t)

Ans. I dont think I could have had.

Cross Ex

1st In your answer to the 2^d Int have you

stated all the conversation which occurred between the parties at that time.

Ans. No Sir. I don't know that I could now.

2^d X Upon what subject was the conversation held between the parties at that time, that is to say, what were the parties attempting to do.

Ans. The conversation commenced in reference to a settlement between them.

3^d X Did the parties agree as to a settlement.

Ans. No.

117.

4th X Did the parties have any dispute as to a settlement

Ans. They differed about it considerable.

5th X What was the subject matter of the settlement.

Ans. They had a long conversation, I understood it to be in reference to the 80 acres over here in Section 18.

6th X What was the contract you refer to in your answer to the second interrogatory, which you say Cone & Newkirk had not signed.

Ans. I understood it to be a contract drawn up between them, by which after that time, Cone was to have one third of the profits made on these purchases of adverse titles.

7th X At what time did you understand that contract to have been made.

118. Ans. I could not say positively, but I took it, it was to take effect from the time Cone drafted it.

8th X What time did you leave Chicago in 1854.

Ans. The 1st of October.

9th X When did you return.

Ans. As near as I recollect about 10th June 1855

10th X Have you been sworn and testified before in this case, if Yea, how many times, and upon what occasions

Ans. I have been sworn before in this case, I think twice in the Court of Common Pleas, and part of depositions taken before John King Jr. and a Deposition about a year ago before Wm L Church. -

11th X What aid if any have you had in the recollection of the matter, which you have testified to on these several occasions

119.

Ans. I had a memorandum of the principal parts in the conversation between Plaintiff & Defendant referred to foregoing. - A few days after the conversation, Brewster asked me if I remembered it, I said I thought I did, he asked me to recollect it, as he said there might be a lawsuit between them, I said it might be a long time if such a thing should happen, and he had better write it down, and he wrote down the conversation, and when I was in his office, he read over to me, or I read it myself, I forget which, after it was read I suggested some alterations, which were made, and I had that memorandum part of the time since. -

12th X In whose handwriting, was the memorandum as last made, and did it contain the whole

of the conversation, as it occurred at that time

Ans. The memorandum was in Newkirk's handwriting. I understood it to contain about the substance of it. I don't suppose it contained the whole as it was a pretty long one.

13th X Now you had frequent conversations with Newkirk in relation to the subject matter of the conversation, referred to by you in answer to interrogatory No 2.

120. Ans. Now since the time my deposition was taken before Church, a year ago, until last Friday, and nothing particular in relation to that conversation, then, I conversed with him several times, with him before that in relation to it.

14th X Waived

A B Seymour

Sworn to and subscribed before
me this 1st day of March
A. D. 1858 S C J Freer
Master in Chancery
Cook Co

Examination adjourned to 2, O'clock
P.M. March 1st 1838.

S C J Freer, Master in Chancery
Interrogatories propounded to Phineas O'Donnell,

1st Int. What is your name, age, occupation,
and place of residence, and are you acquainted
with the parties, Plaintiff & Defendant,
or either, and which of them, and how
long have you known them, or either of them.

121. Ans. My name is Phineas O'Donnell, I
am 31 Years of age, Carpenter & Joiner by
occupation, and reside in Chicago. I know
the Complainant, have known him since
1853, and have known the Defendant
since the same Year.

2^d Int. Did you ever have a conversation
with the Complainant about his Employ-
ment, if so, when and what was it.

Ans. I did have a conversation with
Complainant in regard to his Employment.
It was in 1855, in the Spring, Complainant
called at my house, and in ^{an} conversation
about domestic affairs, he stated to me that
he was getting along better than he had been.

he felt quite encouraged now, for he was working for a man, under a certain salary by which he could live, and a part of the time which was not occupied for him, he had to work for himself, by this means he was enabled to get along quite well. There was nothing said about the price. —

Cross Ex

1st X How long after you first became acquainted with the Complainant, was this conversation,

122. Ans. About a year and nine months, may be two years.

2^d X What had been the business of the Complainant prior to the date of the conversation you refer to. —

Ans. I could not tell exactly only from what he told me, when I first became acquainted with him, I understood he was working in the Recorders Office, next I understood he had an office himself, at No 52 Clark Street in copartnership with another man, next I understood that he had entered into some contract with the New-Kirk through his family. —

Q X How long after you understood that he was in business for McKirk was it that this conversation took place.

Ans. It was in the Spring after
Sworn to and Subscribed
before me this 1st day of
March A D 1858
S C P Freer
Master &c

P O Donnel

123.

I S C Paine Freer Master in Chancery of Cook County in the State of Illinois do hereby certify, that on the 26th day of February A D 1858, at my office in the City of Chicago appeared before me the parties to the cause above entitled, as well as the Solicitor of the said Defendant, to take the depositions of Joseph A Parker, William Redhed, Henry D Seymour and Phineas O Donnel to be used on the part and behalf of said Defendant. The Complainant admitting the due service of Notice upon him to take said depositions. That the said witnesses were first severally sworn, to tell the truth, the whole truth and nothing but the truth, or far as they should be thereto interrogated, and that they were thereupon severally

Examined upon the interrogatories and
Cross interrogatories foregoing propounded
by the Solicitors of the said defendant, and
by the Complainant in propria personum.

Masters fees \$50.00

S. C. J. Freer
Master in Chancery
Cook Co

124.

And afterwards, to wit, on the fifteenth day of July eighteen hundred and fifty nine said day being one of the days of the July term of the Superior Court of Chicago the following among other proceedings was had and Entered of Record as follows, to wit,

John E. One

vs.

Bio

Admission B. Newkirk

125,

And now comes the said complainant in person and said defendant by Tuley and Barker his Solicitors also comes, and this cause coming on to be heard at this time upon Bill and answer, cross bill, depositions and exhibits, and counsel being heard after due deliberation being thereupon had and the premises fully understood it is considered, adjudged and decreed by the Court that said Complainant be and it hereby is dismissed at costs of said complainant and it is ordered that defendant have execution against complainant for costs of this proceeding to be taxed.

And thereupon said Complainant John E. One prays an appeal herein to the Supreme Court of the State of Illinois which is allowed upon filing his appeal bond in the sum of five hundred dollars with W. G. Throp or Ephraim Ward as security thereon within fifteen days, conditioned for payment of costs.

And afterwards to wit on the thirtieth day of July in the year of our Lord Eighteen Hundred and fifty nine Came John E. Cone and filed in the office of the Clerk aforesaid his certain Appeal Bond in words and figures as follows, to wit,

Known all men by These presents,

126. That we John E. Cone principal and Amos, G. Shroff — surety both of the City of Chicago County of Cook and State of Illinois are held and firmly bound unto Adamson B. Newkirk in the penal sum of five Hundred dollars lawful 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 twenty ninth day of July A. D. one thousand eight hundred and and fifty nine,

The condition of the above obligation is such that whereas the above bounden John E. Cone prayed an appeal from a final decree of the Superior Court of Chicago rendered on the fifteenth day of July A. D. 1857 (in a certain suit in Chancery therein depending in which suit said John E. Cone is complainant and Adamson B. Newkirk defendant) to the Supreme Court of the

State of Illinois, and which appeal is allowed,
Now if the said John E. Cone, shall duly prosecute
his said appeal with effect, or in case of failure
shall pay or cause to be paid all the costs of said
suit, then the above obligation to be void else to re-
main in full force and virtue

John E. Cone (Seal)
Amos G. Thorp (Seal)

State of Illinois
County of Cook. } S. S.

127. J. Walter Kimball Clerk of the
Superior Court of Chicago, in and for said County
(formerly the Cook County Court of Common Pleas) do
hereby certify that the foregoing is a full true and
complete transcript of all the papers on file in my
office, and of the proceedings and judgment entered
of Record in said Court in the case wherein John E.
Cone is Complainant and Adamson B. Kirk
defendant.

In testimony whereof I hereunto
subscribe my name, and affix the
Seal of said Court, at the City of Chicago
in said County this 12th day of April
A.D. 1860 Walter Kimball Clerk



Supreme Court
John E. Bone

A. B. New Kito

Supreme Court
Anderson comes the said defen-
dant says there is no one cir-
cled and no proceeding
and he joins in one and
proves to have said judgment
affirmed with his evidence

founder in error
Filed April 25, 1860
L. Leland
clerk

By Sherman M. Adams
Jury & Barker his
Attornies

State of Illinois ss.

Supreme Court
Third Grand Division:
April Term A D 1860.

John E. Cone
vs
Adamson B. Newkirk } Appeal in Equity

Now comes the said appellant and comes to the said Decree of said Superior Court of Chicago and says that there is manifest error in the record aforesaid and Decree aforesaid to his prejudice in this to wit:

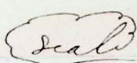
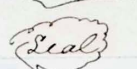
1st That said Court erred in dismissing his said Bill.

2nd That said Court erred in not granting the prayer of said Complainant for the relief asked in and by his said Bill.

3rd That said Court erred in not excluding the testimony of said appellees witnesses in its consideration of said Case, inasmuch as it did not support the affirmative allegations in his said answer contained. Wherefore and for many other causes in the proceedings aforesaid and in the passing the decree aforesaid appearing said appellant prays that the Decree of said Court be reversed and altogether held for naught and that he may have such other and further relief in the premises as to equity appertains and to your Honor shall seem just.

John E. Cone
in pro. her.

State of Illinois, and which appeal is allowed,
Now if the said John E. Cone, shall duly prosecute
his said appeal with effect, or in case of failure
shall pay or cause to be paid all the costs of said
suit, then the above obligation to be void else to re-
main in full force and virtue

John E. Cone 
Amos G. Throp 

State of Illinois
County of Cook. J. S. S.

127. I. Walter Kimball Clerk of the
Superior Court of Chicago. in and for said County
(formerly the Cook County Court of Common Pleas) do
hereby certify that the foregoing is a full true and
complete transcript of all the papers on file in my
office, and of the proceeding and judgment entered
of Record in said Court in the case wherein John E.
Cone is Complainant and Adamson & Newkirk
defendants.

In testimony whereof I hereunto
subscribe my name, and affix the
Seal of said Court, at the City of Chicago
in said County this 12th day of April
1860 Walter Kimball Clerk



293

John C. Bone & Co.

A. B. Kirkham

Filed April 19, 1860

L. L. and
O. L. K.

Fees \$24.⁵⁰ Paid by Bone
W. Kimball

\$10.00