No. 12844

Supreme Court of Illinois

Panton.

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vs.

Tafft.

71641 7

184-187

William Parker

vs.

Erastus Jeffs

194

1859

Page 1.

United States of America
State of Illinois Kane County } ss

Pleas before the honorable Isaac G Wilson Judge of the Thirteenth Judicial Circuit and presiding Judge of the Kane County Circuit Court in the State of Illinois at a Term of said Court begun and held at the Court House in Geneva in said County on the Tenth day of May in the year of our Lord One thousand Eight hundred and fifty eight and of the Independence of the United States the Eighty second

Present The Honorable Isaac G Wilson Judge
" Edward S Joslyn States Attorney
" George E Comrie Sheriff

Attest Paul R. Wright
Clerk

Be it Remembered that heretofore to wit On the 31st day of January A D 1856 there was filed in the Office of the Clerk of the Kane County Circuit Court on the Chancery side of said Court a Bill of Complaint which is in the words and figures following to wit

State of Illinois }
Kane County } ss February Term A D 1856 of the Kane County Circuit Court.

To the Honorable Isaac G. Wilson Judge of said Court in Chancery sitting

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3 Humbly complaining sheweth unto your Honor your Orator Erastus Defft of Clinton in the County of Kane State of Illinois that heretofore to wit on the 10th day of December AD 1847 Joseph Defft and Benjamin W. Raymond who were then seized in fee simple of about 40 acres of Land situate at said Clinton on the West bank of Fox River extending from a point several rods above the dam across said River at said place to a point several rods below said dam and also of the West half of said dam and of the West half of the water power created by the said dam, entered into an agreement with one G. W. Woodberry to convey to him a certain piece of said Land a part of which is the ground on which the flouring Mill hereinafter named stands and twelve hundred inches of the said water power to be drawn from a race therein mentioned to be built (which race is the one now constructed & used on the West side of said River at said place) the same to be the first privilege of said water power whenever and on condition that among other things he should erect and complete a stone flouring Mill on said piece of Land and repair and raise the West half of said dam make a brick head or flume thereat and construct therefrom a Race down to the South line of said certain piece of said Land and ever after keep said Race & West half of said dam in repair that said Woodberry commenced the said works and having made considerable progress with them afterwards to wit on the 9th day of April AD 1849 he concluded an agreement with Strain & Brown by which he agreed so soon as he obtained a deed from said Defft

3 & Raymond to deed to said Brown the piece of ~~said~~ ground on which said Mill now stands and one third of the said 1200 inches of water of said water power and in consideration thereof the said Brown agreed to fulfil the covenants on the part of Woodberry (except some few named things) in the said agreement of his with said Tefft & Raymond. That after the said agreement with said Brown he (Brown) entered upon the performance of said works but as your Orator is informed and believes did not complete the same in accordance with the terms of the said agreement between said Tefft & Raymond on the one part & said Woodberry on the other and in consequence of the non fulfillment thereof said Tefft & Raymond declined executing to said Woodberry a deed that afterwards to wit on the 5th day of February AD 1853 the said Tefft & Raymond still having the title in fee to said forty acres of Land and the West half of said dam and water power for a valuable consideration paid by your Orator to them by a good & sufficient warrantee deed (in which their respective wives joined) conveyed the said forty acres of Land and the West half of said dam and the West half of the said water power created thereby to your Orator who thereby & then became the owner thereof by title in fee simple subject however to any right which said Woodberry might have therein by virtue of said agreement made as aforesaid between them & him That shortly after the purchase of the said property by your orator he your Orator erected on the opposite side of the street and about 66 feet below the flouring Mill built by said Brown a large and expensive paper Mill to

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manufacture paper the machinery of which is propelled by the water power created by the said dam and drawn from the same Race extended a few rods further further South which is hereinbefore mentioned and which conducts the water to said flouring Mill that since the erection & completion of said paper Mill your Orator has carried on and is now carrying on & desires for the future to carry on the business of paper making therein That in the construction and putting in operation said paper Mill your Orator has expended a large sum of money to wit about fifteen thousand dollars that to carry it on successfully he is obliged to Employ a large number of persons to wit from ten to fourteen and incur a heavy daily expenditure of money to wit about $50. per day. And if deprived of the necessary amount of water to propel the machinery thereof he would suffer great and irreparable injury in his said business, that in your Orators opinion with the dam in repair & tight a proper bulkhead the race in repair & tight & no waste at said flouring Mill at all seasons of the year there would be six hundred inches of water for the use of said flouring Mill and all & more water for the use of your Orator said paper Mill than needed of the Westhalf of the Water power created by said dam. That in December A.D. 1852 your Orator obtained a release of all the right and interest which said Woodberry acquired by virtue of the said agreement between said Dexter & Raymond and him in & to the property & privileges therein mentioned. And your Orator further sheweth unto your Honor that said Brown on the 1st day

of April A.D. 1852 had completed the erection of a flouring Mill on the ground herein before mentioned and more particularly described in the deed given by your Orator & wife to him hereinafter specified had dug and fitted so as to be used though not made tight the race from the said dam to the South side or end of said Mill and upon to some extent the West half of said dam and said tail head and in the said flouring Mill had put three runs of stones & three reactive water wheels to drive the said stones. That the said Mill covered the entire ground (North & South at least) by the said agreement with Woodbery said Brown was to have & on account of the manner in which the said Mill was constructed & arranged it would be of great advantage to said Brown to allow him to carry or conduct the water from the race which came down from the North along the West wall of the said Mill across a small piece or part of your Orator's Land lying next to the North West corner of said flouring Mill on to the said water wheels of said Mill that the amount of water which said Brown was to obtain by the contract with Woodbery to wit 400 inches was found to be insufficient for the successful operation of said flouring Mill with the wheels then put in. That the said Brown applied to your Orator to execute to him a deed of said grounds and 400 inches of water of the said water power in pursuance of the said last named contract and at the same time solicited your orator to allow him 200 inches more of water and the privilege of conducting the water he obtained across your orators land adjoining

6 the North West corner of his said Mill on the said Water wheels in the manner it was then arranged after negociating on the subject it was mutually agreed between your Orator and said Brown that said Brown should at any time thereafter when your Orator or his heirs or assigns might desire permit the stones of the North West & North East corners of the walls of said flouring Mill to be removed & another building to be joined to it so that the North Wall of said Mill should be a partition wall to the two buildings & that your Orator should deed to said Brown said ground on which the said Mill stands and six hundred inches (instead of 400 inches as specified in said contract) of water of said water power & grant unto the privilege of drawing or conducting the said 600 inches of water across the corner of your Orators Land in the manner above stated as said Brown desired & that the first or exclusive privileges of the said water power should be the amount necessary for the use of your orators said paper Mill & the said 600 inches for the use of said flouring Mill & that as between the two Mills they as to drawing & using their said respective amounts of water should stand on an Equality of right. And that the said Brown (as in his said Contract with Woodberry stated) his heirs & assigns should thence forth forever maintain & keep in repair the West half of said dam & also the race leading therefrom to the South side of said flouring Mill & in case of a breach or fracture in either said Race or the West half of said dam as soon as practicable on request to repair the same & that the title to

7 said ground 600 inches of water and the privilege of drawing the same as aforesaid should be and remain ever subject to or dependant upon the faithful performance of the agreement to keep in repair as aforesaid said dam & race & that for the purpose of the necessary repairs to the same said Brown might obtain stone from the quarry on the premises of your Orator. That having thus mutually agreed in relation to the said matters to perfect the same your Orator & the said Brown on or about the 17th day of April A D 1854 employed S. Wilcox Esq of Elgin to prepare the necessary papers & the said mutual agreement and understanding between your Orator and said Brown was then stated & explained to him substantially as hereinbefore set forth. That thereupon said Wilcox drew a deed conveying the ground on which said Mill stands and six hundred inches of water (& only six hundred inches as your Orator and said Brown then understood it & supposed & still believe and granting the privilege of drawing the water across your Orators land in the manner it was here being conducted and in its terms substantially conformable as it was understood to the said mutual agreement between your Orator and said Brown which deed your Orator & his wife executed acknowledged & delivered to said Brown. A copy of which deed as taken from the records in the Recorder's Office of said County is hereto attached marked (A) and your Orator prays that it may be considered ~~a part~~ a part of this his bill of complaint that upon the delivery of said deed to said Brown he said Brown sold and assigned to your

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8 Orator all of his interest in & to his said agreement with said Woodbury and his interest in & to the property rights & privileges therein mentioned & delivered to your Orator the said agreement that said Brown after the 18th day of April A.D 1852 had & has had no title to and possessed no interest in the ground on which said Mill stands. The water power on the West side of the said River created by the said dam or any privilege therein save & except what he acquired and derived by virtue of said last named deed & the only consideration for which deed & the grants therein was the erection of said Mill making said race repairing said dam & the agreements in relation to maintain & keeping the same in repair and in relation to the walls of said Mill. That the language used in said deed to describe the things or subjects and privileges granted and covenants between the parties thereto as will be seen by reference to the said copy thereof is as follows to wit: A strip fifty feet in width off of the South side of Lot No Eight (8) in Block No Seventeen (17) of Clinton Town Plott as laid out by Jeffet & Raymond being the ground in which said Browns flouring Mill stands & being fifty feet on the Race and running East to the River Also the privilege of drawing water at the North South end of said Mill for the use of said Mill as it now is Also the said party of the first part grants bargains & sells unto the party of the second part his heirs & assigns forever Six hundred inches of water to be drawn from the dam across Jos River at Clinton on the West side for said

9 Mill The first privilege of the water shall belong to said Defft's paper Mill & said flouring Mill & between them the privilege to be equal also the privilege of quarrying & removing stone from said Defft's quarry in said Town of Clinton sufficient for all repairs & for keeping up said dam & race that may hereafter become necessary. This conveyance is made upon this express condition & the title to the property & privilege aforesaid shall ever remain subject to the faithful fulfilment of them to wit. The said Brown his heirs & assigns shall henceforth forever maintain & keep in repair the West half of said dam & race leading therefrom to the South side of said flouring Mill & in case of a breach or fracture in the said dam or Race the said Brown his heirs or assigns covenant & agree to & with said Defft his heirs & assigns to repair the same as soon as practicable after being requested and that said Brown will allow said Defft at any time hereafter to erect a building adjoining on the North said flouring Mill & to take out the corner stones at the North East & North West corner of said Mill & join the walls of such building thereto so as to make the North Wall of said Mill the partition wall between the Mill & the building so erected. All of which conditions said Brown his heirs & assigns hereby covenant and agree to and with said Defft his heirs & assigns to keep observe & perform

That the said Brown owned occupied and carried on the making of flour in said flouring Mill until some time on or about the 1st day of June A.D. 1854 and during all of that time your Orator never knew or heard of

his claiming or pretending to claim and your Orator is informed by said Brown & believes that he never did claim or pretend that he acquired or had by the terms of said deed to him or otherwise any title or right to more than six hundred inches of water of said water power That during that time having water sufficient for his upper Mill and no occasion for more your Orator was indifferent as to whether said flouring Mill used more than the 600 inches of water and paid no attention to it

And your Orator further showeth unto your Honor that he is informed & believes & so charges the fact to be that on said 1st day of June AD 1854 the said Brown bargained and conveyed said flouring Mill said 600 inches of water and the rights & privileges in the deed from your Orator wife to him granted to William Canton of said Kane County and who your Orator asks may be made a party defendant to this his bill of complaint

And your Orator is informed & believes and so charges the fact to be that previous to & at the time of the bargain & conveyance to said defendant of said flouring Mill by said Brown that said defendant was informed by said Brown & understood & believed that the property rights & privileges granted in the deed from your Orator & wife to said Brown & in the deed from Brown & wife to him said defendant were the same and none other or different than herein before stated. They were intended and understood to be at the time of the making of the deed by your Orator wife to said Brown & your Orator further avers that previous to the bargain & conveyance he informed

the said defendant of same facts and particularly that he was informed understood and believed that the quantity of water intended & supposed to be granted in each of said deeds was only six hundred inches

That the language descriptive of the grants and privileges & obligations used in the said deed from Brown & wife to said defendant as taken from the Records in said Recorder's Office (and a copy of which deed obtained from said place is hereto attached marked (B) and your Orator asks to have it considered a part of this his bill of complaint) is as follows to wit:

"A strip fifty feet in width off of the South side of Lot No Eight (8) in Block No seventeen (17) of Clinton Town Plat as laid out by Defft & Raymond being the ground on which the flouring Mill erected by said Brown stands & being 50 feet on the Race running East to the River. Also the privilege of drawing water at the North end of said Mill for the use of said Mill as it now is. Also grant bargain and sell unto the party of the second part his heirs & assigns forever six hundred inches of water to be drawn from the dam across Dog River at Clinton on the West side for said Mill the first privilege of water to Defft's paper Mill or said flouring Mill shall belong & between them the privilege to be agreed Also the privilege of quarrying & removing the stone from E Defft's quarry in said Town of Clinton sufficient for all repairs & for keeping up said dam & race that may hereafter become necessary. This conveyance is made upon the express condition & the title to the property &

privilege aforesaid shall ever remain subject to the faithful fulfillment of them to wit. The said Panton his heirs & assigns shall henceforth & forever maintain & keep in repair the West half of said dam & race leading therefrom to the South side of said flouring Mill & in case of a breach or fracture in the said dam or race the said Panton his heirs or assigns covenant and agree to & with the said Brown his heirs & assigns to repair the same as soon as practible after being requested and that said Panton will allow Erastus Jeffs at any time hereafter to erect a building adjoining on the North side of said flouring Mill and to take out the corner stones at the North East & North West corner of said Mill and join the walls of such building thereto so as to make the North wall of said Mill the partition wall between the Mill & the building so erected. All of which conditions said Panton his heirs & assigns hereby covenant and agree to & with said Brown his heirs & assigns to keep observe and perform. The said premises being the same conveyed by E Jeffs & wife by deed bearing date the 17th day of April A.D 1852 to said Brown. And this conveyance is made subject to the conditions limitations & restrictions therein contained & is to inure pass the same rights & privileges thereon granted"

That by the terms of said deed as will more fully appear by reference thereto it became and was the duty of said defendant ever after the date thereof to maintain and keep in repair the West half of said dam & also said race that his duty the said defendant has not performed.

13 That during most of the time since the said de-
fendant obtained the deed as aforesaid of said flowing
Mill the said Race and half of said dam have leaked
and been out of repair. That now said race and dam
near the bulkhead & thereby is permitted to be lost a large
amount of water to wit in your Orators opinion about 300
inches. That your Orator a long time ago to wit about six
months ago notified the said defendant of said leak and
requested him to repair and prevent it But the said de-
fendant has omitted and neglected to do it though he has
done some work towards it that as your Orator is in-
formed and believes a large amount of ~~water~~ the water of
said Water power to wit in your Orators opinion from
150 to 300 inches on account of defects in the walls and
works at said flowing Mill and of the want of repair
and in consequence of the negligence and inattention of
said defendant and his servants in operating said flow-
ing Mill is wasted and lost by leakage at and about
said flowing Mill. That said defendant at or about
the time of the purchase of said flowing Mill as
aforesaid of said Brownlee took possession of it and ever
since by himself and his servants has used and carried
on therein the business of a grist and flowing Mill
That as your Orator is informed and believes the said
three water wheels of said Mill with a full head of water
can do and will pass and discharge from twelve to eight-
een hundred inches of water and that said defendant
the whole of the last past year drew and used almost

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constantly during the ordinary hours of business now draws and uses of said water power more than 600 inches thereof. That while there was enough water left for the use of your Orator said paper mill and he had no use for the surplus your orator suffered this infringement of his rights by the defendant without complaint. That during the last past summer & fall on many occasions at low stages of water there was not and there is not now enough water left of said water power to propel properly the machinery of your Orator said paper mill and in consequence thereof your Orator sustained frequently and is now sustaining considerable damages

And your Orator avers that with the said race and dam out of repair and leaking as aforesaid if the said defendant on the occasion of low water as aforesaid had not drawn or used and would not now draw or use for his said flouring mill more than 600 inches of said water power there would have been and would be now enough left of it to have propelled & to propel properly the said paper mill of your Orator and he would thus have avoided and would now avoid said damages.

And your Orator further sheweth unto your Honor that during said low water seasons and while sustaining damage as aforesaid your Orator frequently in a friendly manner called the defendants attention to the fact that he to the injury of your Orator was using more than the 600 inches of water at his said Mill and requested him to refrain from so doing, but the defendant paid little regard

15 to said regnests and persisted & still persists in using as your Orator believes more than he is entitled to to wit 600 inches and your orator is informed and believes the said defendant now pretends to claim that by the terms of the deeds the copys of which as aforesaid are hereto annexed, he has the right to use all of the water of said water power that he might want for the use of said flouring Mill and insists that he intends always hereafter so to do and that he is not & shall not be confined to the use of only 600 inches. And your Orator avers that if the said defendant shall continue during all stages of water to draw & use of said water power for said flouring Mill the quantity of water which he is now drawing and using and which your orator is informed & believes exceeds by several hundred inches the amount ~~to~~ in justice he is only entitled to to wit 600 inches & which he asserts he will then your Orator will suffer serious & irreparable injury in his said business of paper making in his said paper Mill in consequence of the lack of water occasioned thereby to propel the machinery in his said paper Mill. And your orator further avers that if the said defendant (even in the present defective state of said Race works about said flouring Mill and West half of said Dam) would not draw or use of said water power more than 600 inches thereof then now and in all ordinary years at all times there would of said water power remain sufficient water to propel all the machinery of your Orators said paper mill

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16 And your Orator further showeth unto your Honor that he in a friendly manner has frequently remonstrated with the said defendant against his using for his said mill more than 600 inches of said water power. And requested him to repair & make tight said Race the leakages about his said Mill & the West half of said dam. And your Orator had well hoped that the said defendant would have heeded the said reasonable remonstrances and requests of your Orator and would have refrained from injuring your Orator by causing to use more than 600 inches of water and by performing his duty as to said Race dam & works about his said Mill as in Equity and good conscience he ought but now so it is may it please your Honor that contriving how to oppress & wrong your Orator the said defendant omits and neglects and has omitted and neglected though often requested as aforesaid to repair and make tight the West half of said dam the said bulkheads the said race and the wells and works at his said Mill and has used and is using (& alleges he will continue so to do) more (as your Orator is informed & believes) than 600 inches of the water of said water power and the said defendant as your Orator is has been told at times pretends he has fulfilled his obligations as to repairing and making tight said dam bulkheads race & works about his mill that he has used no more of said water power than he was entitled to use & that he was entitled to and had a

17 right by the terms of said deed to use and draw of said water power all that might be required for the use of said flouring mill though it may exceed by ever so much 600 inches thereof. Whereas your Orator charges the contrary thereof to be the truth and avers that said defendant is in duty bound to keep said several structures and works in repair & tight and that for a long time past they have not been and are not now in repair & tight & that the said defendant in equity & good conscience has no right title privilege or authority to draw or use of said water power more than six hundred inches of water. That all the right he has to any of said water power he acquires by virtue of said deeds and that in the opinion of your Orator a fair construction of the same with full knowledge of the Extrinsic facts concerning the situation of the property and privileges therein granted and alluded to does not & cannot ever technically convey to said defendant a title to or right to use more than 600 inches of the water of said water power. All of which actings and doings of the said defendant in the premises are contrary to Equity and tend manifestly to the wrong and injury of your Orator. In consideration whereof and because your Orator can have adequate relief in the premises only in a Court of Equity where matters of this nature are properly relievable and cognizable to the end therefore that the said defendant William Panton may upon his oath true full direct & perfect answer to the best

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of his knowledge information remembrance & belief make to all & singular the matters herein before stated & charged as fully & particularly as if the same were herein after repeated & hereunto distinctly interrogated and more especially that he may set forth & answer whether at the time he negociated with said Brown for said flouring Mill and at the time he purchased & received a deed thereof or at either of those times he was informed understood & believed

1st That the quantity of water of said water power which said Brown had title & and the rights and privileges of drawing & using for said flouring Mill as granted by the said deed from your Orator were was 600 inches and only 600 inches—

2d That the first or exclusive privilege of said water power was the quantity needed or required to propel your Orators said paper Mill and the said 600 inches for said flouring Mill

3d That the said two Mills as to drawing & using their said respective quantities of water stood on and enjoyed an equality of rights.

4th That the words used in the said deeds following to wit: "Also the privilege of drawing water at the North end of said Mill for the use of said Mills as it now is" was intended to & did simply grant the privilege of drawing or conducting said 600 inches of water across the corner of your Orators land at the North West corner of

19 said Mill

Whether the west half of said dam leaks & is out of repair?

Whether at and about said Bulkhead the said dam & Race leaks & wastes a large quantity to wit 600 inches more or less of water?

Whether at & about the said flouring Mill the said water is wasted & lost through defects & otherwise in the walls and works thereof?

8 Whether your Orator notified the said defendant several months ago that the west half of said dam the said bulkhead Race & works at said flouring Mill or one or some or all of them were out of repair leaked and wasted water & requested the same to be repaired & made right?

9 Whether the three water wheels that propel the three runs of mill stones in said flouring Mill are reaction wheels and have the capacity to pass and discharge from 1200 to 1800 inches & to state the quantity to the best of his knowledge information & belief?

Whether the said defendants or his servants have drawn and used & are now drawing & using during the ordinary business hours of running said flouring Mill of said water power more than 600 inches of water?

And that the said defendant his servants agents and workmen be restrained from drawing or using of said water power more than 600 inches of water at any one time and from drawing or using the same

only an equality of right with the quantity necessary to propel your Orator said paper Mill. That if the said Court should adjudge after being advised of all competent extrinsic facts that the true and reasonable construction of the said deeds granted the right or privilege of drawing or using of said water power more than 600 inches of water or granted the right or privilege of drawing or using an indefinite amount which might exceed 600 inches then by the decree of this Court that the said deeds may be corrected and made to express & conform to the true intention & meaning of the parties thereto at the times they were drawn as herein before explained and set forth.

That the said defendant may be compelled by the decree of this Honorable Court specifically to perform the covenants on his part in his said deed from Brown wife contained to maintain and keep in repair the West half of said dam & said Race or in case neglect or failure thereof after the lapse of certain reasonable time by the Court to be determined the said deeds and the matters and things therein contained shall be null and voids and the property rights and privileges therein granted and contained be adjudged & decreed to your Orator. That competent Commissioners be appointed by the order of this Court to measure and adjust so as to prevent infringements upon the rights of your Orator to his great injury the 600 inches of the water of said waterpower to be drawn and used by the said defendant and that your Orator may have such other and further relief in the premises as the nature of his case shall

21 require and as to your Honor shall seem meet

May it please your Honor to grant unto your Orator not only a writ or writs of Injunction of the State of Illinois issuing out of and under the seal of this Honorable Court to be directed to the said defendant William Panton to restrain him his servants workmen or agents from drawing using or wasting or suffering or permitting to be drawn used or wasted at the said flouring Mill of said defendant more than 600 inches of the water of said water power at any one time and from drawing or using that amount only on an Equality of right with the quantity of said Water power necessary to propel the said paper Mill of your Orator as the first privilege of said water power until hearing or further order of this Court. But also a writ or writs of subpoena or summons of the said State issuing out of and under the seal of this Court to be directed to said defendant William Panton thereby commanding him at a certain day and under a certain pain therein to be specified personally to be and appear before your Honor in this Court and then and there to answer all and singular the premises and to stand to and abide by and perform such order and decree therein as shall seem agreeable to equity and good conscience and your Orator shall ever pray &c

S. Wilcox

Solicitor for said complainant

Erastus Sefft

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State of Illinois }
Kane County } ss

Erastus Tefft the complainant in the foregoing bill of complaint being first duly sworn on his oath says that he has heard read and knows the contents of the said bill of complaint by him above subscribed and that the same is true of his own knowledge except as to the matters therein stated to be on his information or belief and as to those matters he believes it to be true

Subscribed & sworn to before me this 31st day of January A.D. 1856

Perry S Tefft
Justice of Peace

Erastus Tefft

A

This Indenture made this Seventeenth day of April in the year of our Lord One thousand Eight hundred and fifty five × Between Erastus Tefft & Rhoda his wife party of the first part and Hiram J Brown all of Kane County State of Illinois party of the second part Witnesseth that the said party of the first part for and in consideration of the covenants on the part of said Brown hereinafter contained & of one dollar to them in hand paid by the said party of the second part the receipt whereof is hereby acknowledged and the said party of the second part forever

released and discharged therefrom) has granted bargained sold remised released aliend and confirmed and by these presents do grant bargain sell remise release alien and confirm unto the said party of the second part and to his heirs and assigns forever all the following described lot piece or parcel of land situated in the County of Kane and State of Illinois and known and described as follows to wit: A strip fifty feet in width off of the South side of Lot No Eight (8) in Block No Seventeen (17) of Clinton Town Plat as laid out by Deffet & Raymond being the ground on which said Browns flouring mill stands being fifty feet on the race & running East to the River Also the privilege of drawing water at the East end of said Mill for the use of said Mill as it now is. Also the said party of the first part grants bargains & sell unto the party of the second part his heirs & assigns forever Six hundred inches of water to be drawn from the land across the River at Clinton on the West side for said Mill. The first privilege of the water shall belong to said Deffets Paper Mill & said flouring Mill & between them the privilege to be equal. Also the privilege of quarrying & removing stone from said Deffets quarry in said Town of Clinton sufficient for all repairs & for keeping up said dam & race that may hereafter become necessary. This conveyance is made upon the express condition & the title to the property & privilege aforesaid shall ever remain subject to the faithful performance fulfilment of them to wit: The said Brown his heirs & assigns shall henceforth & forever maintain & keep in repair the West

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half of said dam & race leading therefrom & the South side of said flouring Mill & in a case of a breach or fracture in the said dam or race the said Brown his heirs or assigns covenant & agree to & with said Defft his heirs & assigns to repair the same as soon as practicable after being requested & that said Brown will allow said Defft at any time hereafter to erect a building adjoining on the North - said flouring Mill & to take out the corner stones at the North East & North West corner of said Mill & join the walls of such building thereto so as to make the North wall of said Mill the partition wall between the mill & the building so erected. All of which conditions said Brown his heirs & assigns hereby covenant and agree to and with said Defft his heirs & assigns to keep observe & perform.

Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining and the reversion and reversions remainder and remainders rents issues and profits thereof and all the estate right title interest claim or demand whatsoever of the said party of the first part either in Law or Equity of in and to the above bargained premises with the hereditaments and appurtenances. To have and to hold the said premises above bargained and described with the appurtenances unto the said party of the second part his heirs and assigns forever. And the said Erastus Defft one of the party of the first part for himself his heirs executors and administrators do covenant grant bargain and agree to and with the said party of the

25 second part his heirs and assigns that at the time of the ensealing and delivery of these presents he is well seized of the premises above conveyed as of a good sure perfect absolute and indefeasible estate of Inheritance in Law in fee simple and ha good right full power and lawful authority to grant bargain sell and convey the same in manner and form aforesaid and that the same are free and clear from all former and other grants bargains sales liens taxes assessments and incumbrances of what kind or nature soever and the above bargained premises in the quiet and peaceable possession of the said party of the second part his heirs and assigns against all and every person or persons lawfully claiming or to claim the whole or any part thereof the said party of the first part shall and will warrant and forever defend

In testimony whereof the said party of the first part hereunto set their hands and seals the day and year first above written

Signed Sealed and Delivered } Erastus Tefft
In presence of } Rhoda Tefft
Silvanus Wilcox

State of Illinois }
Kane County } ss I Silvanus Wilcox Notary Public in and for said County in the State aforesaid do hereby certify that Erastus Tefft & Rhoda Tefft who are personally known to me as the real persons whose names are subscribed to the above deed appeared before

[12844-13]

me this day in person and acknowledged that he executed and delivered the said deed as their free and voluntary act for the uses and purposes therein set forth. And the said Rhoda Deffe wife of the said Erastus Deffe having been by me examined separate and apart and out of the hearing of her husband and the contents and meaning of the said deed having been by me made known and explained to her acknowledged that she had freely and voluntarily executed the same and relinquished her dower to the lands and tenements therein mentioned without compulsion of her said husband and that she does not wish to retract the same. Given under my hand and official seal this Eighteenth day of April in the year of our Lord One thousand eight hundred and fifty four

Seal

Silvanus Miles
Notary Public

Filed for Record 17 day of June }
A.D. 1852 at 12 o'clock M. }
L. Dearborn Recorder

State of Illinois }
Kane County } ss. I Luther Dearborn Clerk of the Circuit Court & ex officio Recorder in & for said County & State aforesaid do hereby certify that the above & foregoing is full true & perfect copy of the original deed from Erastus Deffe & wife to Abram Brown as appears from Record Book 30 page 72 of the Records of said Kane County

27 Witness my hand & seal of said Court at Geneva in said County this 26th day of June A.D. 1855.

Seal

Luther Canton
Clerk

B

This Indenture made this first day of June in the year of our Lord One thousand eight hundred and fifty four Between Hiram J. Brown and Harriet his wife party of the first part and William Canton all of Kane County State of Illinois party of the second part Witnesseth that the said party of the first part for and in consideration of Five Thousand & Five Hundred Dollars to them in hand paid by the said party of the second part the receipt whereof is hereby acknowledged and the said party of the second part forever released and discharged therefrom has granted bargained sold remised released aliened and confirmed and by these presents do grant bargain sell remise release alien and confirm unto the said party of the second part and to his heir and assigns forever all the following described lot piece or parcel of Land situated in the County of Kane and State of Illinois and known and described as follows to wit:

A strip fifty feet in width off of the South side of Lot No Eight (8) in Block No Seventeen (17) of Clinton Town Plat as laid out by Dyett & Raymond being the ground on which the flouring Mill erected by said Brown

Stands & being 50 feet on the race running East to the River also the privilege of drawing water at the north end of said Mill for the use of said Mill as it now is also grant bargain & sell unto the said party of the second part his heirs & assigns forever Six hundred inches of water to be drawn from the dam across Fox River at Clinton on the west side for said Mill the first privilege of water to Jeffs paper Mill & said flouring Mill shall belong & between them the privilege to be equal also the privilege of quarrying & removing stone from E Jeffts quarry in said Town of Clinton sufficient for all repairs & for keeping up said dam & race that may hereafter become necessary. This conveyance is made upon the express condition & that title to the property & privileges aforesaid shall ever remain subject to the faithful performance of them & each. The said Canton his heirs & assigns shall henceforth & forever maintain & keep in repair the West half of said dam & race leading therefrom to the South side of said flouring Mill & in case of a breach or fracture in the said dam or race the said Canton his heirs or assigns covenant and agree to & with the said Brown his heirs & assigns to repair the same as soon as practible after being requested & that said Canton will allow Erastus Jeffs at any time hereafter to erect a building adjoining on the North side of said flouring Mill & to take out the corner stones at the North East & North West corner of said Mill & join the walls of such building thereto so as to make the west wall of

29 said Mill the partition wall between the mill & the building so erected all of which conditions said party of the second part his heirs & assigns hereby covenant & agree to & with said Brown his heirs & assigns to keep observe & perform.

The said premises being the same conveyed by E. Jeffs & wife by deed bearing date the 17th April 1854 to said Brown & this conveyance is made subject to the conditions limitations & restrictions therein contained & is to pass the same rights & privileges therein granted.

Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining and the reversion & reversions remainder and remainders rents issues and profits thereof and all the estate right title interest claim or demand whatsoever of the said party of the first part either in Law or Equity of in and to the above bargained premises with the hereditaments and appurtenances. To Have and to hold the said premises above bargained and described with the appurtenances unto the said party of the second part his heirs and assigns forever. And the said Hiram F. Brown party of the party of the first part for himself his heirs executors and administrators do covenant grant bargain and agree to and with the said party of the second part his heirs & assigns that at the time of the ensealing and delivery of these presents he is well seized of the premises above conveyed as of a good sure perfect absolute and indefeasible estate of inheritance in Law in fee simple and has good right full power and lawful authority to grant bargain

sell and convey the same in manner and form aforesaid and that the same are free and clear from all former and other grants bargains sales liens taxes assessments and incumbrances of what kind or nature soever and the above bargained premises in the quiet and peaceable possession of the said party of the second part his heirs and assigns against all and every person or persons lawfully claiming or to claim the whole or any part thereof the said party of the first part shall and will warrant and forever defend

In testimony whereof the said party of the first part hereunto set their hands and seals the day and year first above written

Signed Sealed and Delivered in presence of Silvanus Niles

Hiram J. Brown (Seal)
Harriett Brown (Seal)

State of Illinois } ss.
Kane County }

I Silvanus Niles Notary Public in and for said County in the State aforesaid do hereby certify that Hiram J. Brown and Harriett Brown who are personally known to me as the said persons whose names are subscribed to the above deed appeared before me this day in person and acknowledged that they executed and delivered said deed as their free and voluntary act for the uses and purposes therein set forth. And the said Harriet Brown wife of the said Hiram J. Brown having been by me examined

31 separate and apart and out of the hearing of her husband and the contents & meaning of the said deed having been by me made known and fully explained to her acknowledged that she had freely and voluntarily executed the same and relinquished her dower to the Lands and tenements therein mentioned without compulsion of her said husband and that she does not wish to retract the same. Given under my hand and official seal this first day of June in the year of our Lord One thousand eight hundred and fifty four.

Silvanus Wilcox
Notary Public

Filed for Record 17 day of June
A D 1854 at 12 M

L Dearborn Recorder

State of Illinois }
Kane County } ss I Luther Dearborn Ex Officio

do hereby certify that the above & foregoing is a full perfect and complete copy of a certain deed from Hiram J. Brown & wife to William Panton as appears from Book 36 Page 70 of Records of Deeds for Kane County aforesaid

Seal

In witness whereof I have hereunto set my hand and seal of said Court at Geneva in said County this 27th day of June A D 1855

Luther Dearborn
Clerk

[12849-16]

State of Illinois
Kane County } ss

Let an injunction issue in conformity to the prayer of the preceding bill upon the complainant filing Bond in the sum of $1000. with Truman Gilbert as surety

Isaac L. Wilson Judge
15th Judicial Circuit

Geneva Jan 31, 1856

And afterwards to wit on the said 31st day of January A.D. 1856 there was filed in the said Office of the Clerk of said Court a Bond which is in the words and figures following to wit:

Know all men by these presents that we Erastus Dafft and Truman Gilbert of Kane County State of Illinois are held & firmly bound unto William Panton of the same place in the sum of One Thousand Dollars for the which payment well & truly to be made we bind ourselves jointly & severally and our respective heirs executors and administrators firmly by these presents. Sealed with our seals this 31st day of January A.D. 1856

Whereas the above named Erastus Dafft has filed his Bill of complaint in the Circuit Court of the 2nd County of Kane on the Chancery side thereof against the above named William Panton praying among other things for an injunction to restrain the said defendant from drawing or using more than 60 inches of the water of certain water power therein mentioned and whereas the Judge of said

33 Court has allowed an injunction for that purpose according to the prayer of said Bill upon the said Erastus Jefft giving bond with the above named Truman Gilbert as surety in the sum of One Thousand dollars to said Panton. Now therefore the condition of the above is such that if the above bounden Erastus Jefft and Truman Gilbert or either of them shall & do well & truly pay or cause to be paid to the said William Panton all such damages as the said William Panton may sustain by reason of such injunction if the Court shall decide that the said injunction was wrongfully sued out and shall pay such costs as may be awarded to the said Panton by said Court on the bill filed by the said Erastus Jefft then the above obligation to be void otherwise to remain in full force.

Signed Sealed & delivered } Erastus Jefft (Seal)
In presence } Truman Gilbert (Seal)

Filed January 31 1856
L. Dearborn Clerk

And afterwards to wit on the said 31st day of January AD 1856 there was issued out of the said office of the Clerk of said Court a writ of Injunction which is in the words and figures following to wit

State of Illinois }
Kane County } ss The People of the State of Illinois

3 34 to William Panton his servants workmen or agents
Greeting. Whereas it has been represented unto
our Kane County Circuit Court in Chancery sitting on
the part of Erastus Tefft complainant that he has
lately exhibited his bill of complaint in our said Circuit
Court against you the said William Panton as defend-
-ant praying relief as to the matters therein complained
against you in which said Bill of complaint it is stated
among other things that your actings and doings are con-
-trary to equity and good conscience and tend to injure
the said complainant. We therefore in consideration of
the premises & the particular matters in said Bill set
forth do strictly enjoin you the said William Panton &
the persons above mentioned that you absolutely refrain
and desist from drawing using or wasting or suffering
or permitting to be drawn used or wasted for and at the
flouring Mill now occupied by you said William Panton
situated at Clinton Kane County Illinois on the West
side of Fox River any more than six hundred inches
of water of the water power created by the dam across
said River at said place at any one time and from drawing
or using of said amount only on an equality of right
with the quantity of said water power necessary to propel
the paper Mill of said Tefft at said place as the
first privilege of said water power until the hearing of
the said cause and our said Court shall have made
further order thereupon

Witness Luther Dearborn Clerk of our

35

said Court & the seal thereof at Geneva in said County this 31st day of January AD 1856

L. L. Dearborn
Clerk

Upon the said Injunction appears the following endorsement:

Personally served by reading to the within named William Panton also by leaving a true copy of the within Injunction with the said William Panton this 1st day of Feby AD 1856

L. P. Barker
Shff of Kane Co

And afterwards to wit on the said 31st day of January AD 1856 there was issued out of the said Office of the Clerk of said Court a summons which is in the words and figures following to wit:

State of Illinois }
Kane County } ss The People of the State of Illinois to the Sheriff of said County Greeting

We command you that you summon William Panton if he shall be found in your County personally to be and appear before the Circuit Court of said County on the first day of the next Term thereof to be holden at the Court House in Geneva in said County on the second Monday of February next to answer unto the Bill of Complaint of Erastus Tefft filed on the Chancery side of said Court against him for Relief & Injunction

[12844-18]

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

Witness Luther Dearborn Clerk of our said Court and the seal thereof at Geneva in said County this 31 day of January A.D. 1856.

L. Dearborn
Clerk

Upon said Summons appears the following endorsement.

Personally served by reading to the within named William Panton this 1st day of Feby A.D. 1856

L. P. Parker
Shff of Kane Co

And afterwards to wit on the 12th day of February A.D. 1856 there was filed in the said Office of the Clerk of said Court an Answer to the ~~complaint~~ Bill of complaint above mentioned & set forth which is in the words and figures following to wit.

State of Illinois. Kane Circuit Court
In Chancery

The answer of William Panton the defendant to the bill of complaint of Erastus Dafft complainant.

This defendant now and at all times saving and

37 reserving to himself all advantage and benefit of
Exception to said Bill of Complaint for answer thereto
says that he has no knowledge information or belief of
the contracts agreements understandings rights or in-
terests of the said Defft Raymond G M Woodbury
Hiram J. Brown or the said Complainant as set forth
in said Bill of Complaint previous to the time this de-
fendant purchased the said Mill property of the said
Hiram J. Brown as set forth in said Bill Except what
he obtained from the Records of the County of Kane
and from the deed given by said Complainant and wife
to the said Hiram J. Brown dated the Seventeenth day
of April A.D. 1857 nor since save and Except as herein
after stated and for answer in that behalf says that
some time and during the first year after this defend-
ant went into the possession of said Mill and since the
said complainant began by various means to interfere
with and deprive this defendant of the rights and privileges
in the premises so purchased by him of said Brown this
defendant has heard various statements in reference to
what was understood by others to be the agreements and
contracts between the persons having or claiming to have in-
terests in said premises previous to the time this defendant
purchased the said Mill property of said Brown the sub-
stance of which is substantially as follows: That some
seven years ago the said G. M. Woodbury entered into some
sort of contract with the said Defft Raymond to build a
grist or flouring Mill on the West side of the River at the

said Town of Clinton with four runs of stone and keep the West half of the Mill dam and race in repair for which the said Jeffs and Raymond were to deed to him certain lots or land upon which to erect said Mill &c and also twelve hundred inches of water for the use of the same. That said Woodbury made a similar contract afterwards with one Truman Gilbert the proprietor on the other side of the River at Clinton and in the year 1830 erected a Mill with four runs of stone that being unwilling to abandon his contract with said Jeffs & Raymond or for some other reason said Woodbury made a contract with said Hiram K. Brown to build said Mill on the West side of the River according to said Woodbury's agreement with said Jeffs & Raymond except in one particular viz said Brown was to keep in repair one half of the West half of said Mill dam and race that said Brown went on and in the year 1830 erected said Mill with four runs of stone That in consequence of some misunderstanding between the said Woodbury and Jeffs & Raymond Woodbury did not obtain a deed from said Jeffs & Raymond but they conveyed their interest in the premises to the complainant subject to whatever rights Woodbury might have in the same that said Woodbury subsequently sold out his property and left the Country That after said Brown had got his said Mill in operation and having no title whatever (the legal title being in said Complainant) he called upon said Complainant to give him a deed of what

39 properly belonged to him that said complainant and said Brown differed in regard to what was said Brown's rights in the premises that they had several conversations on the subject and at one time the said complainant informed said Brown that he would find a person to purchase said Mill property if said Brown would take thirty five hundred dollars for the same that Brown replied he would not sell for any such price but would loose the whole first that said Brown drew or caused to be drawn a deed of said Mill property giving to said Mill the first privilege of water power as he understood his rights and presented the same to said complainant but said complainant, refused to give him such a deed and finally made or caused to be made the deed mentioned in said Bill of complaint executed by said complainant and wife and dated the seventeenth day of April 1854. and this defendant further answering admits that on or about the first day of June 1854 he purchased from said Brown the said Mill property mentioned in said Bill of complaint together with certain privileges and water power mentioned in said deed from said Brown and wife to this defendant and a copy of which deed he believes is attached to said Bill of complaint for which this defendant paid and agreed to pay the said Brown the sum of five thousand five hundred dollars (5500) which said premises were then subject to a lease of two years and which lease this

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defendant purchased from the Lessee before entering into possession of said premises that at the time this defendant purchased said Mill property of said Brown there was four runs of stone and three water wheels in said Mill that said Complainant had a paper Mill located as described in said Bill of complaint also with three water wheels and this defendant admits that many of the conditions limitations and terms of the deed from said Complainant and wife to said Brown are truly set forth in said Bill but denies that the paper attached to said Bill and purporting to be a copy is a true copy of said deed and for answer in that behalf refers to said original deed now in possession of this defendant and ready to be produced.

And this defendant further answering denies all knowledge information and belief previous to his purchase of said premises from said Brown as aforesaid in relation to the understandings conversations and negotiations had with and between the said Complainant and Brown or of the claims acts or pretences of said Brown as alledged in said Bill in respect to their or his respective rights in the premises or what said Brown claimed or pretended to claim under his deed from said Complainant utterly and absolutely denies that he was informed either by the said Brown or said complainant or by any person or thing whatever that previous to or at the time of the purchase of said premises from said Brown the property rights and privileges granted in the deed from said Complainant and wife to

41 said Brown and in the deed from said Brown and wife to this defendant were the same and none other than as in said Bill of complaint claimed to be and denies that he was informed understood or believed that the quantity of water intended or supposed to be granted in each of said deeds was only six hundred inches but for answer thereto says that previous to and at the time of his purchase as aforesaid he was a Miller by occupation and resided at Aurora in Kane County and about twenty miles from Clinton that he was desirous of buying or leasing a Mill and accidently heard that said Mill could be bought that he called upon said Brown for that purpose and that most if not all the conversation he had with said Brown was in reference to the price and time of payment for said premises That being inclined to purchase he was desirous of ascertaining whether Brown had an unincumbered title and knowing that he derived his title from said Complainant it occurred to him that he could obtain all the necessary information upon that particular subject without returning to Geneva to examine the records he therefore called upon the said Complainant informed him of his intention to purchase said Mill and that his object in calling to see him was to ascertain if there was any incumbrance upon the premises and this defendant was then informed by said complainant that he said Complainant had a warrantee deed from Jeff & Raymond for the whole village property and water power and that

[12044-21]

42 he had given a good deed to said Brown for the Mill property this defendant can not say but that some other conversation occurred between said complainant and himself but has no recollection of any other that having asked for no other information other than upon the subject of incumbrances upon said property and having received the said answer of the said complainant as above stated this defendant closed his contract of purchase with said Brown. And this defendant absolutely denies that up to the time of his purchase and until some time after he went into possession he had any knowledge information or belief that either the said complainant or any one else claimed or pretended that the right title and interest of the parties in the premises were other and different than that expressed in said deeds and this defendant says that in negotiating for and purchasing said property he was informed and judged wholly and entirely as to the rights and privileges he should acquire under his purchase from the grants contained in said deed from said complainant to said Brown and not nothing from any source whatever conflicting with that this defendant supposed to be the true form and legal interpretation or construction of the language contained or expressed in said deeds That this defendant received not asked any counsel in the matter he examined the deed not critically but was satisfied that it gave him the Mill with some run of stone and water privilege or power sufficient to propel them with all

43 necessary machinery that at that time he did not form any opinion as to all and every one of the various conditions limitations and terms of said deed but understood and believed and still understands and believes that by said deeds he obtained the rights and privileges subject to the conditions and restrictions precisely as they are expressed in said deeds and that without such knowledge information and belief obtained from said deeds and from that only he would never have purchased said premises he came without sufficient water power to run said Mill with the necessary machinery the grants are worse than worthless if this defendant is compelled to perform the terms and conditions of the grant and this defendant insists that he has not and does not claim under said deeds any more water power than is necessary to propel and keep in successful operation a mill as this was at the date of said Brown and this defendants deed with four runs of stone and that such grant is no more than a poor equivalent or compensation for the obligation imposed on this defendant by the terms of said grant and this defendant further answering denies that he has failed to keep and faithfully perform all the terms conditions and obligations in consequence upon him to perform in relation to keeping said dam and race in repair but for answer to that part of said Bill of complaint says that he has studiously and carefully repaired said dam and race at any and all practicable seasons of the year when the same required

[12-14-22]

At that said dam and race are now and have continued to be since this defendant took possession of said Mill in as good repair and condition as ~~xxxx~~ can well be with such material and as good as any known to this defendant that this defendant has not only kept the said dam and race in as good order and condition as at the date of said Brown's deed from said complainant but this defendant has expended over four hundred dollars in making them better and more secure than they were when he bought said premises and has also expended about a hundred dollars upon an embankment along the road all of which this defendant avers is no part of the obligations imposed upon him by the terms of said deed but he has expended this money and intends to expend much more to make said dam and race better than they were when he bought for his own safety security and interest whilst the said complainant will be necessarily benefitted thereby. And this defendant further answering says that it is true that soon after his purchase from said Brown he did take possession of said Mill and has occupied the same since that has and does use the same wheels and machinery that was in the Mill when he received his deed and is informed that they are the same that were in at the time the said complainant executed the said deed to the said Brown that the wheels are the same and he therefore uses the same quantity of water when in operation that was used by said Brown and no more. And this defendant further answering says

45 that since his purchase from said Brown as afore said the said defendant has put into his said paper Mill additional machinery and three additional water wheels and this defendant therefore insists that if the said complainant has not had sufficient water to operate his said paper mill such deficiency is occassioned by the additional quantity required and not by the said defendants using more water than was used by said Brown nor by any defect in said Mill dam race and works about said Mill. And this defendant further answering denies that said complainant ever at anytime in a friendly manner remonstrated with this defendant against his using for his said Mill more than six hundred inches or any other quantity of water but on the contrary thereof this defendant for answer in that behalf says that soon after he went into possession of said Mill the said complainant whenever he had occasion to repair or arrange any part of his said Mill or machinery would shut off the water at the head of the race and thereby stop this defendants Mill and would keep the water so shut off without any regard to injury he was thereby doing to this defendant in not only preventing this defendant from reaping a profit in operating his said Mill but preventing him from grinding grain for those who came to his mill for that purpose and thereby greatly injuring the Character of this defendants mill for doing promptly all work brought to it this defendant relying upon

12844-23

custom work principally for his said mill and during the first ten months that this defendant occupied his said Mill the said complainant so shut off the water four or five times stopping entirely this defendants mill about one month during that time and when spoken to by this defendant and remonstrated with for such vexations and unnecessary acts his reply was he would let the water into the race when he got ready and when asked by this defendant why he did not put in head gates in front of his own Mill and below defendants by means of which he could shut off the water from his own Mill without interfering with defendants Mill he answered "because he did not choose to do so" That some time last spring when said complainant had kept the water shut out of the race much longer than this defendant believed necessary to do what was to be done in said paper Mill this defendant called upon said complainant and informed him that unless he would finish his work and let the water into the race at a certain time this defendant would do so whereupon the said complainant informed the defendant that if he did he would throw him into the Race. And for further answer in that behalf the said defendant says that some time last summer about the ~~time he proceeded throwing said defendant into the River~~ first of August the said complainant informed this defendant that he had obtained a copy of the deed from himself & wife to Brown

And that said deed granted the right or privilege of drawing water at the South end instead of the North end of said Mill and that he therefore notified this defendant to close up the opening at the North end of the Mill and take the water at the South end according to the terms of said deed and stated that he would compel defendant to do so although such a change would be no benefit or advantage to him and would cost this defendant at least two thousand dollars thereby manifesting as this defendant insists a feeling towards this defendant anything but friendly and very much like a certain few insisting upon the condition of a certain deed.

And this defendant further answering unto the interrogating part of said Bill of complaint says that at the time he negotiated with said Brown for said flouring Mill and at the time he received a deed therefor nor at either of said times was he informed understood or believed that the quantity of water of said water power which said Brown had title to and the right and privilege of drawing and using for said flouring Mill as granted by said deed from said Complainant and wife was 600 inches and only 600 inches but this defendant at that time as hereinbefore stated particularly examined said deed and did not as fully understand them as he has since but he understood and believed them as he does now that the principal and controlling grant in said deed of the water power is in the words "to so the privilege of drawing water at

[12 SHH-DH]

the North end of said Mill for the use of said Mill as it now is." This he understood and believed then as now because 600 inches of water was then and is now wholly insufficient to operate a Mill with four run of stone and not only so but is insufficient to operate the wheels that were then and are now in said Mill which are only sufficient to operate two run of stone.

In reference to the other grant of six hundred inches he did not at that time understand nor was he informed nor did he believe any thing in particular about it and the only construction he could then have given to it had his attention been called to it is perhaps the same as he should now if called upon unasked to do so and that is the grist grant of water power only extended to the number of wheels then in use and not the number of stone in the Mill and that the 600 inches were added to propel such other wheels as might be necessary to operate the stone in the Mill for which at that time there was no wheels

2d This defendant further answers that he understood and believed then as now that the grist or exclusive privilege of said water power was the quantity required or needed to propel said compliments paper Mill as it was and the said flouring or grist Mill as it was at the date of said Brown's deed and not the said 600 inches for said grist Mill.

3d That this defendant understood and believes then as now that said two mills as to drawing and using their said respective quantities of water stood on and enjoyed

49 an equality of right as they then were at the date of said Browns deed and not that said paper Mill with its additional wheels and machinery has an equal right with said grist mill which uses precisely the same quantity of water now that it did then at the date of said Browns deed each Mill had three water wheels

4th This defendant again answers that he had no knowledge information or belief as to what was intended by said grant of 600 inches as mentioned in said deed other than he has already answered.

5th The West half of said dam before the winter set in leaked a little and as little as any dam of like material that this defendant has known and much less than it did at the time said Brown sold to this defendant

6th At the Bulkhead between the Rock and the foundation Timbers which this defendant has as yet been unable to prevent but it was much worse at the time this defendant purchased the race is in as good condition as such works generally ~~[illegible]~~ and as can well be as they will necessarily leak some the race is in much better condition than when this defendant purchased and this defendant has expended between two and three hundred dollars in building a new wall to the same

7th There may be a trifling waste of water and but a trifle if any through the walls and works of said Mill but no more than is usual about such places

[12844-25] 8th The said complainant did notify this defendant in relation to repairing said dam bulkhead &c

50 some time last spring and at a time when it was entirely impracticable in consequence of high water but this defendant did as soon as it could well be done repair said dam race &c and made them as well as they could well be

9 The three water wheels in said Grist Mill are what are generally called reaction wheels one of which this defendant has measured and has the capacity to pass 244 inches of water another is of the same kind and capacity the third is an iron wheel of different construction and as this defendant is informed passes something less than three hundred inches these are the same wheels that were in the mill when purchased by this defendant and at the date of said deed to Brown and altogether as this defendant understands and believes discharge less than Eight hundred inches or about that amount

10 This defendant has since he has occupied said Mill and still does draw and use water to propel the same machinery that was in the mill at the time he purchased it. When he has the work to do sometimes one two and three wheels as his business required using generally only two run of stone his business is such that there are ~~xxxxx~~ times when he has nothing to do at other times all he can do with the present capacity of said Mill which is the same as when he purchased. lately he has used but two wheels part of the time but one. And this defendant denies all contriving &c charged in said

of complaint without that that any other matter or thing in said Bill of complaint contained and herein sufficiently answered confessed and avoided traversed or denied is true to his knowledge or belief all of which matters and things this defendant is ready to aver &c and prays that the Injunction granted in this case against this defendant may be dissolved and he hence dismissed with his reasonable damages sustained by reason of the issuing of said Injunction and his costs and charges most wrongfully sustained

W B Plato } Wm Panton
Solr

Subscribed & sworn to before me this 11th day of February 1856
L Dearborn Clk

State of Illinois }
Kane County } ss On this 11th day of Feby AD 1856 before me appeared the above named William Panton and made oath that he had read the foregoing answer subscribed by him and knows the contents thereof and that the same is true of his own knowledge except as to the matters therein stated to be on information and belief and as to those matters he believes the same to be true

Filed Feby 12 1856
L Dearborn Clk

[12844-26]

And afterwards to wit on the 15th day of November A.D. 1856 the same being one of the days of the November Term for A.D. 1856 of said Court the following among other proceedings in said Court were had and entered of record to wit:

Erastus Dafft
v
William Canton
} Bill for Relief & Injunction

This day comes the Complainant by Wilcox his Solicitor and enters his exceptions to the defendants answer herein. The Court not being fully advised take the same under advisement

And afterwards to wit on the 7th day of March A.D. 1857 the same being one of the days of the February Term A.D. 1857 of said Court the following among other proceedings in said Court were had and entered of Record to wit

Erastus Dafft
v
William Canton
} Bill for Relief & Injunction

This day come the said parties by their respective Solicitors and agree that upon filing the answer herein replication shall be considered as filed and this cause be at issue as if the same were made at the term of the Court

53 And afterwards to wit on the 16th day of April A.D. 1857 there was filed in the office of the Clerk of said Court a further answer to said Bill of Complaint which is in the words and figures following to wit:

William Panton
ats
Erastus Dafft } In Chancery

The further answer of the said defendant to such parts of said Bill as has not been heretofore sufficiently answered to

The said defendant admits that the west half of said dam did leak but denies that it was out of repair but for answer in that behalf this defendant refers to his former answer upon that point

And this defendant denies that at & about the said time that the said dam was leaked and wasted a large quantity to wit: three hundred inches of water but for answer thereto refers to his former answer.

And this defendant admits that the location of said Mill and the manner of drawing apart of the water for supplying the same is substantially set forth in said Bill of Complaint

And this defendant further answering says that he and his servants in the ordinary business hours of running said Mill have drawn & used sometimes more and sometimes less than six

[illegible]

hundred inches of water and for further answer in that behalf refers to his former answer on that point

Sworn & subscribed before me this 16th day of April 1857
P Kellogg Clerk

William Canton

Filed April 16 1857
P Kellogg Clerk

And afterwards to wit on the 1st day of June A.D. 1857 there was filed in said Clerks Office a Replication which is in the words and figures following to wit;

State of Illinois } ss
Kane County }

Kane County Circuit Court
May Term A.D. 1857

Erastus Jeffs
vs
William Canton

In Chancery

The Replication of Erastus Jeffs complainant to the answers of William Canton defendant

This repliant saving to himself all advantage or exception which may be had or taken to the errors and insufficiencies of the answer of the said defendant for replication thereunto says that he does and will aver and prove his said bill to be true and sufficient in the law to be answered unto by the said defendant and that the said answer

55 is evasive and insufficient in the Law to be replied unto by the replicant without that that any other matter or thing in the said answer contained material in Law to be replied unto and hereby well & sufficiently replied unto confessed or avoided traversed or denied is true all which matters & things this replicant is ready to aver & prove as this Court shall direct & prays as in & by his said Bill he has already prayed

S Wilcox
Compl's Solr.

Filed June 1st 1857
P R Wright Clerk

And afterwards to wit on the 6th day of July AD 1857 the same being one of the days of the July Special Term for AD 1857 of said Court the following among other proceedings in said Court was had and entered of record to wit,

Erastus Tefft
v
William Panton
} Bill for Relief and Injunction

This day comes the defendant by Plato his Solicitor and on his motion it is ordered by the Court that this cause be continued

And afterwards to wit on the 9th day of November AD 1857 the same being one of the days of the November Term for AD 1857 of said Court the following among other proceedings in said Court was had and entered of record to wit

[12844-28]

Erastus Defft
v
William Canton
} Bill for Relief & Injunction

This day comes the Complainant by Wilcox his Solicitor and moves the Court to suppress the depositions of John W Smith et. al. taken on the 4th inst.

And afterwards to wit on the 15th day of February AD 1858 the same being one of the days of the January Term AD 1858 of said Court the following among other proceedings in said Court was had and entered of record to wit

Erastus Defft
v
William Canton
} Bill for Relief & Injunction

This cause continued

And afterwards to wit, on the 9th day of June AD 1859 the same being one of the days of the May Term for 1858 of said Court the following among other proceedings in said Court were had and entered of record to wit,

Erastus Defft
v
William Canton
} In Chancery Bill for Injunction & Relief

5481

This day comes the Complainant

57 Erastus Tefft by Silvanus Wilcox his Solic-
-itor and the defendant by William Panton
by William B. Plato his solicitor and this
cause comes on to be heard upon the Bill of
Complaint of the said Complainant the answer
as amended of the said defendant the Replica-
-tion the depositions of Hiram J Brown Henry
Sharpless D B Bartholomew John M Smith
the deed of Joseph Tefft & B W Raymond the
agreement of Tefft & Raymond to G. M Wood-
-bury agreement from G. M Woodbury to H. J.
Brown, deed of Tefft & Raymond to complainant
deed from Woodbury to P R Wright Release from
Wright to complainant deed from complainant to
H. J. Brown deed from H. J. Brown to defendant
deed from Complainant to Ulsarers and deed
from Ulsarers to defendant produced as evidence
on the part of the complainant and the depositions of
J. H. Perry John M Smith H. J Brown Hiram
Peterson & Isaiah Ross - - produced as evi-
dence on the part of the defendant and arguments
of counsel. And the Court having duly
considered the said pleadings proofs and argu-
-ments doth declare that the quantity of water
granted and conveyed in and by the deed executed
by the complainant & wife to Hiram J. Brown dated
April 17" 1854 and in & by the deed executed by
said Brown & wife to the defendant dated June 1

[12844-29]

1852 referred to in the pleadings in this cause is Six hundred inches and no more that the language used therein on which the defendant relies as granting more than said grant by to wit "also the privilege of drawing water at the North end of said Mill for the use of said Mill as it now is" grants and conveys no water whatever but grants the right or privilege of carrying the quantity of water conveyed to wit Six hundred inches over and on the Complainants land to the water wheels of the Mill in the manner at the time the same was conducted. And it appearing to the Court that the said defendant had previous to the Commencement of this suit and before the acquisition of the 300 inches additional water obtained by him of the said Delawares used and drawn for said Mill more than Six hundred inches to which he was entitled and that in consequence thereof the complainant had sustained damages. It is therefore ordered adjudged and decreed by the Court that the injunction heretofore granted in this cause to stay and restrain the said defendant his servants agents or workmen from drawing or using of said water power by virtue of the grants in said deeds contained more than Six hundred inches of water at any one time thereafter be made perpetual that the said defendant pay to the complainant within thirty days from the day of June A.D. 1858 the

59 sum of One dollar for his damages occasioned by the using as aforesaid by the defendant of more than said Six hundred inches of water

And the Court further orders adjudges and decrees that the said defendant do pay to the said complainant the costs of this suit

To which decision order and decree of the Court the defendant by his Counsel excepts

And afterwards to wit on the said 9th day of June 1858 aforesaid the same being one of the days of the said May Term of said Court the following among other proceedings in said Court was had and entered of record to wit

Erastus Tafft
5481 v
William Panton } Bill for Injunction and Relief

This day comes the defendant by Wm B Plato his solicitor and prays an appeal from the decree of the Court entered herein to the Supreme Court of the State of Illinois which is allowed by the Court on condition that he file his Appeal Bond conditioned according to law with Hiram J Brown as surety in the penal sum of five hundred dollars by the first day of September next.

12844-30

And afterwards to wit on the 9th day of June AD 1858 there was filed in the said Office of the Clerk of said Court a bill of exceptions which is in the words and figures following to wit

Erastus Tefft
v
William Panton
} Bill &c

Kane C Circuit Court
May Term AD
In Chancery 1858

Be it remembered that on the trial of this cause the complainant introduced the following depositions

61 State of Illinois }
Kane County } ss Kane County Circuit Court

Erastus Tefft }
vs
William Panton }

Depositions of Henry Sharpless aged about 42 years a witness in the above entitled suit taken by John Cox Esquire a Justice of the Peace of the County of Kane in the State of Illinois on the 16th day of May A.D. 1857 at the Office of said Justice of the peace in the Village of Clintonville in said Kane County in the presence of the attorney of the complainant and the said defendant.

On the part of the said complainant

State of Illinois }
Kane County } ss

being first duly sworn on his oath says as follows to wit

1st Interrogatory

What is name age occupation and place of residence

Answer Henry Sharpless - forty two years - Papermaker - Clintonville Kane County and State of Illinois

2d Interrogatory Are you acquainted with the parties to this suit and if yea how long have you known them

Answer I am acquainted with them have been for eighteen months

[12844-31]

62 or nearly two years

3d Interrogatory Are you acquainted with the Grist Mill built in Clinton by Abram L. Brown and now used and occupied by the defendant William Cannon have you ever been in and through said Mill if yea when was you first in and through said Mill

Answer I am I have been in the Mill one year ago last June.

4th Interrogatory Was you in and about said Mill in the year A.D. 1856 if so what were the capacity of the water wheels used in said Mill during said year and what was the number of wheels used during said time

Answer I was in the Mill during that year one of the wheels to the best of my recollection was using two hundred and ninety or ninety five inches of water I know nothing except of one wheel more and that measured three hundred inches. I cant tell you the number of wheels used

5th Interrogatory Do you mean in answer to the fourth Interrogatory that the wheels drew the one two hundred and ninety or two hundred and ninety five inches of water and that the other drew three hundred inches of water or do you mean that the one wheel measured two hundred and ninety or two hundred and

ninety five inches and the other three hundred inches

Answer I mean that one wheel measured two hundred and ninety or two hundred and ninety five inches and that the other wheel measured three hundred inches

6th Interrogatory Did you see another water wheel in that Mill during that year

Answer I believe to the best of my knowledge there was another wheel there though I did not pay any attention to it

7th Interrogatory How many inches of water was used by or escaped through that Mill during the year 1856 to the best of your opinion

Answer To the best of my opinion from eight hundred to a thousand inches

8th Interrogatory When you replied to the seventh interrogatory that said mill used from 800 to 1000 inches of water do you include the leakage of the flume and all other water wasted by said Mill and for the use of how many wheels do you estimate

Answer I estimate that water for the leakage of the flume and the running of two wheels

64

9th Interrogatory What is the name of the kind of wheels used in that Mill during the time spoken of

Answer They were reaction wheels

10th Interrogatory Was Ernestus Deffft the complainant a Mill situated on the same race with this Mill of Pantons if you is Deffts Mill above or below Pantons

Answer He has a Mill situated on the same race it is below Mr Pantons

11th Interrogatory Is there any other Mill or Machine shop or water wheel of any kind on said race below Pantons Mill that uses the water of said race

Answer There is not

12th Interrogatory Was the Mill belonging to Deffft before mentioned in part or wholly idle during the year A.D 1856 for want of water to propel its machinery and if yea how long was it so idle

Answer to 12th

Two thirds of the Mill was idle part of the months of June and July the water failed in June and left for Deffft in July. I dont remember of there being any rise of water again till September

13th Interrogatory What would have been the value to said

65 Sefft of eight hundred inches of water at his said Mill over and above what he had during the Month of July in the year 1856

Answer Probably two thousand dollars.

14th Interrogatory What was the condition of the dam and race connected with said Mills or on which said Mills was situated during the summer of 1856

Answer Rather imperfect. the dam and race both leaked some

15th Interrogatory What would have been the cost of putting said dam and race in good order and repair

Answer The dam and race could have been made tight for from twenty five to fifty dollars

Direct examination closed and in answer to cross interrogatories by defendant said witness testifies as follows to wit.

1st Cross Interrogatory Did you ever measure any of the water wheels in Pantons Mill if yes which of them when and how did you measure them

Answer I never did measure them

2d Cross Interrogatory How do you know that one wheel measures two hundred and ninety or two hundred and ninety five

[12 DNN-33]

66 inches and another wheel three hundred inches

Answer By being one of the number that see them measured and seeing other mens figures for it

3d Cross Interrogatory Who measured these wheels and how was they measured and at what time

Answer Erastus Tefft William Van Wie and a man by the name of Clark and Peter O Brien measured ~~them~~ on the face of the issue in the month of June I think in the latter part of June

4th Cross Interrogatory When water is denominated by the inch does it mean anything else than the measurement of the aperture or hole through which the water issues or escapes if so tell what it does mean

Answer Well in my judgment that is the accurate way to measure water there is a difference of opinion in regard to the draft of a wheel

5th Cross Interrogatory

Did you judge of the quantity of water escaping from said Mill by the measurement of the wheels or by the general appearance of the water running down the tail race.

Answer I judged the amount of water escaping from

67 the wheels or mill by closely observing other bodies of water issuing from gates or wheels that I know drawed about so much

6th Crop Interrogatory How many water wheels were being used each day during the summer of 1856 in Canton Mill

Answer I cant tell you

7th Crop Interrogatory

How many new water wheels have been put in Defft's paper Mill since June 1855 and how much water do they draw.

Objected to by the complainant

Answer There has been three new wheels in the place of three old ones. the builder of one of the new wheels says it draws eight hundred inches the other two I cant state anything about I dont know what they draw

8th Crop Interrogatory How many more water wheels are there in said Mill now than there were in when you first saw said Mill

Objected to by complainant

Answer Not any

9th Crop Interrogatory Was there any leakage or wasting of water in or about said paper Mill during the summer of 1856

Objected to by complainant

Answer Yes sir there was some leakage

10th Crop Interrogatory How much

Objected to by complainant

Answer There was considerable ground for it to spread over it would be hard telling probably from one to two hundred inches of water

11th Crop Interrogatory How many water wheels were running at the Jeffers Paper mill during the month of July 1856 and how much did the Mill earn during that month.

Objected to by complainant

Answer I cannot say it was not here during the month of July 1856

12th Crop Interrogatory How much of the summer of 1856 did you spend in tending said paper mills

Answer I left said Jeffers paper mill some time from the fifth to the tenth of July that was all of the summer of that I tended there in 1856

13th Crop Interrogatory Did Mr Panton repair the race and dam belonging to said Mills during the summer of 1856.

Answer Mr Panton did repair the race and dam during that season

14th Crop Interrogatory. At what time in the season was it done

Answer It was in June or July

69 Cross Examination closed and direct resumed

16th Interrogatory When in answer to your fourteenth direct Interrogatory you say the dam and race refered to was imperfect and leaked some did you mean that such was the condition of the dam and race before or after Panton repaired them particularly near the head gates

Answer The dam was in pretty good order after Mr Panton repaired it it did not leak much but the race always leaked near the head gates since I knew it

17th Interrogatory How many inches of water was wasted by the leakage of the Dam and race to the lower end of Pantons Mill after Mr Panton repaired them and how many before.

Answer Probably after Mr Panton repaired the Dam and Race the leakage would not exceed two hundred inches before he repaired the dam and race I should say from four to five hundred inches

18th Interrogatory Does Tefft's mill draw more water now than when you first saw it in June 1856

Answer Probably it does a trifle

Direct Examination closed and cross Examination resumed.

[12844-35]

77

15th 70

Cross Interrogatory Do you know what the amount of water is that the water wheels in the paper mill are reputed to draw by Mr Defft or the man that made them

Objected to by complainant

Answer I know what one of them is reputed to draw and only one by the man that made it and seeing his figures

Henry Sharpless.

State of Illinois } ss
Knox County }

I John Cox a Justice of the Peace of said County do certify that the foregoing deposition was taken by me at the time and place mentioned in the caption thereof that the said witness was first duly sworn and that the same was carefully read to said witness and signed by him

Dated this 16th day of May 1857

John Cox
Justice of the Peace

71 Deposition of Hiram J Brown a witness aged about fifty eight years taken before A Raymond A Police Magistrate of the City of Elgin Kane County State of Illinois at his Office in the City of Elgin County & State above said on the second day of May A D 1857 in a certain cause now pending in the Kane County Circuit Court and on the Chancery side thereof wherein Erastus Tefft is complainant and William Panton is defendant in the presence of the said complainant and defendant & on the part of said complainant

State of Illinois }
Kane County } ss Hiram J Brown being first duly sworn deposes and says in answer to Interrogatories as follows to wit.

1st Interrogatory What is your name age occupation & place of residence.

1st Answer Hiram J Brown - Farmer - fifty eight - Elgin Kane County Illinois - farmer

2d Ques Are you acquainted with Erastus Tefft complainant and Wm Panton deft in this suit. If you state how long and where you have known them

Ans 2d Yes. Have been acquainted with Mr Tefft eight or ten years & Mr Panton nearly three years in the Township of Elgin Kane Co. State of Illinois

[12844-36]

3d Ques Did you ever own a grist or flouring mill at Clinton Kane County State of Illinois If you state when you owned it & from whom you received the deed of it and if you afterwards sold and deeded it away state to whom and when

3d Answer I did own a grist mill about three years ago received the deed from Erastus Dafft I sold it and deeded it away to William Canton about two years before the first of June last

4th Ques Did you ever deed to said Canton the defts any other Mill than the one you received the deed of from the said Complainant

Ans 4 No Sir.

5th Ques Who erected the said grist or flouring Mill

5th Ans I did

6th Ques If you erected the said Mill upon any contract state who the contract was with and how you came to erect it and what if any thing you were to receive for so doing

Ans 6th I did erect it on a contract with H. N. Woodbury I erected on application of from said Woodbury I was to have on that contract the privilege of getting the stone out of Dafft & Raymonds Quarry where it was at that time for building the Mill and stone for building and repairing the dam and race walls and was to

73 have four hundred inches of water the grant, privilege of water and a deed for the ground water

7th Ques What if any thing did you give Erastus Jeffs for the title or deed of said Mill and the water power mentioned therein

7th Ans I contracted for keeping the West half of the dam in repair and agreed to

8th Ques How much water did said Jeffs agree & deed to you or said Mill and how much water were you to have according to your understanding of the bargain between Jeffs & you previous and at the time said deed was made

Ans 8th Six hundred inches

9th Ques Did the Complainant ever agree to or did you ever understand that he would convey or deed to you more than six hundred inches of water for the said Mill

Ans 9th No he did not

10th Ques How much of the ground conveyed to you in said deed was it covered by said Mill building that is how wide is the lot on the west end and how wide is the building on the west side

10th Ans The Lot is fifty feet wide on the West end & the building is fifty feet long on the West side the building covers the whole of said lot.

[12844-37]

11th Ques Explain the relative position of the mill building with the race and how at the time of the deed from Jeffs to you was made the six hundred inches of water for the mill was drawn or taken out of the race or to the wheels of said Mill

11th ans The West walls of the Mill forms a part of the East wall of the race. A part of water was drawn through an arch through the west wall of the Mill & part of it was drawn through a flume or race at the North end of the Mill and then through an aperture through the Mill wall into an inner flume said flume or race along North end of said Mill is about seven feet wide and five feet deep and was built from the main race to about the centre of the building

12th Ques On whose Land was said flume or race along on North end of said Mill built

12th ans on the Land of complainant & Jeffs

13th Ques Was there any agreement or understanding between the complainant and you in reference to giving you the privilege or right of drawing or taking said six hundred inches of water or any part thereof from the main race or to the wheels of said mill through the race or flume along the North end of said Mill. If yes state what it was

13th Ans There was an understanding or agreement that I

75 should have the privilege of drawing the water along the North end of said Mill

12th Ques Was there any claim in the deed of said Mill & water Executed by the Complainant to you in relation to said privilege of drawing the water at the North end of the Mill. If you state the purport of that claim as you recollect it

14th Ans Yes. There was a claim in reference to said privilege that claim granted me the privilege of drawing water at the North end of the Mill for the use of said Mill as it now is

13th Ques Did you at any time previous to or at the time of Executing the deed of the said Mill & water power to the deft inform him how much water you claimed & was deeded to you by the Complainant If you state what was said between you & deft on that subject

13th Ans I did not mention to my recollection anything about the Quantity of water that I owned or claimed by the deed that I had from the Complainant

Direct Examination Closed

Cross Examination Commenced

1st Question Do you recollect the conversation between yourself and deft at Mr Wiley's office when no objection to the working of a certain claim in the deed and if so state the subject matter of that conversation

(Ques objected to)

1st Ans (76.) Mr Panton called my attention to the clause in the deed granting the six hundred inches of water to be drawn at the dam He said it had ought to have been worded to be drawn at the Mill dont know as I can give the exact words but that is the substance after looking over the deed he said perhaps it is all right it will make no difference

Cross Examination closed

Direct Examination resumed

11th Question Has your business heretofore ever been such as to make you acquainted with flouring mills and necessary machinery thereof and amount of water necessary to drive the same. If yea state what it was and how many years it was that you were engaged in such business

16th Ans I have been in the Mill business more or less for the last fifteen or twenty years except since eighteen hundred and fifty four I have been in the Mill building & flouring business. I never operated with so low head of water as here

Examination closed

Hiram J. Brown Exmd

State of Illinois }
Kane County } ss I the subscriber a Police Magistrate of the City of Elgin in & for said County do Certify that the above deposition was taken by me at the time and place mentioned in the Caption thereof that the

77 said Witness Horace J Brown was first duly sworn and that the said deposition was carefully read to the witness and signed by him

Dated this 2d day of May A.D. 1857

A. Raymond
Police Magistrate

Deposition of David B. Bartholomew aged about fifty seven years taken before A. Raymond a Police Magistrate for the City of Elgin in the County of Kane & State of Illinois at his office in the City of Elgin County of Kane & State of Illinois on the second day of May A.D. 1857 in a certain cause now pending in the Kane County Circuit Court and on the Chancery side thereof wherein Erastus Dafft. is complainant and William Canton is defendant in the presence of the said complainant and defendant on the part of said complainant.

State of Illinois } ss
Kane County } David B. Bartholomew being first duly sworn deposes and says to Interrogatories as follows

1st Question What is your name age & occupation

1st ans David B Bartholomew age fifty seven years occupation Millwright

2d Ques How long have you been engaged in the Millwright business.

2d ans About thirty nine years.

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3d Ques Explain the quantity of water a reaction water wheel in motion will discharge compared with the size of the issues of the buckets of the wheel

3d Ans It will discharge just as much more to the second as the wheel runs in feet a second and if the issues of the bucket would standing still discharge sixteen feet of water per second then if the rim of the wheel runs sixteen feet to the second it would discharge just double that amount of water that is thirty two feet and a head of four feet of water would discharge about sixteen feet of water per second. That is the way I estimate the discharge of water in building my mills never measured it but that is my rule

Examination closed. Cross Ex^n waived by Deft

D. B. Barthotomew

State of Illinois }
Kane County } ss I the subscriber a Police Magistrate of the City of Elgin in & for said County do certify that the above deposition was taken by me at the time and place mentioned in the caption thereof that the said witness David B. Barthotomew was first duly sworn and that the said deposition was carefully read to the witness and signed by him

Dated this 2d day of May A.D. 1857

Augustine Raymond
Police Magistrate

79 Deposition of John M Smith a witness aged about fifty seven years taken before A. Raymond a Police Magistrate of the City of Elgin in the County of Kane & State of Illinois at his office in the City of Elgin in the County of Kane and State of Illinois on the second day of May AD 1857 in a certain cause now pending in the Kane County Circuit Court and on the Chancery side thereof wherein Erastus Tefft is complainant and William Panton is defendant in the presence of the said Complainant and defendant on the part of said complainant

State of Illinois }
Kane County } ss John M Smith being duly sworn deposes and says in answer to Interrogatories as follows:

Interrogatory 1st to wit: What is your name age occupation & place of residence

Ans 1st Name John M Smith age fifty seven years farmer residence Coral McHenry County State of Illinois

2d Ques Are you acquainted with the parties in the title to these interrogatories named if yea how long have you known them and where did you know them.

Ans 2d Am acquainted with them have known Mr Panton three years in June next & Mr Tefft about seven years first knew Mr Panton at Mr Brownsin Township of Elgin Kane County State of Illinois & Mr Tefft in Township & Co. above said

3d Ques At the time you saw Mr Panton the defendant at

[12844-40]

80 Hiram L. Brown if you heard him say what his
business at Mr Brown's was state what he said

3d Int. She never stated what his business was at Mr
Brown's before me.

4th Int. Have you any recollection of being present at any
time when any writings were being made between the
defts Canton & Hiram L. Brown If you state what
writings were being made and where they were being
made

1st Ans I have There was a deed made and a Mortgage
made. deed made by Mr Brown to Mr Canton and
Canton gave Mr Brown a Mortgage. Deed & Mortgage
made at Mr Riley's Esq Office in Elgin

5th Int. State if you know what property was conveyed to said
defendant by the said deed and where it was situated

Ans 5th The property conveyed was a grist Mill or
flouring Mill on the West side of Fox River in Clinton
in Kane County.

6th Int. If you heard any thing said during the said time
said deed & Mortgage were being made by Mr Canton or
between him and any one else in reference to the quantity
of water belonging to or to be conveyed with said Mill state
what & all you heard said on that subject

Ans 6th While Mr Canton deft was reading the deed
he found a certain clause in it that he did not
understand that he thought it did not convey as right
meaning in the instrument. Then he spoke to Mr
Brown about this clause Mr Brown told him that we

all his claim that he sold him or what the deed specified Mr Brown stated that the number of inches of water, that he conveyed to him was six hundred inches

Question 6th Who was present during the said Conversation between Panton and Brown about the amount of water

Answer 6th There was no person here except Mr Wiley & ourselves

Direct Examination closed

Cross Examination commenced

Interrogatory 1st What was the particular clause in the deed which Mr Panton said that he did not understand

Ans 1st The deed said something about drawing water from the dam instead of drawing it at the Mill it spoke of drawing it at the dam and of drawing it at the Mill as though there was two quantities

Ques 2d Was not the drawing the water at the dam the subject of conversation between Mr Panton & Mr Brown and not the quantity of the water mentioned in the claim

Ans 2d It was the subject of this clause that caused Mr Brown to refer to this claim when he spoke of the number of inches of water

Ques 3d Did not Mr Panton say to Mr Brown at this time that the claim ought to have read to draw this water at the Mill instead of at the dam.

Ans 3 There was a conversation of that kind at the time

Q. 4 Was not this drawing of the water at the dam the only thing that Mr Panton found fault with and said it might have read been drawn at the Mill

Ans 4 This is the same Question that arose when he

Brown told him that was all that he had to see him when the deed was drawn Mr Paxton read it over and he said that this might to be wrote in another form stating where the water was to be used if he had made out the deed in the first place then he would have done it in a shorter way. Mr Brown at the same time told him that he let him have his claim just as he had it naming the number of inches of water six hundred inches of water.

Ans 4

Cross Examination closed

John W Smith

State of Illinois }
Kane County } ss I the subscriber a Police Magistrate of the City of Elgin in & for said County do certify that the above deposition was taken by me at the time and place mentioned in the caption thereof that the said witness John W Smith was first duly sworn and that the said deposition was carefully read to the witness and signed by him.

Dated this 2d day of May A D 1857

Augustine Raymond
Police Magistrate

To the introduction of each of which depositions as evidence the defendant by his counsel at the time objected - The Court overruled the objections and allowed the depositions to be read as evidence to which said ruling and decision of the Court in admitting said several depositions as

evidence the defendant by his counsel at the time excepts
The complainant then introduced as evidence in the
case the following papers or instruments in writing;

Raymond &c
Tefft
To
E. Tefft

This Indenture made this Fifth day of February
in the year of our Lord One thousand Eight Hundred &
fifty three Between Benjamin Dt. Raymond and
Amelia his wife of the City of Chicago County of Cook &
State of Illinois and Joseph Tefft and Lovina his
wife of Elgin County of Kane and State of Illinois of
the first part and Erastus Tefft of Elgin County of
Kane and State aforesaid of the second part Witnesseth
that the said party of the first part for and in considera-
tion of Three Thousand Dollars in hand paid by the
said party of the second part the receipt whereof is hereby
acknowledged and the said party of the second part forever
released and discharged therefrom, have granted bar-
gained sold remised released aliened and confirmed
and by these presents do grant bargain sell remise release
alien and confirm unto the said party of the second part
and to his heirs and assigns forever all the following de-
scribed lots pieces or parcels of land to wit: Situate in the
County of Kane & State of Illinois known and designated
as Raymond & Tefft's Plat of the Village of Clinton Bounded
as follows: Beginning Eighty rods East of the west line and
Forty rods South of the South line of Section Thirty five
(35) in Township Forty One (41) North Range Eight (8) East
of the third principal meridian at a Stake & Stone Thence

L 12844-42

84 South nineteen chains and twenty seven links (19.27chs) thence west Seven chains & twelve links (7.12 chs) to the center of the County Road as now marked out, Thence South ten degrees & fifteen minutes west twenty chains and twenty Six links (20.26 chs) to a Stake & Stone Thence North Eighty degrees (80°) East twenty one chains & twenty five links (21 25/100 chs) to the Bank of Rock River thence North by the bank of said River to a Stake forty rods South of the North line of said Section thirty five (35) thence west to the place of beginning. Containing Forty (40) & 90/100 acres be the same more or less. Together with the west half of the Dam connected with said premises and the one half of the water power created by said Dam Meaning hereby to convey all the Land, Dam, water power and privileges thereto belonging which were conveyed to Edmund Gifford and Joseph Tefft by deed from Fanny Collins & by deed from Truman Gilbert. Both dated Feby 8th 1845 Excepting 7 & 90/100 acres of said premises which were reconveyed to said Fanny Collins and her children by said Gifford & Tefft also Excepting & reserving Lot No. One (1) in Block No. Five (5) according to said Plat as surveyed by Adin Mann. It being hereby understood that provided any lawful claims exist or shall hereafter be established against the said premises under or by virtue of a certain Contract bearing date the tenth day of December A.D. 1847 between said Tefft and Raymond of the first part and Greenleaf M. Woodbury of the second part

relative to Water power and the keeping forever the Dam in repair and other things in said Contract mentioned the above premises are conveyed subject to all such ~~claims~~ lawful claims. Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining and the reversion and reversions remainder and remainders rents issues and profits thereof and all the estate right title interest claim or demand whatsoever of the said party of the first part either in law or equity of in and to the above bargained premises with the hereditaments and appurtenances. To have and to hold the said premises above bargained and described with the appurtenances unto the said party of the second part his heirs and assigns forever. And the said party of the first part for themselves and their heirs executors and administrators do covenant grant bargain and agree to and with the said party of the second part his heirs and assigns that at the time of the ensealing and delivery of these presents they are well seized of the premises above conveyed as of a good sure perfect absolute and indefeasible estate of inheritance in law in fee simple and have good right full power and lawful authority to grant bargain sell and convey the same in manner and form aforesaid and that the same are free ~~from~~ and clear from all former and other grants sales liens taxes assessments and incumbrances of what kind or nature so ever except such liens or rights as

[12844-43]

86 may exist by virtue of the contract above mentioned and the above bargained premises in the quiet and peacable possession of the said party of the second part his heirs and assigns against all and every person or persons lawfully claiming or to claim the whole or any part thereof the said party of the first part shall and will warrant and forever defend except as against any claims arising under said Contract with L. M. Woodbury.

In Testimony whereof the said party of the first part hereunto set their hands and seals the day and year first above written

Signed Sealed and delivered in presence of

The words "except such liens or rights as may exist by virtue of the Contract above mentioned" between the 48th & 49th lines interlined before signing

R R Wright

B. F. Raymond (Seal)
Amelia Raymond (Seal)
Joseph Tefft (Seal)
Louisa Tefft (Seal)

State of Illinois } ss
Cook County }

I Henry W. Clarke a Notary Public in and for said County in the State aforesaid do hereby certify that B. F. Raymond & Amelia Raymond who are personally known to me as the real persons whose names are subscribed to the above Deed appeared before me this day in person and acknowledged that they executed and delivered the said Deed as their free and voluntary act for the uses and

87 purposes therein set forth. And the said Amelia wife of the said B. W. Raymond having been by me examined separate and apart and out of the hearing of her husband and the contents and meaning of said Deed having been by me made known and fully explained to her acknowledged that she had freely and voluntarily executed the same and relinquished her dower to the lands and tenements therein mentioned without compulsion of her husband and that she does not wish to retract the same.

Notary Seal

Given under my hand and Notarial Seal this Fifth day of February in the year of our Lord one thousand eight hundred and fifty three

Henry M. Blake
Notary Public

State of Illinois } ss
Cook County }

I Paul R. Wright a Justice of the Peace of said County do hereby certify that Joseph Tefft and Lovina Tefft who are personally known to me to be the same persons whose names are subscribed to the within Deed appeared before me this day in person and acknowledged that they executed and delivered the said Deed as their free and voluntary act for the purposes therein set forth. And the said Lovina Tefft wife of the said Joseph Tefft having been by me examined separate and apart and out of the hearing of her said husband and the contents and meaning of said Deed having been made known and explained

to her acknowledged that she had freely and voluntarily executed the same and relinquished her dower to the lands and tenements therein mentioned without compulsion of her husband and that she does not wish to retract the same.

Witness my hand and seal this Tenth day of February in the year of our Lord One Thousand Eight hundred and fifty three

Paul R. Knight (Seal)
Justice of the Peace

Filed and recorded Feb. 10 1853
3 o'c P. M. in Book 29 Page 197
Luther Dearborn Recorder

Jeffr & Raymond to Woodbury

This Indenture made this Tenth day of December A.D. 1847 by and between Joseph Jeffr of Elgin in the County of Kane and Benj. R. Raymond of Chicago in the County of Cook both in the State of Illinois of the first part and Greenleaf M. Woodbury of Peoria County in the State aforesaid of the second part

Witnesseth that in consideration of the covenants & agreements hereinafter mentioned the said Jeffr & Raymond the said party of the first part covenant and agree to and with the said Woodbury the said party of the second part his executors administrators & assigns that when and as soon as the said covenants and agreements hereinafter mentioned are fulfilled on the part of the said party of the second part except the

89 covenant to keep the premises hereinafter mentioned (to wit) the Mill dam & Race in repair will convey or cause to be conveyed to the said party of the second part his heirs and assigns forever the following described land & water power (to wit) Being a certain parcel of land situate in the said Kane County in Township (41) Forty One North Range Eight (8) East of the third principal meridian. Being a part of fractional quarter Section (35) Thirty five and beginning on the upper side of Clinton Dam (so called) and running South as far as the Street the west end of which divides the lands of the said Tefft & Raymond from the lands of one Fanny Collins and lying between the Race hereinafter mentioned & Fox River and also a lot of land as described by a Plat made from the survey of Alvin Mann Surveyor for the said County of Kane situate directly west of the South end of the last named lot & north of the said Street

And also to convey at the time aforesaid to the said party of the second part Twelve hundred (1200) inches of the water to be drawn from the Race hereinafter mentioned within One hundred feet of the lower end of said race and with covenants to secure the same as the first privilege of the west half of the water power created by the said Clinton Dam. And also to convey to the said party of the second part the right to quarry a sufficient quantity of stone on the land belonging to the said Tefft & Raymond South of

[12 2444-116]

where a quarry has already been opened on the said land to erect the mill to construct the Race & repair the dam (all hereinafter mentioned) & to keep the same in repair as hereinafter stated and the right of way from the said Mill Race & Dam to and from the said quarry for the purpose of conveyssing the said Stone for the purposes aforesaid. And the said party of the second part for himself his executors administrators and assigns covenants and agrees to and with the said party of the second part their executors administrators & assigns that he will erect build and complete a stone flowing mill upon the lower or south end of the first above named lot of land lying between the said Race & the Sd. Fox River to be at least fifty feet long and forty feet wide and at least three stories high and to put into the said Mill four run of stone with all necessary bolts & machinery for running the said Mill in flowing wheat. Also to repair the west half of the said Clinton Dam by running three timbers crosswise on the said Dam and cover them with oak plank from two to three inches thick making the said Dam five inches higher than the said Dam now is and gravel the same so as to make it tight and permanent. Also to construct a suitable bulkhead or floom at the said Dam the west side of which to be at the middle of the present floom and to set the whole width of the same towards the center of the river to be thirty feet long and as wide as the old floom now is to be built in a work-

91 manlike manner with four bents timbers at the bot=
tom to be ten inches thick and the bottom & sides to
be covered with oak plank two inches thick.

Also to contruct a race leading from the said
floom or bulkhead to the said first named Sluice
making the said race about twenty five rods long
the said race to be thirty feet wide at the bottom
and thirty three feet wide at the top when finished
said race to be walled upon both sides said walls
to be from eighteen to twenty four inches thick and
well supported on the back side particularly at
the said dam on the East side of the said race
the bottom of the said floom and race to be within
one foot as low as the top of the rock as it now is
under the dam on the East side of the new floom
as above described and the south end of the said
race on the bottom to be two inches lower than at
the dam aforesaid making a gradual descent.
And to commence the construction of the said Mill
race & the repairing of the said dam as soon as
the Spring of Eighteen hundred & forty Eight and
to have the said race & building for the said Mill
and the repairing the said Dam as aforesaid and the
constructing of the said floom or bulkhead all com=
pleted on or before the Month of May Eighteen
hundred & forty nine. And to have two run of
Stone with all the necessary machinery in full
operation by the last mentioned time and to have

512844-15

four run of stone with all the necessary bolts and machinery in full operation on or before the Month of May A.D. 1850.

And the said party of the ~~first part~~ second part his executors administrators & assigns covenants & agrees to and with the said party of the first part their executors administrators & assigns that he will forever keep the said west half of the said dam and the said race in good repair and to make the said repairs as soon as is practicable after he is requested so to do by other persons interested therein reasonable time being given for so doing

And it is further understood and agreed by & between the said parties that the said last named repairs shall forever remain an incumbrance upon the said lots of land and upon the said water power herein agreed to be conveyed as aforesaid and that the said conveyance is to be subject to the said incumbrance forever

And it is also still further understood and agreed by and between the said parties that the said race is to run direct from the said flume to the said street as laid out by Adin Mann as aforesaid and for a more particular description reference to be had to the plat aforesaid. And the said parties of the first part covenant & agree to & with the said party of the second part that they will pay or cause to be paid to the said party of the second part the sum of

93 ($225) Two Hundred and fifty Dollars as follows (to wit) one half of the said sum ($125) One Hundred and twenty five Dollars when and as soon as the said dam and race are one half completed and the other half (to wit) ($125) One Hundred and twenty five Dollars when and as soon as the said Dam and race are fully completed. And the said party of the second part further agrees to and with the said party of the first part that he will construct the said race One foot higher than the said dam when the said dam is completed as aforesaid or higher if necessary to prevent the water from running over it and built permanent & in a workmanlike manner & to keep the same tight forever tight and in good repair so that there shall never be any loss of water from the said race.

And it is further understood and agreed that the said party of the first part shall draw and conduct the water from the said race whenever they shall chose to do so by a race connected with the South end of the aforesaid race & to use the said water South of the south End of the said race to be built by the said party of the second part provided that the said twelve hundred inches of water shall be left for the use of the said party of the second part under a full head that is having the same full to the top of said dam

In Witness Whereof we have hereunto set our hands and seals the year and day first above named

[12844-47]

Joseph Tefft (Seal)
B. W. Raymond (Seal)
G. M. Woodbury (Seal)

Tefft & Raymond To Woodbury

In consideration that the party of the second part agrees to construct a permanent Stone aqueduct 18 inches Square in the clear below the bottom of the present race said aqueduct to be built 7 feet South of the South line of the Street directly South of the lot herein mentioned to be conveyed by the party of the first part. the party of the first part agree to extend the time of completion of the first part of this Contract to wit the putting in operation two runs of Stones by the month of May 1849 to the first of September 1849 & further more the finishing of the Building machinery and completing of the flom & Dam until said first day of September 1849

B. W. Raymond
Joseph Tefft
G. M. Woodbury

Elgin Dec 27th 1848

Woodbury To P. R. Wright

For a valuable consideration I hereby assign and set over the within Contract between me and Joseph Tefft & B. W. Raymond and all my right title & interest therein & to the premises & all matters & things therein contained to Paul R. Wright

Signed Sealed and delivered this first day February A. D. 1854

Greenleaf M. Woodbury (Seal)

95

Woodbury
B
H. J. Brown

Articles of agreement made and entered into between Greenleaf M. Woodbury of the County of Kane and State of Illinois of the first part and Hiram J. Brown of the same place of the second part Witnesseth that the party of the first part for and in consideration of the covenants and agreements hereinafter mentioned do agree with the party of the second part to let said Brown have a lot of land upon the East side of the lower end of the Race that said Woodbury has made upon the west side of Fox River in the Town of Clinton in said County being fifty feet front and rear and extending back from said Race to said Fox River Likewise one third of the Water power that said Woodbury has contracted with one Benj. W. Raymond and Joseph Tefft for in accordance and agreeable to articles of agreement hereunto annexed which the said Woodbury dose hereby bind himself his heirs and administrators to deed to the said Brown as soon as said Raymond & Tefft Deeds to said Woodbury which said Deed shall be in the same manner and form as the said Raymond and Tefft deed to said Woodbury is. Providing said Raymond & Tefft will not deed the portion that is stated above to said Brown & the balance to said Woodbury for and in consideration of the above the party of the second part dose bind himself his heirs administrators and assigns unto the party of the first part that he will fulfill all of the covenants and agreements that said Woodbury has

(12894-48)

covenanted and agreed to in the said articles of agreement between said Benj. W. Raymond and Joseph Pfeiffer hereunto annexed excepting the Race wall commencing about four rods from where the old flume formerly stood to the lower end of said Race to where it is now dug which said Woodbury is to complete excepting the lot where said Browns Mill is to stand And it is the expressed understanding between said Woodbury and the said Brown that they are to replace and repair the west half of the said Clinton Dam and put in a new Bulkhead or flume & build two good & sufficient walls below said flume to where said Race walls are now commenced all of which is to be done as soon as the water and weather will admit and agreable to the annexed articles of agreement and the expense to be borne equally between said Woodbury and said Brown and it is further agreed between said Woodbury and said Brown that they and their heirs assigns and administrators are forever to keep the west half of said Dam Bulkhead & Race as far as it now is dug in repair and the expenses of so doing shall be borne equally between said parties. And it is further agreed by and between said parties that whenever there should be a break or fracture in said West half of said Dam. Bulkhead or Race and then as soon as it is practicable to replace or mend said break or fracture. if either party shall fail to help to replace or mend said break or fracture then the other party has the privelege

of doing all of said work and shall keep a correct account of said work and then as soon as the said work is completed the party so refusing shall pay unto the party that has done said work one half of what it has actually cost to replace or mend said breach

Signed Sealed and delivered this the ninth day of April 1849 & G. M. Woodbury L.S.
Hiram J. Brown L.S.

Woodbury To Wright

For a valuable consideration to me paid by Paul R. Wright I hereby assign & set over to the said Wright the within contract between me and Hiram J. Brown and all my right title and interest therein & to the premises & all matters & things therein named Signed Sealed & delivered this First day of February A.D. 1854

Greenleaf M. Woodbury

Wright To Tefft

Whereas Joseph Tefft & Benjamin W. Raymond of one part and Greenleaf M. Woodbury of the other part Entered into a certain agreement dated the Tenth day of December A.D. 1847 relating to certain property and certain work to be done at Clinton & Clinton in Kane County Illinois on the west side of Fox River and whereas the said Joseph Tefft and Benjamin W. Raymond have sold and conveyed the property aforesaid to

Erastus Pefft subject to all the rights of said Woodbury under said agreement which ~~said~~ said agreement has been assigned by said Woodbury to Paul R. Wright and whereas also the said Erastus Pefft and Paul R. Wright have submitted the whole matter in said agreement and the rights of said Wright under said agreement to the award arbitrament & final determination of Thomas L. Morgan John Rumstead & Ezekiel Ballard as arbitrators mutually chosen by said Pefft & Wright and said Arbitrators have awarded & determined that said Erastus Pefft shall pay to said Paul R. Wright the sum of Two Hundred & Eighty one Dollars in full of all claims under said agreement.

Now Therefore Know all men by these Presents that I the said Paul R. Wright in consideration of the premises and of the sum of Two Hundred & Eighty One Dollars secured to be paid to me ~~by~~ in one year from this date do hereby grant release and quit claim unto the said Erastus Pefft his heirs and assigns all my right title interest and claim in and to the said agreement or originating arising or growing out of the same. To Have and to hold the same to him his heirs and assigns forever.

In Witness whereof I have hereunto set my hand and seal this 25th day of December A.D. 1854

Paul R. Wright (Seal)

49 State of Illinois } I Silvanus Wilcox Notary
Kane County } ss Public in and for said Kane
County do hereby certify that Paul R.
Wright personally known to me as the real person whose
name is subscribed to the forgoing deed appeared be-
fore me this day in person & acknowledged that he signed
sealed & delivered the said instrument of writing as
his free & voluntary act for the uses and purposes
therein set forth.

Notary Seal.

Given under my hand & official
Seal this 26th day of December A.D. 1854
Silvanus Wilcox
Notary Public

E. Tefft
To
J. & D. Ulsaver

This Indenture made the Nineteenth day of
October in the Year One Thousand Eight Hundred
and fifty five Between Erastus Tefft & Rhoda
his wife of Elgin Kane County State of Illinois of
the first part and Jonathan Ulsaver and David
Ulsaver of the County and State above named of the
second part Witnesseth that the said parties of the
first part in consideration of the sum of One Thou-
sand ~~Dollars~~ Three Hundred Dollars to us duly paid
before the delivery hereof have granted bargained
sold and by these presents do grant bargain sell and
convey to the said parties of the second part their heirs
and assigns forever all the following pieces of land

S 12844-50

Commencing at the South west corner of Pantons mill and running along the line of the race as now built Sixty feet thence East to Fox River thence along the line of said River Sixty feet to the South East corner of said Pantons Mill lot thence along the line of said Mill Lot to the place of beginning with the right to use Pantons South wall and subject to the conditions of a Deed from E. Peffer & wife to H. J. Brown of said Mill also to draw three hundred inches of water from said Race and in no case to put any gate that will allow of more than said water to run through

Also commence at the South west corner of Lot No (6) Six in Block No (17) Seventeen and run forty feet South on a line of said Lot Thence East to the west line of the Race thence along the line of the Race to the South line of said lot Thence west to the place of beginning with the privelege of building a Bridge over said race between said Lot but in no case to obstruct said Race all in Elliston Kane Co Illinois as laid out and recorded. The above granted water power is to be considered the second draw of water Peffs paper mill and Pantons Mill to be first power and have the preference. With the appurtenances and all the estate title and interest of the said parties of the first part therein And the said parties of the first part does hereby covenant and agree with the said parties of the second part that at the time of the delivery hereof the said

101 parties of the first part the lawful owners of the premises above granted and seized thereof in fee simple absolute that they will warrant and defend the above granted premises in the quiet and peaceable possession of the said parties of the second part their heirs and assigns forever and that they are free from all incumbrances whatsoever

In Witness Whereof the said parties of the first part have hereunto set our hands and seal the day and year first above written

Signed Sealed and delivered in presence of Silvanus Wilcox } Erastus Tefft (Seal) Rhoda Tefft (Seal)

State of Illinois } ss I Silvanus Wilcox Notary
Kane County } Public in and for the said County in the State aforesaid do hereby certify that Erastus Tefft and Rhoda Tefft personally known to me as the same persons whose names are subscribed to the above Deed appeared before me this day in person and acknowledged that they signed sealed and delivered the said instrument of writing as their free and voluntary act and for the uses and purposes therein set forth. And the said Rhoda Tefft wife of the said Erastus Tefft having been by me examined separate and apart and out of the hearing of her husband and the contents and meaning of the said instrument of writing having

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been by me fully made known and explained to her she acknowledged that she had freely and voluntarily executed the same and relinquished her dower to the lands and tenements therein mentioned without compulsion of her said husband and that she does not wish to retract the same

Given under my hand and Notarial Seal this Twentieth day of October A.D. 1855

(Notary Seal)

Silvanus Wilcox
Notary Public

Filed Oct 22 1855 at 11 o'c a.m. & recorded in Book 40 Page 17

C. Dearborn Recorder

J. D. Ulsaver To Wm. Panton

This Indenture made this Fourteenth day of February in the year of our Lord One thousand eight hundred and fifty six Between Jonathan Ulsaver and David Ulsaver of the Town of Elgin County of Kane State of Illinois of the first part and William Panton of Town County and State aforesaid party of the second part Witnesseth that the said parties of the first part for and in consideration of One Thousand Dollars in hand paid by the said party of the second part (the receipt whereof is hereby acknowledged) and the said party of the second part forever released and discharged therefrom have granted bargained sold remised released aliened and confirmed &c

103 by these presents do grant bargain sell remise release
alien and confirm unto the said party of the second
part and to his heirs and assigns forever all the
following described lot piece or parcel of land
situated in the County of Kane and State of Illinois
and known and described as follows to wit: The
following pieces of land commencing at the North west
corner of Pantons mill and running along the line
of the race as now built Sixty feet North Thence East
to Fox River. Thence along the line of said River sixty
feet to the South East corner of said Pantons Mill lot
Thence along the line of said Mill lot to the place
of beginning. Also Commencing at the South west
corner of Lot No (6) Six in Block No (17) Seventeen
and running Forty feet North on the line of said lot
Thence East to the west line of the race Thence along the
line of the race to the south line of said lot thence
west to the place of beginning. With the privelege of
building a bridge over said race between said lots
but in no case to obstruct said race also the right
to draw three hundred inches of water from said
race and in no case to put any gate that will allow
of more than said water to run through. Said water
power to be second in privelege to Tefft's Paper Mill
and Pantons Flouring Mill they having the preference
All in the Village of Clinton Town of Elgin County
of Kane State of Illinois as laid out by Tefft and
Raymond. The above Deed is intended to pass

(12844-5)

convey all the right and priveleges granted by a deed from E. Tefft & wife to Jonathan Ulsaver & David Ulsaver bearing date the nineteenth of October Eighteen hundred & fifty five. Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining and the reversion and reversions remainder and remainders rents issues and profits thereof and all the Estate right title interest claim or demand whatsoever of the said party of the first part either in law or Equity of in & to the above bargained premises with the hereditaments and appurtenances. To have and to hold the said premises above bargained and described with the appurtenances unto the said party of the second part his heirs and assigns forever. And the said Jonathan Ulsaver & David Ulsaver party of the first part for themselves and their heirs Executors and administrators do covenant grant bargain and agree to and with the said party of the second part his heirs and assigns that at the time of the Ensealing and delivery of these presents they were well seized of the premises above conveyed as of a good and perfect absolute and indefeasible Estate of inheritance in law in fee simple and have good right full power and lawful authority to grant bargain sell and convey the same in manner and form aforesaid and that the same are free and clear from all former and other grants bargains sales

105 liens tapes assessments and incumbrances of what kind or nature soever and the above bargained premises in the quiet and peaceable possession of the said party of the second part his heirs and assigns against all and every person or persons lawfully claiming or to claim the whole or any part thereof the said party of the first part shall and will warrant and forever defend

In Testimony Whereof the said party of the first part hereunto set their hands and seal the day and year first above written

Signed Sealed and delivered in presence of
Perry S. Tefft

Jonathan Ulsaver (L.S.)
David Ulsaver (L.S.)

State of Illinois } ss
Kane County }

I Perry S. Tefft a Justice of the Peace in and for said County in the State aforesaid do hereby certify that Jonathan Ulsaver and David Ulsaver who are personally known to me as the real persons whose names are subscribed to the above Deed appeared before me this day in person and acknowledged that they executed and delivered the said Deed as their free and voluntary act for the uses and purposes therein set forth. Given under my hand and seal this Fourteenth day of February in the year of our Lord one thousand Eight hundred & fifty six

Perry S. Tefft
Justice Peace

Filed March 3. 1856 at 11½ o'c A.M.
and recorded in Book 43 Page 40
L. Dearborn Recorder

[128414-53]

to the introduction of each and every one of which said written instruments as evidence the defendant by his counsel at the time objected. The Court overruled the true execution of each of said instruments being admitted by defendant

defendants objections and allowed such instruments to be read as evidence to which ruling and decision of the Court in admitting said evidence the defendant by his counsel at the time excepted. The foregoing is all the evidence on the part of the complainant. The defendant then introduced and read as Evidence the following depositions to wit

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State of Illinois }
Kane County } ss

Deposition of Hiram J Brown

a witness aged about 58 years taken before John Cx a Justice of the Peace in and for the County of Kane and State of Illinois at his Office in East Clinton in said County on the 4th day of November AD 1857 in a certain cause now pending in the Kane County Circuit Court and on the Chancery side thereof wherein Erastus Tefft is complainant and William Panton is defendant in the presence of the said Complainant and defendant on the part of said defendant.

Plaintiff objected to taking any further depositions on the ground of the cause being submitted.

1st Int q Are you the Hiram J Brown whose deposition was taken by complainant in the case of Tefft vs Panton on the 2d day of May AD 1857 before A Raymond a Police Justice in Elgin

Ans 1st I am.

2d Int In that deposition you state substantially that the Mill sold by you to Panton was erected by you upon a contract with G. M. Woodbury now how many run of stone were you to put in the Mill by that contract and was this the same size Mill that Woodbury engaged to build in his contract with Tefft & Raymond for which he was to receive twelve hundred inches of water

[128114-54]

Ans 5th Was to put in four. It was the same size Mill

3d Int How many water wheels and how many hundred inches of water would it require to propel said four run of stone with necessary machinery

3d Ans Five water wheels from twelve to fifteen hundred inches of water.

4th Int How many run of stone and how many water wheels were in said Mill when you obtained your deed from E Jeffs and how many hundred inches of water did those wheels draw

4th Ans Four runs of stone and three water wheels, dont know how much they did draw I should think they drew about eight hundred inches

5th Int Are the same water wheels in use in said Mill now and none others

5th Ans They are and no others that I am aware of

6th Int Did Mr Canton increase the West half of dam and race from the time of his purchase to January 31st A.D 1856 and if so how and to what extent

6th Ans He improved it during that time by gravelling the dam and building a stone wall on the East side of the race at the upper end and raising and gravelling

the wing at the west side of the bulkhead and raising the banks of the race at a cost of from five hundred to a thousand dollars

7th Int What is it in your opinion worth per year to keep said dam & race in ordinary repair and what is the risk of more severe damage by flood.

7th Ans Worth one hundred dollars a year. It may cost one thousand dollars if it should sweep it all out.

8th Int What was water worth per inch on this dam at the time you built this mill

8th Ans Dont know what it was worth

9th Int Did you before or at the time of his purchase of said Mill Explain to Mr Panton your understanding of said deed or particularly that clause reading thus also the privilege of drawing water at the North end of said Mill for the use of said Mill as it now is.

Ans 9th I did not to the best of my recollection.

10th Int Was the conversation between you and Panton in Mr Wiley's Office in relation to the quantity of water that the deed conveyed or in relation to the place of drawing the six hundred inches mentioned in the deed

10th Ans The conversation was with regard to the drawing of
110 110 the six hundred inches at the dam. Mr Canton
said he thought it said ought to be written to draw
at the Mill.

11th Int Who was present during this conversation and what
were they engaged in

11th Ans Mr Wiley Mr Canton Mr Smith and myself were in
the room Mr Wiley was engaged in one corner of the
room filling out a Mortgage and the other three was
in the opposite corner of the room sitting at a table
talking waiting for Mr Wiley to fill out the Mortgage

Cross Interrogatorys Commenced

1st Int How much water was you to have in your Contract
with Woodbury to run and Fail with

1st Ans Four hundred inches

2d Int Did you make a very bad bargain with Woodbury

2d Ans I did

3d Int Are these water wheels reaction wheels

3d Ans Two of them are and one of them is a combination between
reaction and percussion

4th Int Would a reaction wheel draw more water than they
measure and what do you think them would measure

4th Ans It is generally supposed that they will near eight hundred inches.

5th Int Was Pantons improvement to the race of much use and who was to keep the wing from the bulk head West in repair

5th Ans It dont appear to have been of a great deal of use. I meant to be understood that the wall was not of much use as part of it went out last spring The banks of the race I consider to be a benefit there was never any contract to keep the wing in repair I used to do it while I owned the Mill.

6th Int Do you known that Panton has utterly refused to keep the wing dam in repair

6th Ans Of my own knowledge I dont. Mr Panton now says he does.

7th Int Do you swear you never told Panton you did not own but six hundred inches of water or words to that import at any time

7th Ans To the best of my reccollection I never told Mr Panton that I ~~never~~ did not own but six hundred inches of water nor I do not reccollect telling him any words to that import.

8th Int Was six hundred inches all you did own

128 HH-56

8th Ans 112 112 That was all I considered I owned

Direct examination resumed

1st Int Under your contract with Mr Woodbury did you agree to keep the whole of the West half of the dam and race in repair if not how much of it were you to keep in repair

1st Ans I did not agree to keep the whole of the West half of the dam and race in repair was to keep half of the West half of the dam and race in repair

2d Int Did you not repair the wing dam or embankment for the purpose of protecting yourself against damage to the race banks.

2d Ans Yes I did and to prevent the water from flooding around in front of the Mill

3d Int Are not all improvements on the dam and race liable to be injured by high water and are we therefore to consider them useless

3d Ans They are I should think not.

4th Int Is it the improvements you speak of have the effect to stop the leakage of the dam and race

4th And it stopped the principal part of the leakage
to the race and dam

Hiram J. Brown

State of Illinois }
Kane County } ss I John Cox a Justice of the
Peace in and for said County
do certify that the above deposition was taken by
me at the time and place mentioned in the caption
thereof that the said witness Hiram J. Brown
was first duly sworn and that the said deposition was
carefully read to the witness and signed by him
Dated this 4th day of November A.D. 1857.

John Cox
Justice of the Peace

Deposition of Josiah Rose a witness aged about
31 years taken before John Cox a Justice of the
Peace in and for the County of Kane and State of
Illinois at his office in East Clinton in said County
on the 5th day of November A.D. 1857 in a certain
cause now pending in the Kane County Circuit
Court and on Chancery side thereof wherein Erastus
Hoffer is Complainant and William Canton is defend
=ant in the presence of the said Complainant and def
=endant or the part of said defendant

State of Illinois }
Kane County } ss

[illegible]

11d

1st Int

What is your name - age - occupation - place of residence - and where do you work

1st Ans

Isaiah Rose - 31 years - Carpenter - Clinton Kane County - in Clinton.

2d Int

Are you acquainted with E. Jeffs. Paper Mill in Clinton and how long have you been acquainted with it.

2d Ans.

I was when it was first built cannot say that I am now. Four years last spring when we Commenced it and I worked there until it started running.

3d Int

How many water wheels were put in said Mill and were in use in April 1852 and how much water were they intended to draw to best of - knowledge or belief

3d Ans

There was three, from 16 to 18 hundred inches

Isaiah Rose

State of Illinois }
Kane County } ss I John Cox a Justice of the Peace in and for said County do Certify that the above deposition was taken by me at the time and place mentioned in the Caption hereof That the said witness Isaiah Rose was first duly Sworn and that the said deposition was carefully read to the witness and signed by him

Dated this 5th day of November A.D. 1852

John Cox
Justice of the Peace

115

State of Illinois }
Kane County } ss

Deposition of John W Smith a witness aged about 58 years taken before John Cox a Justice of the Peace in and for the County of Kane and State of Illinois at his Office in East Clinton in said County on the 2nd day of November A D 1857 in a certain cause now pending in the Kane County Circuit Court and on the Chancery side thereof wherein Erastus Goff is complainant and William . Canton is defendant in presence of the said complainant and defendant on the part of said defendant

1st Interrogatory. Are you the John W Smith whose deposition was taken by the complainant in the case of E Goff vs Canton on the 2d day of May 1857 before a Raymond a Police Magistrate in Elgin

1st Ans I am

2d Int. In that deposition you state that you was present during and heard a conversation between Mr Canton and Mr Brown in Wilcox Office in June 1854. now was that conversation in relation to the amount of water conveyed by the deed or in relation to the place of drawing the six hundred inches of water mentioned in the deed

2d Ans It was in relation to the drawing the water mentioned in deed at the dam

12 8114-5

3d Int Did they converse on any other clause of the deed at that time

3d Ans They did not

4th Int Who was present during this conversation and what were they doing

4th Ans Mr Brown Mr Paulin Mr Wiley and myself Mr Wiley was drawing a Mortgage at the desk on the opposite side of the room Mr Paulin on one side of a long table Mr Brown on the other seated

5th Int Why is it your present testimony does not exactly agree with your former testimony in relation to this conversation as given in your deposition referred to above

5th Ans If there is any variation in my deposition taken in Elgin and to days deposition Mr Wiley must have put a different meaning than I intended or than I meant my words to convey for I wished to act the with not being interested in either party

6th Int Have you heard the testimony of Mr Brown as taken here to day in relation to the conversation in Mr Wiley's office if you do you mean to swear on that point the same as he did

6th Ans I have yes I do I think that is true

7
117
117

Cross Interrogatory commenced

1st Int You swore in the affidavit before Raymond that Brown told Panton that all the water he had to sell was six hundred inches was this conversation at that time or some other

1st Ans I dont reccollect of ever being asked that question in that shape for Mr Wilcox was asking me questions diferent times each time in a different manner all aiming at that certain clause mentioned in the deed that is in drawing water from the dam for I never heard Mr Brown say anything relating to any other clause in the deed

2d Int Did you swear in that affidavit that Mr Brown told Panton that all the water that he had to sell was six hundred inches or words to that import

2d Ans I did not or I did not intend to for I was so confused by Mr Wilcox asking me so many questions.

3d Int What did you swear to in that affidavit about Brown's having no more than six hundred inches of water to sell or Brown saying so

3d Ans I never heard Mr Brown explain him self in that manner I do not reccollect of hearing Mr Brown say any thing about having six hundred inches of water to sell

4th Int Did you ever hear Mr Brown say that he had never bought or had more than six hundred inches of water

4th Ans All I ever heard Mr Brown say in regard to the number of inches of water was what he said here to day

5th Int What did Mr Brown say here to day

5th Ans Was the four hundred inches that he got of Woodbury

6th Int Is that all you recollect of Mr Brown saying in his deposition to day

6th Ans That is all I noticed

7th Int What did you hear Brown say about the water power in Clinton connected with the grist Mill on the West side when Panton was present

7th Ans I never heard Mr Brown say a word about the East or West side while Mr Panton was by for there was but a few words spoken while I was present

8th Int Do you know that Panton knew that he did not purchase of Brown more than six hundred inches of water or what do you know on that subject

8th Ans I do not know. All I know Mr Brown told him in the office that he deeded him the Mill just as he said it was deeded to him and that was all he could do

119 and that was all the conversation that was between them in the office

9th Int Did he say any thing about the amount of water deeded to him

9th Ans Not in my presence and I was there all the time

10th Int Did S. Wilcox say anything about the amount of water deeded from Brown to Panton in the presence of Panton

10th Ans Did not to my knowledge

11th Int. Has your mind been refreshed by conversation with Panton or Brown on the subject of what you now swear to or any body else if so who

11th Ans I have had no conversation with Mr Brown Mr Panton nor Mr Tefft neither party have tried to draw any thing out of me I have had no conversation with any body else upon this subject

John M Smith

State of Illinois }
Kane County } ss I John Cox a Justice of the Peace in and for said County do certify that the above deposition was taken by me at the time and place mentioned in the Caption thereof that the said witness John M Smith was first duly sworn and that the said deposition was carefully read to the witness and

[128414-60]

120 signed by him. Dated this 4th day of November A.D. 1857

John Cox
Justice of the Peace

121 Deposition of Hiram Peterson a witness aged about 51 years taken before John Cox a Justice of the Peace in and for the County of Kane and State of Illinois at his office in East Clinton in said County on the 5th day of November AD 1857 in a certain cause now pending in the Kane County Circuit Court and on the Chancery side thereof wherein Erastus Tefft is complainant and William Panton is defendant in the presence of said complainant and defendant on the part of said defendant

State of Illinois }
Kane County } ss

1st Int What is your name age occupation place of residence and where do you work

1st Ans Hiram Peterson - 51 years - Carpenter and joiner - Clinton Kane County - in Clinton.

2d Int Are you acquainted with Erastus Tefft the complainant and William Panton ~~the~~ defendant in this suit if yea state how long and where you have known them

2d Ans I am. - been acquainted with Tefft some 9 years Elgin & Clinton with Mr Panton about 3 years Clinton.

3d Int How long have you been acquainted with E Tefft's paper Mill and how many water wheels

[12844-4]

122 wer in said Mill in April A.D 1854 and how many inches of water did they draw to the best of your knowledge or belief

3d Ans Ever since it was built. Three – about 18 hundred inches.

4th Int How many water wheels are in said Mill now and how many hundred inches of water do they draw and what amount of water leaks or is wasted about said Mill to the best of your knowledge or belief

4th Ans There are six to best of my belief. all the wheels would draw thirty six hundred inches. I have seen times there that it leaked considerable how much I could not say

5th Int Did Mr Paxton improve the dams and race from the time of his purchase to January 31st A.D 1856 and since and to what extent in your judgment

5th Ans I should say he did improve it. Yes and since he done a great deal of work there but what it amounted to I could not say.

Cross Interrogatory Commenced

1st Int Can you tell how far apart the shoots were in the two iron wheels in the Paper Mill and how deep up and down and how many in each wheel

123

1st Ans My impression is they were inch and three fourths apart.- 16 or 16½ inches I think it was 16 inches. I think there was 32 in each wheel

2d Int Was the water generally confined to that space to go through or did the shoots average to be one half out and the wheels generally draw double that amount of water

2d Ans Generally about half of the shoots would be broken off.- the wheels with part of the shoots brokenoff would draw more water and if half of them was broken out it would draw twice as much water

3d Int What part of the time does the whole number of the wheels in the paper Mill average to run and what amount of water do they average to draw

3d Ans. I could not come at any thing definite about it when they were all running they will draw 36 hundred inches I should judge

4th Int Have you frequently seen all of the wheels standing still in said Mill.

4th Ans I have seen the Mill stand still and the wheels not running

5th Int What amount of water would they draw when the wheels stand still

(12844-62)

5th Ans I could not tell if the gates were tight they would not draw any.

6th Int Is not nearly all the water that leaks through said Mill through the gates.

6th Ans I should think not

7th Int What proportion of it does go through the gates

7th Ans I could not tell what amount of water leaks through the gates.

8th Int Do you know of the whole of the water wheels in said Mill running at any time for any considerable length of time.

8th Int Dont know that I have for any great length of time

9th Int What amount of water does the old Machine wheel draw the one first put in the Mill

9th Ans about four hundred inches as near as I can get at it

10th Int What is the size of the water spout that conducts the water to said wheel

10th Ans I cant tell the exact size

11th Int How do you know that said wheel does not draw eight hundred inches of water or thereabouts

11th Ans From size and looks of the wheel

Direct Interrogatories resumed

1st Int If the first three water wheels in the paper Mill were allowed to run with the shoots half out and letting out twice the amount of water the wheels were designed to draw would you not consider the additional amount of water wasted

1st Ans I should in a measure or nearly so

2d Int When you have seen all of the wheels standing still was it not for the purpose of repairs and is there not nearly as much water escapes the mill when standing as when running in consequence of the bad condition of the floom and gates

2d Ans That was generally the case when they were all standing still, there is not as much escapes when standing as when running but there is considerable water escapes the Mill when standing

3d Int How many of the old water wheels are in said Mill now as were in use in April 1854 and how much water does the three additional water wheels use to the best of your knowledge

3d Ans. There aint but one that I know of should think the three would draw 18 hundred inches of water

125
126 Cross Interrogatory resumed

1st Int Do you know any thing about what the wheels last spoken of do draw

1st Ans The one large wheel from my judgment of it I think would draw one thousand weight of water The other two I dont know much about

Hiram Peterson

State of Illinois }
Rane County } ss I John Cox a justice of the Peace in and for said County do certify that the above deposition was taken by me at the time and place mentioned in said Caption hereof that said Hiram Peterson was first duly sworn and that the said deposition was carefully read to the witness and signed by him.

Dated this 3rd day of November A.D 1857

John Cox

Justice of the Peace

127 Deposition of John H Perry a Witness aged about 43 years taken before John Cox a Justice of the Peace in and for the County of Kane and State of Illinois at his office in East Clinton in said County on the 4th day of November AD 1857 in a certain cause now pending in the Kane County Circuit Court and on the Chancery side thereof wherein Erastus Tefft is complainant and William Panton is defendant in the presence of said complainant and defendant on the part of said defendant

State of Illinois }
Kane County } ss

1st Int What is your name age occupation and place of residence and where do you work

1st Ans My name is John H Perry my age 43 occupation Miller place of residence West Clinton work for the defendant

2d Int Are you acquainted with Erastus Tefft complainant and William Panton defendant in this suit if yea state how long & where you have known them

2d Ans Yes Have known Mr Tefft about ten years in Elgin and Clinton. Mr Panton about three years in Clinton

3d Int Are you acquainted with a grist ~~Mill~~ and flouring Mill owned by Mr Panton in Clinton Kane County if yea how long have you been acquainted with it

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3d Ans 108 128 I am little over seven years

4th Int How many run of Stone are there in said Mill and how many water wheels would it be necessary to drive them with necessary machinery and how many hundred inches of water would it require to propel them

4th Ans Four. Five. My opinion is they ought to have three hundred inches to a wheel

5th Int Are you using the same water wheels in said Mill now as were in in April AD 1854 and how much water do they draw.

5th Ans Yes. One wheel measures 297 inches the other two wheels are equal together they measure 520 inches I suppose that to be what they draw

6th Int What proportion of the time does said Mill run and how much water does it use upon an average per day

6th Ans Not to exceed one third of the time not to exceed six hundred inches while running we never run out two wheels at a time

7th Int What was the condition of the dam and Race in April 1854 and what was their condition in January 31st 1856 and how much improvement has Mr Panton made on them

7th Ans The Dam and race was in tolerable good repair

They were in a better condition than in April 1832
I should think he had made about two hundred
dollars in that time I should think he had put on
two hundred dollars more since

8th Int What in your opinion would it be worth per year
to keep said dam & race in ordinary repair aside
from extraordinary breaks

8th Ans My opinion is it would be worth one hundred
and fifty dollars per year

9th Int How many waterwheels were in Deffts Paper Mill
in April 1832 and how much water did they
draw

9th Ans I believe there was three I dont Know

10th Int How many water wheels are in said paper mill now
and how much water do they draw and what in your
opinion is the amount of leakage about said Mill and
does it generally run day & night or not

10th Ans I believe there are six I have heard Mr. Defft
say that two wheels drew one thousand inches each and
the others I could not tell how much. Well it is
considerable that is the entire. Yes it generally runs
day and night

11th Int How do the other four wheels compare in size and
draft to the two mentioned

11th Ans My opinion is that the other four are equal to the two

Crop Interrogatory Commenced

1st Int Do you ever run but two pairs of stone at any time and do you run day and night

1st Ans. We never run but two at a time — Yes we do about three months in the Year

2d Int Did you never run in the last three years more than two run at a time

2d Ans Never

3d Int About what is amount of water did the Paper Mill draw in 1852 and how many wheels does the paper Mill now run on an average

3d Ans I understood they had two wheels that drew one thousand inches each and one that drew two hundred and fifty inches I think at least four runs all the time

4th Int Is one of that four the same one that drew two hundred and fifty inches of water in 1852

4th Ans To the best of my belief it is one similar to that one

John M. Perry

131 State of Illinois }
Kane County } ss I John Cox a Justice of the
Peace in and for said County do
certify that the above deposition was taken by me at
the time and place mentioned in the caption thereof
that the said Witness John H Perry was first duly
sworn and that the said deposition was carefully
read to the witness and signed by him
Dated this 4th day of November A.D. 1857
John Cox (Seal)
Justice of the Peace

The defendant also introduced and read as evidence
the following Deeds and papers to wit

Tefft To Brown This Indenture made this Seventeenth day of
April in the year of our Lord One thousand
Eight Hundred and fifty four Between Erastus
Tefft and Rhoda his wife party of the first and
Hiram J. Brown all of Kane County State of
Illinois party of the second part. Witnesseth that
the said party of the first part for and in consideration
of the Covenants on the part of said Brown hereinafter
contained and five dollars to them in hand paid
by the said party of the second part the receipt whereof
is hereby acknowledged and the said party of the
second part forever released and discharged therefrom
have granted bargained sold remised released

[12-8144-66]

alined and confirmed and by these presents do grant bargain sell remise release alien and confirm unto the said party of the second part and to his heirs and assigns forever all the following described lot piece or parcel of land situated in the County of Clinton and State of Illinois and known and described as follows to wit a strip fifty feet in width off of the south side of lot No. Eight (8) in Block No. Seventeen (17) of Clinton Town Platt as laid out by Tefft & Raymond being the ground on which said Browns flowing mill stands & being 50 feet on the Race & running East to the River. Also the privelege of drawing water at the South End of said mill for the use of said Mill as it now is. Also the said party of the first part grant bargain and sell unto the party of the second part his heirs and assigns forever Six hundred inches of water to be drawn from the dam across Hoop River at Clinton on the west side for said Mill. The first privelege of the water shall belong to said Tefft's Paper mill and said flowing mill and between them the privelege to be equal. Also the privelege of quarrying and removing Stone from said Tefft's quarry in said Town of Clinton sufficient for all repairs & for keeping up said dam and race that may hereafter become necessary. This conveyance is made upon these express conditions and the title to the property and privileges aforesaid shall ever remain subject to the faithful fulfilment of them to wit: that said Brown

133 his heirs and assigns shall henceforth forever maintain & keep in repair the west half of said dam and race leading therefrom to the south side of said flouring mill and in case of a breach or fracture in the said dam or race the said Brown his heirs or assigns covenant & agree to and with said Pefft his heirs and assigns to repair the same as soon as practicable after being requested and that said Brown will allow said Pefft at anytime hereafter to erect a building adjoining on the South said flouring mill and ~~[illegible]~~ to take out the corner Stones at the North East and North west corners of said mill & join the walls of such building thereto so as to make the north wall of said mill the partition wall between the mill and the building so erected. All of which conditions said Brown his heirs and assigns hereby covenant and agree to & with said Pefft his heirs and assigns to keep observe and perform. Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining and the reversion and reversions remainder and remainders rents issues and profits thereof and all the Estate right title interest claim demand whatsoever of the said party of the first part either in law or equity of in and to the above bargained premises with the hereditaments and appurtenances To have and to hold the said premises above bargained and described with the appurtenances

[12544-67]

unto the said party of the second part his heirs and assigns forever. And the said Erastus Tefft one of the party of the first part for himself his heirs executors and administrators does covenant grant bargain and agree to and with the said party of the second part his heirs and assigns that at the time of the ensealing and delivery of these presents he is well seized of the premises above conveyed as of a good sure perfect absolute and indefeasible estate of inheritance in law in fee simple and has good right full power and lawful authority to grant bargain sell and convey the same in manner and form aforesaid and that the same are free from and clear from all former (and other) grants bargains sales liens taxes assessments and incumbrances of what kind or nature soever and the above bargained premises in the quiet and peaceable possession of the said party of the second part his heirs and assigns against all and every person or persons lawfully claiming or to claim the whole or any part thereof the said party of the first part shall and will warrant and forever defend.

In Testimony whereof the said party of the first part hereunto set their hands and seals the day and year first above written

Signed Sealed and delivered in presence of Silvanus Wilcox

Erastus Tefft (Seal)
Rhoda Tefft (Seal)

135 State of Illinois } ss I Silvanus Wilcox Notary
Kane County } Public in and for said County
in the State aforesaid do hereby certify
that Erastus Tefft and Rhoda Tefft who are
personally known to me as the real persons whose names
are subscribed to the above Deed appeared before me
this day in person and acknowledged that they execu-
ted and delivered the said Deed as their free and
voluntary act for the uses and purposes therein set
forth. And the said Rhoda Tefft wife of the said
Erastus Tefft having been by me examined separate
and apart and out of the hearing of her husband and
the contents and meaning of the said deed having
been by me made known and fully explained to
her acknowledged that she had freely and volunta-
rily executed the same and relinquished her dower
to the lands and tenements therein mentioned with-
out compulsion of her said husband and that she
does not wish to retract the same.

Notary seal

Given under my hand and Official
seal this Eighteenth day of April in
the year of our Lord One thousand
Eight hundred and fifty four.

Silvanus Wilcox
Notary Public

Filed and recorded June 17th 1854 at 12 o/c M. in
Book 36 Page 72

L. Dearborn Recorder

[12844-18]

136

Brown
To
Panton

This Indenture made this first day of June in the year of our Lord one thousand Eight Hundred and fifty four Between Hiram J. Brown and Harriett his wife party of the first part and William Panton all of Kane County State of Illinois party of the Second part Witnesseth that the said party of the first part for and in consideration of Five Thousand & five Hundred Dollars to them in hand paid by the said party of the second part the receipt whereof is hereby acknowledged and the said party of the second part forever released and discharged therefrom) have granted bargained sold remised released aliened and confirmed and by these presents do grant bargain sell remise release alien and confirm unto the said party of the second part and to his heirs and assigns forever all the following described lot piece & parcel of land Situated in the County of Kane and State of Illinois and known and described as follows to wit: A strip fifty feet in width off of the south side of Lot (8) eight in Block (17) seventeen of Clinton Town Plat as laid out by Tefft & Raymond being the ground on which the flouring mill erected by said Brown stands & being 50 feet on the Race & running East to the River. Also the privilege of drawing water at the South end of said Mill for the use of said Mill as it now is. Also grant bargain and sell unto the party of the second part his heirs and assigns forever Six hundred inches of water to be

137 drawn from the dam across Gr. River at Clinton on the
west side for said mill the first privilege of the water
to Tefft's Paper mill & said flouring mill shall belong
& between them the privilege to be equal. Also the privilege
of quarrying & removing stone from E. Tefft's quarry
in said Town of Clinton sufficient for all repairs
and for keeping up said dam & race that may hereafter
become necessary. This conveyance is made upon
these express conditions and the title to the property and
privileges aforesaid shall ever remain subject to the
faithful fulfilment of them to wit. That said Panton
his heirs and assigns shall henceforth and forever main-
tain & keep in repair the west half of said dam and
race leading therefrom to the south side of said flouring
mill and in case of a breach or fracture in the said
dam or race the said Panton his heirs or assigns cov-
enant and agree to & with the said Brown his heirs
& assigns to repair the same as soon as practicable
after ~~having~~ being requested and that said Panton
will allow Erastus Tefft at anytime hereafter to
erect a building adjoining on the north side of said
flouring mill and to take out the corner Stones at
the North East and north west corners of said mill
and join the walls of such building thereto so as to
make the north wall of said mill the partition
wall between the mill and the building so erected
all of which conditions said Panton his heirs
and assigns hereby covenant and agree to and with

(12MH-65)

138) said Brown his heirs and assigns shall observe and perform. The said premises being the same conveyed by E. Tefft & wife by deed bearing date 17th April 1854 to said Brown & this conveyance is made subject to the conditions limitations & restrictions therein contained and is to pass the same rights & privileges therein granted. Together with all and singular the hereditaments thereunto belonging or in anywise appertaining and the reversion and reversions remainder and remainders rents issues and profits thereof and all the estate right title interest and claim or demand whatsoever of the said party of the first part either in law or equity of in and to the above bargained premises with the hereditaments and appurtenances. To have and to hold the said premises above bargained and described with the appurtenances unto the said party of the second part his heirs and assigns forever. And the said Hiram J. Brown one of the party of the first part for himself his heirs executors and administrators does covenant grant bargain and agree to and with the said party of the second part his heirs and assigns that at the time of the ensealing and delivery of these presents he is well seized of the premises above conveyed as of a good sure perfect absolute and indefeasible Estate of inheritance in law in fee simple and has good right full power and lawful authority to grant bargain sell and

139 convey the same in manner and form aforesaid and that the same are free and clear from all former and other grants bargains sales liens taxes assessments and incumbrances of what kind or nature soever and the above bargained premises in the quiet and peaceable possession of the said party of the second part his heirs and assigns against all and every person or persons lawfully claiming or to claim the whole or any part thereof the said party of the first part shall and will warrant and forever defend

In Testimony whereof the said party of the first part hereunto set their hands and seals the day and year first above written

Signed Sealed and delivered in presence of
Silvanus Wilcox

Hiram J. Brown (Seal)
Harriet Brown (Seal)

State of Illinois } ss
Kane County }

I Silvanus Wilcox Notary Public in and for said County in the State aforesaid do hereby certify that Hiram J. Brown & Harriett Brown who are personally known to me as the real persons whose names are subscribed to the above Deed appeared before me this day in person and acknowledged that they executed and delivered the said deed as their free and voluntary act for the uses and purposes therein set forth. And the said Harriett

[18249-76]

140 S Brown wife of the said Hiram Jr Brown having been by me examined Separate and apart and out of the hearing of her husband and the contents and meaning of the said Deed having been by me made known and fully explained to her acknowledged that she had freely and voluntarily executed the same and relinquished her dower to the lands and tements therein mentioned without compulsion of her said husband and that she does not wish to retract the same.

Notary Seal

Given under my hand and Official Seal this First day of June in the year of our Lord One thousand Eight hundred and fifty four

Silvanus Wilcox
Notary Public

Filed June 17th 1854 at 12 P.M.
and recorded in Book 36 Page 70

J. Dearborn Recorder

The foregoing is all the evidence in the case.

The court thereupon rendered a decree for the Complainant to the rendition of which judgment and decree the defendant by his Counsel at the time excepted and prays that this his bill of exceptions may be signed which is done

Isaac G. Wilson

And afterwards to wit on the 25th day of August A.D. 1858 there was filed in the office of the Clerk of said Court an Appeal Bond which is in the words and figures following to wit:

Know all Men by these presents that we William Panton and Hiram J. Brown are held and firmly bound unto Erastus Tefft in the penal sum of five hundred dollars lawful money of the United States to be paid unto the said Erastus Tefft his heirs and assigns for which payment well and truly to be made we bind ourselves our and each of our heirs executors and administrators jointly severally and firmly by these Sealed with our seals and dated this 25th day of August A.D. 1858

Whereas Erastus Tefft did at the May Term A.D. 1858 of the Kane County Circuit Court obtain a decree in Chancery against the said William Panton from which judgment or decree of said Court the said William Panton has taken an appeal to the Supreme Court of the State of Illinois

Now therefore the condition of the above obligation is such that if the said William Panton shall prosecute his appeal with effect and shall pay whatever judgment may be rendered against him by the Court on the trial or dismissal of said appeal then the above obligation to be void otherwise to remain in full force and effect.

William Panton Seal

Hiram J. Brown Seal

Filed Aug 25 1858.

P. H. Wright clerk

[12844-71]

State of Illinois }
Kane County } ss I Paul R Wright Clerk
of the Circuit Court of said County
do hereby certify that the foregoing is a true perfect and
complete transcript of the Record in a certain cause
in said Court on the Chancery side thereof wherein
Erastus Dexter was complainant and William
Canton was defendant including the complainants
Injunction bond writs of Injunction & Summons & the
Returns thereon all the Pleadings in the cause and
Bill of Exceptions and original bond and all
the orders made by said Court and Entered of record
therein as appears from the records of said Court and the
files in my office.

Witness my hand and the seal of said Court
at Geneva in said County this 26th day
of March A D 1859

P. R. Wright
Clerk

And now comes the said appellant and
says that in the record and proceedings
aforesaid and in the rendition of the decree
aforesaid there is manifest error in this
to wit

2 The Court erred in admitting in Evidence
the depositions of Nelson D. Brown and
John A Smith severally

3d The court erred in admitting improper evidence for the complainant

4th The court erred in rendering this decree aforesaid in manner & form aforesaid

Plato & Cook
Attys for appellants

[12844-78]

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Kane Co. Cir. Court

Erastus Tefft
appellee
vs.

William Panton
appellant

Transcript

Filed Apl. 19. 1859.
L. Leland
Clk.

Plato & Cook
attys of appellant

Cook pd
$5

Clk's Fees $35.00

138
25
690
276
3 45-0

STATE OF ILLINOIS. SUPREME COURT, APRIL TERM, 1859.

WILLIAM PANTON, vs. ERASTUS TEFFT. } Bill in Chancery by Appellee vs. Appellant in Kane County Circuit Court.

POINTS OF APPELLEE.

Upon the merits of this case, the principle question is the quantity of water sold and conveyed by the Appellee by his deed to Hiram J. Brown, dated April 17th, 1854.

The Appellant claims that all of the water necessary—whatever the quantity—to propel the wheels then in the Mill, and perhaps 600 inches besides is sold and conveyed.

The Appellee insists that only 600 inches of water are sold and conveyed.

The intention of the parties to the deed to sell and purchase only 600 inches of the water of the water-power made by the Dam at Clinton, is certain—Brown testifies to this distinctly—and his testimony also shows the purpose of the parties in the use of the clause in the deed which the Appellant founds his claim to the indefinite quantity of water upon. It is therefore obvious, that if the Appellant's claim is well founded, the Grantor and Grantee were greatly deceived in regard to the import of the language used, and without either of them intending or thinking of doing it—unwittingly the one lost and the other acquired property, worth $3,000 to $4,000.

What the parties to the deed meant to do being clearly ascertained—if the language they use in the instrument can without forcing the words away from their proper signification, be so read and understood as to give effect to the meaning of the parties, then it should be.

2 Parsons on Cont. 6.

The rule is where the intent is obvious and language is doubtful—the latter will be so construed as to accomplish the intent.

The Appellant claims that the clause "also the privilege of drawing water at the North end of said Mill for the use of said Mill as it now is," grants such quantity of water as is or was necessary to propel the wheels then in the Mill.

Without reference to extrinsic facts, and looking only to the deed itself, it seems such meaning cannot be given to the clause.

There are many objections to such construction.

1st. There is a sale and conveyance of 600 inches of water—a definite quantity—for the Mill.

2nd. The words used to transfer the 600 inches, are plain, certain, and appropriate—and it is fair to presume, if any more water was intended to be sold and conveyed, apt words would have been employed to express such intent.

3rd. It is unreasonable to suppose that an indefinite quantity of water, so valuable as that was and is, would be granted.

4th. It is unreasonable to suppose, that two grants of water, one definite and the other indefinite, would in same deed be made for the same Mill.

S12244-73

5th. The words used are not expressive of a sale and conveyance of any quantity of water—not only is there an absence of words indicating an intention to sell water at all, but nothing appears fixing the quantity. Appellant avers it means all that is necessary—800 to 1200 inches—to propel the wheels in the mill. Nothing justifies such an inference, and as no words are used expressing that idea, it must be presumed that it was not intended by that clause to grant any water.

6th. It is evident that clause was inserted for some other purpose than to grant water—for upon no other hypothesis can the expressions or words, "privilege of drawing," "north end," and "for the use of said mill," be consistanly explained.

7th. The order and method of the grant (land and privileges in regard to land being first, and next the water and the preferences or privileges,) is against the Appellants construction.

8th. The construction placed upon this clause, renders other parts of the deed doubtful, and many words of no effect whatever. The rule is to so construe an instrument, as to give force and effect to every word, and all parts of it if possible.

2 Parsons on Cont. p. 16 and 17.

City of Alton vs. Ills. Transp't Co., 12 Ills. 38. 56.

The unreasonableness of the Appellant's construction was so apparent, that in his answer, he was forced to concede substantially, that he was unable to explain on his hypothesis the object of the grant of the 600 inches of water.

The situation of the property—lot, mill building, races, and manner of drawing or conducting the water on to the wheels of the mill—at the time the deed from the Appellee to Brown was made—(all of which continued the same to the time Brown deeded to Appellant, as is shown by the testimony,) being understood the purpose and meaning of the clause in question is apparent, and the words employed, express unambigously that purpose and meaning.

Such extrinsic facts may be shown by parol to apply and give force to the language used in the deed.

1 Greenleaf on Evd., page 334, S. 282. 2 Starkie on Evd. 547–8.

Cook vs. Whiting, 16 Ills. 480, (483.)

Barrett vs. Stowe, 15 Ills. 423. Ib. 581.

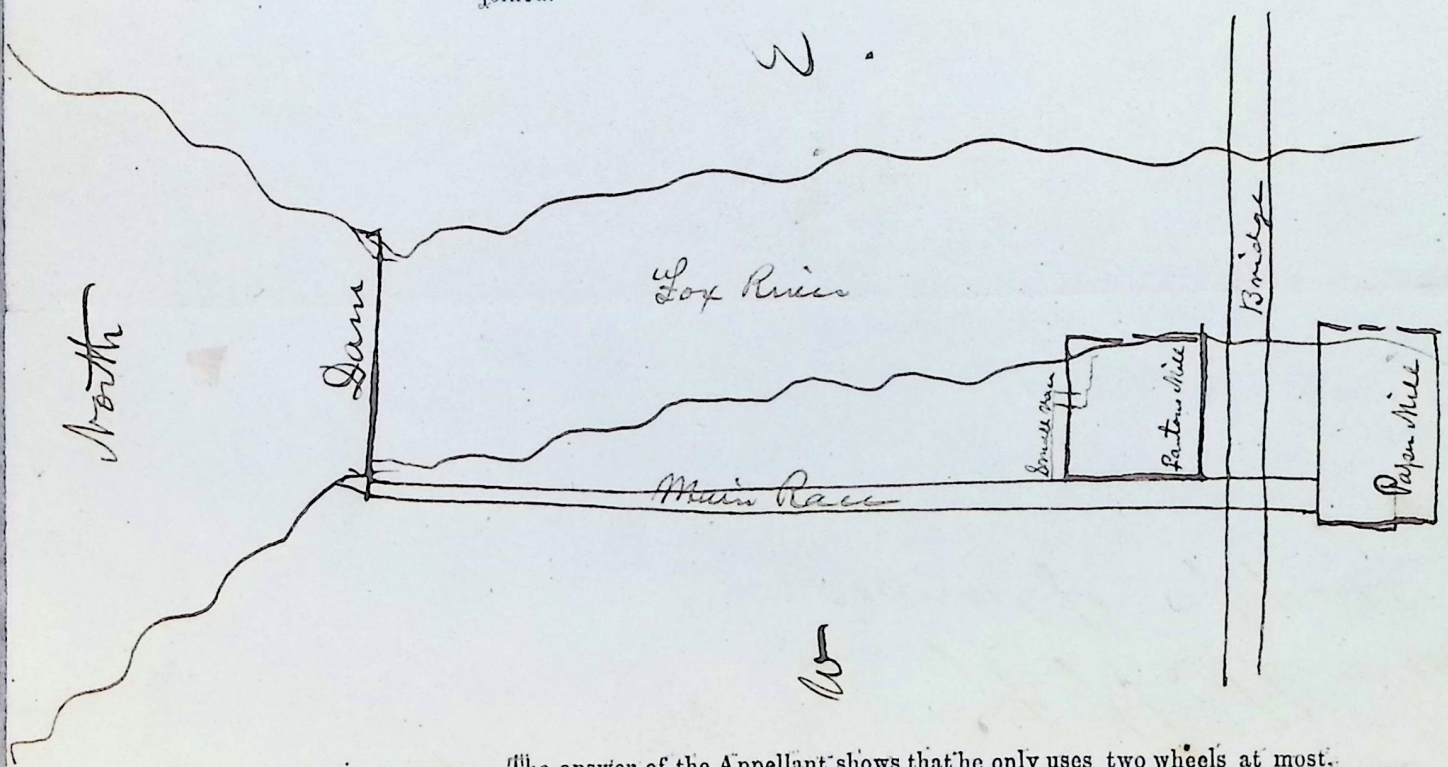
The testimony of Brown shows, that when the mill was erected, he expected certain lots would be deeded to him—that he built the mill 50 feet long North and South—the West side forming the East wall of the Main Race—that along the North end of the mill, and North of the 50 feet, he dug a small race, 7 feet wide, 5 feet deep, and extending Eastward from the Main Race to about the centre of the North end of the Mill, to an arch in the wall of that end of the Mill, which communicated with another race inside the Mill leading to the wheel, that when the deed was executed, the water or considerable part of it was conducted from the main Race by the small race along the North end of the Mill to the arch, and thence on to the wheels.

12844-74

As the Appellee was to deed to Brown only the ground (50 feet North and South along the main race, and extending Eastward to the river,) covered by the Mill, it was important to Brown to secure the privilege of drawing or conducting the water he bought for the mill along the small race at the north end of the mill, (which was and would be on Appellee's land,) on to the wheels of the mill as it was then arranged. And it was for this purpose (to wit, to secure the privilege of conducting or drawing the 600 inches of water for the use of the Mill on to the wheels in the way it was then conducted or drawn,) that the clause in question was put into the deed, and it is submitted, that these facts being considered, the words in that clause in their ordinary sense, express this intent of the parties and no more.

Understanding the clause as only performing the office of granting this privilege, then all parts and every word in the deed is plain, consistent and operative, and shows clearly, that the quantity of water sold and conveyed is no more than 600 inches.

To elucidate more fully the situation of the property, a rough map is subjoined.



The answer of the Appellant shows that he only uses two wheels at most, and generally only one, and that for those purposes, 600 inches of water is sufficient.

Again, the Appellant was so conscious of the injustice of his pretended claim, that he to secure more water, bought 300 inches of Ulsaver, as is shown by the deed to him from Ulsaver.

The rules and principles of construction of the deed from Appellee to Brown, so far as the extrinsic facts are concerned, apply with equal force to Appellant as to Brown, because these facts were the same, nothing was changed about the mill when Appellant bought the property.

S. WILCOX, Attorney for Appellee.

12844-79

The testimony of Brown & Smith was properly received — Its object was, not to alter or extend the terms of the written contract, but to prove notice on Panton, which fact was in issue by the pleadings —

The evidence did not tend to alter or extend the terms of the written contract or Deed from Brown to Panton

W H L Wallace
counsel for appellee.

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William Panton
vs
Erastus Tefft
Points of appellee

Filed May 14, 1859
L. Leland
Clerk

Wm Panton
vs.
Erastus Tefft } Appeal from Kane -

Brief Argument -

The subject of Controversy in this case was, "The amount of water that appellant was entitled to use in a certain Mill in Clinton under and by virtue of a deed from Appellee to one Brown & from Brown to Appellant see Abstract page 15.

The Errors assigned are.
1st That the court admitted improper evidence - &
2° That the Court misconceived the effect of the Deeds aforesaid -

I The conveyance of the water privilege is in writing, and the Court admitted parol evidence to show what the contract meant -
See Depositions of Brown & Smith abstract pages 8 & 9 -
This was error for
The general rule is too well established to need argument or admit of a doubt - & is.
[12844-75]
That Parol Evidence cannot be

admitted "to contradict or vary the terms of a valid written Contract", "but as to the terms, conditions & limitations of the agreement, The written agreement must speak for itself" -

Our own Supreme Court are explicit upon this point & repeatedly affirm the rule

17 Ill 389 - 16. Ill. 480 - 2. Gilm 368.
See also 23 Verm 681 -
11 Barb S.C.R. 147 - 1 Blatch C.C.R. 467 -
23. Verm 231 - 2 Caines 155 -
1. Johns 413 - 1. Georg. 12 -
4. Taunt 786 - 5. Georg. 373 -
2. Barn & Cress 634 - 3. Wils 275 -

The Court will observe that the evidence of Brown & Smith goes directly to explain the meaning of the written Contract -

Brown page 8 of abstract says "I contracted to rock the west half of the dam race in repair in consideration of the Mill water power" - "Left was to deed me 600 inches of water which was also is the amount I was to have

according to my understanding of the bargain between Tefft & me previous and at the time said deed was made" -
"There was a clause in Compts deed to me which granted me the privilege of drawing water at the North End of the mill for the use of said mill as it now is" -

Smith on page 9 of abstract says "I was present when a deed was made by Brown to Panton, the property conveyed was a flouring mill at Clintonville on the west side of Fox River" - "Brown told him (Panton) that the number of inches of water that he conveyed to him was six hundred inches"

The evidence above quoted cannot be held admissable under any of the exceptions under the general rule for it goes directly to vary the terms of the Contract to the construction of it - It cannot be insisted that this evidence either tended either

[12844-77]

identify the persons contracting, to make certain the subject matter or to explain any technical or scientific terms -
It went directly to show what the contract meant & was we insist erroneous -

The evidence of Brown should have been excluded for the further reason that any agreement or understanding between him and Appellee outside of the deed, even if made subsequently to its execution would not be operative as to Appellant, unless it was brot to the knowledge of Appellant before the execution of the deed to him, he had the right to depend upon the deed to Brown as declaring Brown's rights -

II The Court misconceived the effect of the deeds from Appellee to Brown & from Brown to Appellant

What is its obvious meaning & intent of those Deeds gathered from the deeds themselves?

See Abstract page 15-

We insist that there are two distinct grants of water in said Deeds -

One is contained in the words "also the privilege of drawing water at the north end of said Mill as it now is for the use of said Mill as it now is" -

The Courts have universally held that such words, & in fact words much less explicit & direct, carry the right to water sufficient for the use of the Mill -

3. Shepley 218- ×4 Shepley 63-
×5- Shep. 281- ×18 Pick. 268-

If there were no other clause in the deed granting a supply of water would it be held that the right to water did not pass?

We think not - For the rule of the construction of private grants

S/2844-78

as laid down by this Court is That they are to be taken most strongly against the Grantor -

2 Gilm 228 - x12 - Ill. 38 -
1. Blatch C.C.R. 479 - 2 Har & Johns 174 -

If we construe this clause in accordance with the above rule it must we think be held that this clause granted to Applicant water sufficient to run the mill as used at the date of the deed

The Deed grants &c
"Also ~~six~~ ~~hundred inches to~~ of six hundred inches of water to be drawn from the dam across Fox River at Clinton, on the west side of said Mill" —

This was undoubtedly additional to the first grant as will appear from the deed itself and also from the evidence

1st from the deeds.

The water first granted was to be drawn across grantors

land at the North End of said Mill -

The 600 inches was to be drawn from the dam on the West side

The word "also" is used between the grants evidently in the sense of "Addition to" and is the same word subsequently used when there can be no doubt that the grant was an additional one I mean "also the privilege of quarrying stone &c" -

From the evidence -

The evidence of Brown page 8 abst - is that "the water was partly drawn thro an arch in the west wall of the mill part thro a floor at the North End of the Mill showing plainly that the parties contemplated that two different grants would be used -

The mill is constructed so as to draw water at two places, and the deed gives the

[12804-79]

right to draw at both places, at one "water for the use of said Mill as it then was at the other 600 inches -

Can anything be plainer?

If the testimony contained in the depositions of Brown & Smith are excluded then there is nothing in this record except the two deeds, by which to determine what the contract was, And these deeds we think plainly describe two different & distinct quantities of water, And most certainly must be taken to grant the two quantities if construed according to the rule heretofore laid down by this Court "most strongly against the Grantor" -

But if the evidence were all properly admitted, still we contend that there is nothing in the whole record that can

in any way change the meaning or vary the terms of said deeds as they appear upon their face, as between the parties to this suit -

Suppose it be admitted that between Appellee & Brown it was perfectly understood that only 600 inches of water were intended to be conveyed by the first deed; Can such an understanding affect the Appellant in any way whatever? Most certainly not - He was no party to any such agreement, there is nothing in the record to show that he ever heard of it or could have imagined it to exist -

Brown on page 11 of abstract that he did not tell him of it Smith who was present at the time the second deed was made on the same page, says there was nothing whatever said about the quantity conveyed

[12644-50]

Appellant had the right to depend entirely upon the deeds & was not bound to make any inquiries outside of them.

Moreover at the time of the purchase Brown was in the actual use of the water, amount of more than 600 inches as he himself testifies on page 11 of the abstract, this use was entirely undisturbed & had never been questioned by Appellee. And if there was any question as to the quantity the deed entitled him to, this would estop Appellee as against Appellant.

And then is the more reason that the rule that private grants shall be construed most strongly against the grantor should be strictly applied in this case as there is no privity between Appellee & appellant, & appellant had the right to infer that Appellee would take sufficient care to guard his own rights.

Appellee had cannot be per-

mitted to take advantage of his own slovenly contract as against a third party who has been misled by it & much less can he claim, for his own advantage, a ~~strict~~ construction of it beneficial to himself, when he differs the use under a different & more liberal construction has always been acquiesced in by Grantor —

For these reasons we insist that under & by virtue of said Deeds Appellant was entitled to the use of water enough at the North End of the Mill for the use of said Mill as it then was also the addition amount of 600 inches

And submit —

That the Court erred in admitting the evidence of Brown & Smith —

And that they misconceived the effect of said Deeds —

Injunction should not have made said injunction perpetual

(over)

We might in addition urge that in any event the grant of 600 inches of water was no limitation of the quantity of water "for the use of the mill as it then was" granted by the first clause but only in the nature of warranty that grantee should have at least that quantity - where by the terms of a deed there are two descriptions of the thing granted, the grantee is entitled to hold by that which will be the most beneficial to him

Lincoln v Wilder 29 Maine 182 -

Paulton 194-187
Left 194-
Appts
Argument

Filed May 14, 1859
L. Leland
Clerk.