

No. 12310

Supreme Court of Illinois

Johnson.

vs.

Dody. *ge*

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66
William F. Johnson
to
John B. Dodge

Reverend

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12310

1856

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State of Illinois)
County of Cook &c.

Pleas before the Honorable John M. Wilson Judge of the Cook County Court of Common Pleas within and for the County and State aforesaid at a Vacation Term of said Cook County Court of Common Pleas begun and holden at the Court House in the City of Chicago in said County on the first Monday being the first day of January in the year of our Lord one thousand eight hundred and fifty five and of the Independence of the United States the Twenty ninth.

Present The Honorable John M. Wilson Judge

James Andrew

Sheriff

Attest

Walter Kimball

Clerk

Be it Remembered that heretofore to wit on the fifteenth day of January A. D. one thousand eight hundred and fifty three came William F. Johnson by Morris, Hervey & Clarkson his Solicitors, and filed in the Office of the Clerk of said Cook County Court of Common Pleas Process for Summons in Chancery against John C. Dodge, together with Bond for Costs, which said process and Bond are in words and figures following that is to say.

Cook County Court of Common
Pleas. In Chancery.

William F. Johnson
v-
John C. Dodge... } Bill

The Clerk will issue Summons
in the above cause returnable to the next Term of
this Court.

Morris Hervey & Clarkson
Compl^{ts} Solic^{rs}

In the Cook County Court of
Common Pleas. In Chancery.

William F. Johnson
v-
John C. Dodge... } Bill.

We do hereby enter ourselves
Security for Costs in this Cause and acknowledge
ourselves bound to pay or cause to be paid all Costs
which may accrue in this action either to the opposite
party or to any of the Officers of this Court, in
pursuance of the Laws of this State.

Dated this fifteenth day of January A. D. 1853.
Morris Hervey & Clarkson,

And thereafter to wit on the said fifteenth day of
January Eighteen hundred and fifty three a Summons
issued out of the Office of the Clerk of said Court, which
said Summons with the Sheriffs return thereto is in
words and figures following that is to say.

State of Illinois
Cook County S. S.

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

We command you that you summon John C. Dodge
if he shall be found in your County personally to be and
appear before the Cook County Court of Common Pleas of
said County on the first day of the next Term thereof to
be holden at the Court House in the City of Chicago in
said County on the first Monday of February next to
answer unto William H. Johnson in his certain Bill
of Complaint filed in our said Court on the Chancery
side thereof against him. And have you then and
there this Writ, with an endorsement thereon, in what
manner you shall have executed the same.

Witness Walter Kimball Clerk of
our said Court and the Seal thereof
at the City of Chicago, in said County
this 15th day of January A.D. 1853
Walter Kimball. Clerk



Served by reading to the within named John C. Dodge
and giving him a Copy of the within January 15th 1853
C. P. Bradley. Sheriff
By W. A. Dexter. Deft.

And also on the said fifteenth day of January in
the year aforesaid the said Plaintiff filed in the Office
of the Clerk of said Court his Bill in Chancery
against the said Defendant, which said Bill is in
the words and figures following that is to say.

In Chancery.

To the Honorable Mark Skinner Judge of
the Cook County Court of Common Pleas in Chancery sitting

4

Humbly Complaining sheweth unto your Honor
William F. Johnson of the City of Cincinnati in the
State of Ohio.

That a certain John C. Dodge of said
Cook County and State of Illinois and whom your
Orator prays may be made a Defendant to this Bill
on or about the Fourth day of September in the year of
our Lord one thousand eight hundred and fifty two
being or pretending to be seized in fee simple of a
certain tract or parcel of land situate in said Cook County
and which is hereinafter more particularly described,
And said Dodge being desirous to dispose of the said
Land by one N. P. Egghart of Chicago in said County
his duly authorized Agent for that purpose entered into
an Agreement for the Sale thereof with and to one
Thomas C. Walters of the State of Ohio aforesaid
And which said Agreement was duly reduced to writing
and signed by the said John C. Dodge, by said
N. P. Egghart his Agent, whereby amongst other
things it was stated as agreed that said Dodge sold
to said Thomas C. Walters the North half of the West
half of the North West quarter of section one (1) in
Township Thirty nine (39) North Range Thirteen
(13) East containing Forty acres of Land more or less
at Thirty dollars per acre on the terms to wit. One
fourth in Cash on making of the Deed, One fourth
in one year, One fourth in two years and one fourth
in Three years with interest on the deferred payments
and to be secured by Mortgage on the said premises
sold And that the said Deed should be made either
to the said Walters or to any other party he might
select or assign to and that the same, should be closed
by both parties within five days from the said fourth
day of September aforesaid. And that the sum of Fifty

dollars on account of the said first payment was then and there paid down to the said John C. Dodge, and received and receipted by him, by said Iglehart his Agent as set forth in said Agreement & by the said Agreement now in your Orators possession ready to be produced as this Court may direct will on reference thereto more fully appear. A Copy of which Agreement is herewith filed and made a part of this Bill, and marked A.

And your Orator further shews unto your Honor that the said Walters has in all things complied with the terms of the said Agreement on his part to be performed so far as he could by offering to pay to the said Dodge the residue of the first payment of the said purchase money. And that he the said Walters did on the sixth day of September in the year aforesaid offer to pay to the said John C. Dodge the residue of the one fourth of the said purchase money payable in cash, to wit, the sum of Two hundred and fifty dollars and demanded then and there from the said Dodge a Deed of the said Land according according to the said herein recited Agreement, and also then & there offered upon receiving such Deed to execute to the said Dodge a Mortgage on the said premises to secure the payment of the deferred payments and interest thereon according to the terms of the said Agreement, but that the said Dodge then & there refused to accept the said sum of Two hundred and fifty dollars or to convey the said premises to the said Walters or to receive a Mortgage from the said Walters thereon to secure the said deferred payments, alleging as an excuse for such refusal to carry out the provisions of the said Agreement on his (the said Dodge) part that he thought the said Land was worth more money than it had been so sold for and which is

specified in said Agreement.

And your Orator further shows unto your Honor that on the thirteenth day of September in the year aforesaid the said Thomas C. Walters duly sold assigned and transferred the said Agreement and all his interest therein to your Orator for a valuable consideration then and there paid to him therefor by your Orator a Copy of which Assignment is to this Bill attached and marked **B**.

And your Orator further shows unto your Honor that on or about the said sixth day of September aforesaid the said John C. Dodge left the City of Chicago and was absent therefrom until about the fourteenth day of the said Month of September on which said last mentioned day your Orator tendered and offered to pay to the said Dodge, at his Office in Chicago aforesaid the said sum of Two hundred and fifty dollars being the balance of the first payment according to the said Agreement and did then and there demand from him a Deed of the said premises in pursuance thereof And did then and there offer to Execute to the said John C. Dodge a Mortgage on the said premises for the securing of the residue of the purchase money thereof in compliance with and according to the terms of the said Agreement, but that the said Dodge then and there refused to receive the said sum of Two hundred and fifty dollars such balance of the first payment so to be made as aforesaid And also refused to Execute a Deed for the same to your Orator alleging as an excuse therefor and pretending that he thought that the said so agreed to be sold was worth more money than the amount specified in the said Agreement, although your Orator avers that the price was a fair one at the time when the said

Agreement was made but that said Lands were daily rising in speculative value in consequence of sales and speculations then daily going on in lands near the premises in question.

And your Orator further states and shews to your Honor that he is now and has been always ready and willing and hereby offers to perform and fulfil the said Agreement in all things on the part of the said Walters or of your Orator as Assignee thereof to be performed and is ready and hereby offers to bring the said Sum of Two hundred and fifty dollars into Court subject to the Order of this Honorable Court in the premises for the said Dodge on his making a Deed to your Orator for the said Land And your Orator is ready and willing and hereby offers to Execute to the said Dodge a good and sufficient Mortgage on the said premises to secure the payment of the residue of the said purchase money thereof according to the terms of the said Agreement, And that although the said Walters and your Orator have done or offered to do all the things in the said Agreement contained on the part and behalf of the said Walters to be done and performed, yet the said John C. Dodge without good and sufficient excuse has refused to perform the said Agreement on his part contrary to Equity and good Conscience.

And your Orator further shews unto your Honor as evidence of the authority of the said Tglehart to make the said Sale in manner and form aforesaid that he is informed and believes and so charges the fact to be that the said Tglehart reported the fact of the Sale of the said herein described Land to the said John C. Dodge by sending a Memorandum in writing of the said Sale to the said Dodge by his (the said Tglehart's)

8.

Clerk on or about the said sixth day of September aforesaid. And that said Dodge on or about the same day told the said Clerk of the said Iglehart that "the Sale was all right" And that the said Dodge would attend to it. And further that the said Iglehart as Agent for the said Dodge since the said fourth day of September aforesaid has sold large quantities of other lands which the said Iglehart in a similar manner reported to the said Dodge. And that said Dodge did recognize and carry out and close up all such other sales of said lands so sold except the said Forty Acres. So sold to the said Walters as herebefore mentioned. All of which actings doings and pretences of the said John C. Dodge are contrary to Equity and good conscience and tend to the manifest injury of your Orator in the premises, And in consideration whereof and forasmuch as your Orator is remediless in the premises at Law and can only be relieved by your Honor in Equity. To this End therefore he prays that the Peoples Writ of Subpoena may issue against the said John C. Dodge and that he may be compelled to appear and answer all and singular the allegations aforesaid without oath (oath being hereby expressly waived according to the Statute in such case made and provided) And particularly that he may answer and say Whether he did not have a description of the said Land in said Agreement specified with the said St. J. Iglehart and authorize and request him to sell the same at the price and on the terms specified in the said Agreement as above set forth?

Whether he left said Land by description for Sale by said Iglehart or not? And, if so, whether he did not authorize or request the said Iglehart to sell the same for him the said Dodge at and for the

price of Thirty dollars per acre one fourth of the purchase money to be paid down on making the Deed thereof And the residue in three Equal annual instalments with interest secured by a Mortgage on said Land, or how otherwise?

And your Orator prays that the premises considered your Honor will by your Decree to be made in this Cause compel the said John C. Dodge to convey the said Land to your Orator. Your Orator being ready and willing and offering hereby specifically to perform all things in the said Agreement contained on the part of the said Walters to be performed Or if it shall appear that the said Dodge is unable to make a good title to your Orator for the said Land, that he may be decreed to pay to your Orator the Estimated value of the said Land at the hearing of this Cause over and above Thirty dollars per Acre, and the sum of Fifty dollars so paid on account of the first payment thereon or such damages as your Orator may or shall have sustained by reason of the nonperformance of the said Agreement by the said John C. Dodge, or grant to your Orator such further or other relief in the premises as shall comport with Equity as his case may seem to require And your Orator as in duty bound will ever pray &c

Morris, Hervey & Clarkson

Sols for Complainant.

Trink & Baker
of Counsel.

Exhibit A.

A. P. Tylehart & Co
General Commission Merchants
and Land Agents.
Chicago. Illinois

Counting House
35 Clarke Street
Chicago. Ill.
4th Septemb, 1852

Particular attention given to the purchase or sale of
of Produce and Provisions having had experience
in same of over 17 years, also to the buying and
selling Real Estate, the best legal advice being engaged
for the examination of Titles.

We have sold (as Agents for
Mr. John C. Dodge) to Thomas
C. Walters Esq. the N 1/2 of W 1/2

of N. W. 1/4 of Section 1. Tp 39. R. 13 E containing 40
acres of Land more or less at Thirty Dollars per acre,
on the terms to wit,

1/4 in Cash on making of Deed.
1/4 " 1 year
1/4 " Two years
1/4 " Three years } with interest on the deferred
payments and to be secured by Mortgage on the same
premises sold. It is understood that the Deed shall
be made either to said Walters or any other party he
may select or assign to and to be closed by both
parties within five days.

We have received of said Walters the sum of
Fifty dollars on a/c of the first payment herein named

(signed) N. P. Sglehart & Co.
agents for John C. Dodge
for Sale of this Land.

Acknowledgment on back.

State of Illinois

Cook County S.S.

I Lewis C. Korchwal a Justice of
the Peace in and for said County in the State aforesaid
Do hereby Certify that Nicholas P. Sglehart who is
personally known to me as the same person who under
the firm name of N. P. Sglehart & Co.) subscribed to
the within contract or Agreement as having executed the
same as Agent of John C. Dodge appeared before me
this day in person and acknowledged that he as Agent

of said John C. Dodge signed sealed and delivered the said instrument of writing as his free and voluntary act acting as Agent aforesaid for the uses and purposes therein set forth.

Given under my hand and seal this the 8th day of September in the year of our Lord 1852

(signed) L. C. Kercheval J.P. (S.E.)

"Endorsement" "Articles of Agreement. John C. Dodge to Thomas C. Walters. No 37990. State of Illinois. Cook County, Ill. Filed for Record November 25. 1852 and recorded in Book No 55 of Deeds page 380 (signed) L. D. Hoara, recorder."

Exhibit B.

For value received I hereby transfer to William F. Johnson all my right title and interest to the annexed Contract of Forty acres of Land being the N $\frac{1}{2}$ of N $\frac{1}{2}$ of N $\frac{1}{4}$ of Sect 1. T 39. N. R. 13. E) and authorize the said William F. Johnson for me and in my name to make the tender or the payment required to said named John C. Dodge. And to receive a Deed of said Land, and compel the Conveyance thereof by Bill in Chancery or otherwise in my name. Hereby giving him the said William F. Johnson full authority to institute and prosecute any suit for that purpose in my name.

Given under my hand and seal this 13th day of September A. D. 1852

(Signed) Thomas C. Walters (Seal)

And thereafter to wit on the Seventh day of February A. D. Eighteen hundred and fifty three the said Defendant John C. Dodge by Miller & Wentz his Solicitors filed in the Office of the Clerk of said Court, his answer to said Complainant's Bill, which said answer is in words

and figures following that is to say.

13

In Chancery.

Before the Honorable Mark Skinner
Judge of the Cook County Court of
Common Pleas.

The Answer of John C. Dodge defendant to
the Bill of Complaint of William F. Johnson
Complainant.

This Defendant now and at all times
taking and reserving to himself all manner of benefit and
advantage of Exception to the many errors and insuffi-
ciencies in the Complainant's said Bill of Complaint
contained for answer therunto or unto so much or such
part thereof as this Defendant is advised is material for
him to make answer unto, he answers and says, he
admits that he did on or about the fourteenth day of
May A. D. 1852 at a Public Sale of their lands, held
in the City of Chicago on that day, purchase of the
Trustees of the Illinois and Michigan Canal the tract
or parcel of Land described in said Bill of Complaint
as the North $\frac{1}{2}$ of the West half of the North West
Quarter of Section one in Township Thirty-nine, North
Range, Thirteen East, containing Forty acres of Land
more or less, and that he received from the said Trustees
a Certificate of said Sale and purchase similar to those
usually given by said Trustees in such cases.

But this Defendant denies that he did on the
fourth day of September A. D. 1852 or that he has at
any other time since said purchase pretended to be
seized in fee simple of said Land as charged in said
Bill of Complaint or that he ever pretended to have any

other Title to said Land than that arising from said Sale and evidenced by said Certificate. He denies that he was on the said fourth day of September desirous of disposing of said Land as charged in said Bill; but on the contrary says that said lands were purchased to be retained by this Defendant for a much longer period than to the said fourth day of September, and that though this Defendant has been frequently applied to, to sell said Land, he has invariably declined to make such Sale and has at all times adhered to his original intention to keep and retain the same.

And this Defendant further answering denies that he did on or about the said fourth day of September by N. P. Iglehart his duly authorized Agent for that purpose enter into an Agreement for the Sale of said Land with and to one Thomas C. Walters of the State of Ohio, as charged and set forth in said Bill of Complaint. And this Defendant says, that he never appointed the said N. P. Iglehart as his Agent, and that he never authorized the said Iglehart to sell or dispose of said Land as his Agent, And that if such Sale was made or Agreement Executed by the said Iglehart, he assuming or pretending to act as the Agent of this Defendant the same was done without any authority whatever from this Defendant.

And this Defendant denies that the sum of Fifty dollars on account of the first payment for said pretended purchase was then & there paid down to this Defendant or that the same was received or receipted by him of the said Iglehart his Agent as set forth in said Bill, but this Defendant saith that he has never received any sum whatever on account of said pretended Sale nor has he ever authorized the said Iglehart to receive the

12

said sum or any other sum on account thereof, and if the same has been received by the said Tglehart or a receipt given therefor as charged in said Bill, the same has been done without any authority from this Defendant and without his knowledge or consent.

And this defendant further answering denies that the said Walters did on the 6th day of September in the year aforesaid or at any other time offer to pay this Defendant the sum of Two hundred and fifty dollars or any other sum on account of said pretended sale and purchase or that said Walters ever demanded a deed of said premises from this Defendant or that said Walters ever offered upon receiving such Deed to Execute to this Defendant a Mortgage on said premises to secure any portion of the purchase money agreed to be given therefor as charged in said Bill of Complaint, or that this Defendant refused to receive the said sum of Two hundred and fifty dollars or that he refused to convey the said premises to said Walters or that he refused to receive a Mortgage thereon from the said Walters as charged in said Bill, or that he alleged as an excuse for refusing to carry out the provisions of said pretended Agreement that he thought the Land was worth more than it had been sold for, as is charged therein by the said Complainant, but this Defendant says that he is wholly unacquainted with, and to his knowledge has never seen the said Thomas C. Walters the person mentioned in said Bill of Complaint as having purchased said premises and as having made the said offers therein charged.

And for answer to that part of said Complainant's Bill of Complaint which alleged that the said Thomas C. Walters duly sold assigned and transferred the said pretended Agreement and all his interest therein to the

13

said Complainant. this Defendant says that he is wholly ignorant thereof and of all and singular the matters therein stated in relation thereto, and therefore leaves the said Complainant to make such proof thereof as he shall be able to produce.

And this Defendant further answering denies that on or about the 6th day of said September, he left the City of Chicago or that he was absent from said City until the fourteenth day of said Month as charged in said Bill of Complaint but on the contrary says that he was in the City of Chicago from the thirtieth day of August A.D. 1857 until the seventeenth day of September then next ensuing and that he was during the whole of that period and during the business hours of each day thereof at his Office and could easily have been seen by the said Walters or by any other person who should have desired an interview with him.

And this Defendant denies that said Complainant did on or about the fourteenth day of said September offer to pay to this Defendant at his Defendants Office in Chicago the sum of Two hundred and fifty dollars as the balance of the first payment according to the terms of said pretended agreement or that he did then and there demand from this Defendant a deed of said Premises in pursuance thereof, or that he did there and then offer to execute to this Defendant a Mortgage on said Premises to secure the residue of the purchase money in compliance with and according to the terms of said pretended agreement or that this Defendant then and there refused to receive the said sum of Two hundred and fifty dollars or that he refused to execute a deed for said Premises to the said Complainant nor did he allege as an excuse for such refusal that he thought the Land agreed to be

16
sold was worth more money than the sum specified in said pretended Agreement.

And all and singular the matters and things in said Bill contained charging and alleging the said several offers by said Complainant and the said several refusals and the cause for such refusals by this defendant this Defendant denies the same and each and every part thereof.

And this Defendant denies that the price for which said Lands are pretended to have been sold was a fair price and says that they were at the time of such pretended purchase worth a much larger sum than that specified in said pretended Agreement.

And for further answer to that part of said Complainant's Bill of Complaint wherein it is charged and alleged that said Complainant offered to pay to this Defendant the said sum of Two hundred and fifty dollars and that this Defendant refused to receive the same and the said several matters therein stated and charged; this Defendant says that he admits that on or about the fourteenth day of said September a person who was a stranger to this Defendant called upon this Defendant at his Office in Chicago and presented or offered to him a sum of money, how much he is unable to say, saying that said money was for Land sold by him this Defendant, without specifying what Land or to whom the same had been sold, or for whom or by whose authority said money was offered, and desired that this Defendant should fulfill his contract for the Sale of said Land without specifying what contract or in what manner a performance thereof was required And this Defendant thereupon told the said person in substance that he had sold no lands and that if any lands belonging

16.

1
to this Defendant had been sold they had been sold without his authority and without his knowledge or consent.

And this Defendant further answering admits that on or about the sixth day of said September he found at his Office a Note or Memorandum in writing, by whom left there, this Defendant is unable to say, but purporting to have been written by the said Iglehart, and to the effect that the Land mentioned & described in said Bill had been sold. But this Defendant denies that he received the said Note or Memorandum at the hands of the Clerk of the said Iglehart, or that he told the said Clerk of said Iglehart or any other person that said Sale was all right and that he would attend to it. But on the contrary this Defendant says that immediately upon discovering said Note or Memorandum and reading the contents thereof he returned the same to said Iglehart with a statement endorsed thereon, the precise language of which he does not now recollect but to the effect that if any Sale of said Land had been made it had been improperly made and without any authority whatever from this Defendant.

And this Defendant further answering says that on or about the 8th day of said September he received a letter from said Iglehart which was handed to him by a person whom he supposed to be a Clerk of said Iglehart stating that the Land described in said Bill had been sold to one Thomas C. Walters late of Ohio and requesting this Defendant, to execute a deed thereof in pursuance of such Sale. And being indignant that said pretended Sale should be persisted in, and this Defendant considered bound by a Contract he had never made or authorized, and that he should be called upon to convey Land pretended to have been sold by a person assuming without any authority whatever to act as his Agent

in the Premises and who was almost an entire stranger to this Defendant, this Defendant thereupon said to the person who was the bearer of said letter that he should like to know by what authority Mr. Iglehart had been selling his Land and that he would see to it or some words to that effect. Showing by his manner and language he employed that he was much displeased at said proceeding, and not by any means indicating or manifesting a disposition to acquiesce in or ratify said pretended sale.

And this Defendant says that immediately and on the same day he called upon the said Iglehart at his Office in person in relation to said pretended sale, and whether he found said Iglehart at his Office or not, this Defendant is now unable to say, but that on the same or succeeding day and as soon as he could succeed in finding the said Iglehart, he saw him in relation thereto, and again reminded him that no authority had been given by this Defendant for any such sale, and desired the said Iglehart not to cause this Defendant any further trouble or involve him in any difficulty in respect thereto. And the said Iglehart then and there admitted to this Defendant, that such sale was unauthorized, expressed much regret that it had taken place, and promised this Defendant that he would see the said Walters or person to whom said sale had been made and have the same rescinded. And this Defendant then asked the said Iglehart where he might find the said Walters, that he might personally communicate to him the fact that said pretended sale was unauthorized and have the same instantly abandoned. And the said Iglehart thereupon stated to this Defendant that said Walters was then absent from Chicago, and that he Iglehart would

see him in respect thereto.

And this Defendant further says that subsequently and on or about the 14th day of said September and immediately after the offer of the sum of money hereinbefore referred to, he again called upon the said Iglehart and the said Iglehart thus told this defendant that he had seen the said Walters respecting such Sale and had offered to pay the said Walters the sum of One hundred & fifty dollars from his own pocket to have the said pretended Sale abandoned and assured this Defendant that the same should be given up and abandoned by the said Walters.

And this Defendant further answering denies that said Iglehart as Agent for this Defendant has since the said fourth day of September, sold large quantities of other Lands for this Defendant, or that this Defendant did recognize, carry out or close up such Sales as charged in said Bill of Complaint, but this Defendant says that in all the transactions & sales therein referred to the said Iglehart merely had authority to receive propositions and offers for said other Lands, and report the same to this Defendant, to receive and give effect to such propositions and offers, by making & perfecting a sale of said lands in pursuance thereof or to reject the same as he should think proper. And that the said Iglehart never as the Agent of this Defendant or with his knowledge or consent signed any Agreement of the sale of such other lands or performed any act in respect thereto, which should be binding upon this Defendant but in all things left this defendant free to act in the premises as he should think proper, and that all the Agreements or instruments in writing respecting such sales were signed by this Defendant with his own proper hand

as by such Agreements or instruments in writing duplicates of which are now in the possession of this Defendant ready to be produced as this Honorable Court shall direct reference being had thereto will more fully appear.

And for answer to the Interrogatory in the said Bill of Complaint "Whether this Defendant did not leave a description of the said Lands in said Agreement specified with the said N. P. Iglehart and authorize and request him to sell the same at the price and on the terms specified in said Agreement" this Defendant says that he did not leave a description of the said Land with the said Iglehart, nor did he authorize or request him to sell the same on said terms, or on any other terms, and that he did not request or authorize the said Iglehart to sell the same for him this Defendant at and for the price of Thirty dollars an Acre, one fourth of the purchase money to be paid down on making the deed thereof and the residue in three equal annual instalments with interest secured by a Mortgage on said Land and that he gave the said Iglehart no authority to sell the said Land in any manner or on any terms whatever.

And for further answer to the said several interrogatories in the said Bill of Complaint, and the said several matters and things therein contained this Defendant says that on or about the Eleventh day of August A.D. 1852 he was called upon in his Office by the said N. P. Iglehart who was until that time an entire stranger to this Defendant, and that said Iglehart desired to know if certain lands then recently purchased by this Defendant, and including the land described in said Bill of Complaint, were for sale. And this Defendant then & there told the said Iglehart distinctly they were not for sale. That subsequently and

the succeeding day according to the best recollection of this defendant, the said Iglehart again called upon this defendant at the place aforesaid and in the course of his conversation with this defendant asked this defendant what lands he the Defendant had for sale - and thereupon designated by referring to a Map of the City of Chicago then in his office the particular pieces or parcels of land which this Defendant might be willing to sell, but that the land mentioned and described in said Bill of Complaint was not included in said designation, nor was any authority then given to the said Iglehart to sell the lands so designated or any portion of them.

And this defendant further says that he did not see the said Iglehart from the time of such interview nor had he any other or further ~~communication~~^{communication} from or with him respecting said lands until he received the Note or Memorandum hereinbefore referred to, stating that the Land mentioned and described on the said bill had been sold.

And this Defendant further answering says that he is and for many years past has been a resident of and doing business in the City of Chicago - that he is and ever has been accustomed to give his personal attention to and to transact all of his business, and not to employ another to act in his name, place or stead. That the pretended Agreement alleged to have been made by the said Iglehart as his Agent was made if made at all without defendants knowledge or consent, and without his having been advised with or consulted in any manner in respect thereto. That defendants office or place of business is at a central point and in one of the most public places in said City and though he was in the City and could have been seen at his Office at the

time when said pretended Sale is alleged to have been made and for many days subsequent thereto. Yet he has never been called upon by the said Walters or the said Complainant and has as yet been unable to learn who the said parties are or where they reside.

And this Defendant not confessing or acknowledging all or any of the matters & things in the said Complainant's Bill to be true in such manner and form as the same are therein set forth and alleged claims and insists that the authority charged in said Bill to have been given by this Defendant to the said Igthart to sell the lands therein mentioned was not in writing or signed by this Defendant as is required by the Statute in such cases. And also that the Agreement set forth in said Bill of Complaint and therein alleged to have been made and executed by this Defendant by said Igthart as his Agent to and with the said Thomas A. Walters, was not signed by the said Walters and could not be enforced against him, and for that reason the said Agreement is not binding upon this Defendant nor should he be compelled to a specific performance thereof as prayed for in said Bill. And also that the said several offers and tenders alleged in said Bill to have been made to this Defendant by the said Walters and the Complainant were not made in pursuance of and according to the terms of said pretended Agreement and were otherwise insufficient And that this Defendant is discharged therefrom by reason of the nonperformance of the several conditions therein contained to be done and performed by the said Walters and by reason of the insufficiency of the said several tenders and offers. And this Defendant prays the same benefit of so much of the said several matters and things hereinbefore contained

by him as goes in bar to the said Complainants Bill of Complaint as if the same had been pleaded to said Bill.

And this Defendant denies all & singular the matters & things in the said Bill charged in the manner & form therein set forth and alleged, Without that, any other matter or thing mentioned or necessary for this Defendant to make answer unto, and not herein or hereby well or sufficiently answered unto composed or avoided, traversed or denied is true, All which matters and things this Defendant is ready to aver maintain and prove as this Honorable Court shall direct, and hereby prays to be hence dismissed with his reasonable Costs in that behalf most wrongfully sustained.

John C. Dodge.

Miller & Prentiss

Solicitors for Plaintiff,

J. N. Arnold
of Counsel.

And thereafter to wit on the tenth day of February one thousand eight hundred and fifty three the said Plaintiff by his said Solicitors filed in the Office of the Clerk of said Court, his Replication to said Answer, of defendant, which said Replication is in words and figures following that is to say.

In the Cook County Court of Common Pleas,
In Chancery.

William F. Johnson - Complainant.

vs
John C. Dodge. Defendant.

The Replication of
William F. Johnson the

24

above named Complainant to the Answer of John C. Dodge the above named Defendant in this Cause.

This Repliant saving to himself all and all manner of Exception which may be had and taken to the manifold errors uncertainties and insufficiencies of the answer of the said defendant for Replication thereto Saith

That he does and will aver maintain and prove his said Bill to be true certain and sufficient in the Law to be answered unto by the said Defendant - And that the answer of the said Defendant is uncertain untrue vague and insufficient in the Law to be replied unto by him this Repliant Without this that any other matter or thing in the said Answer contained material or effectual in the Law to be replied unto and not herein and hereby well and sufficiently replied unto confessed or avoided traversed or denied is true All which matters and things this Repliant is ready to aver maintain and prove as this Honorable Court shall direct and he humbly prays as in and by his said Bill he has already prayed for

Morris Hervey Clarkson
Solicitor for Complainant.

And afterwards to wit on the eighteenth day of March being one of the days of the February Term of said Court A. D. Eighteen hundred and fifty four the following proceedings were had in said cause and entered of Record in said Court to wit.

William F. Johnson } In Chancery
vs } Bill.
John C. Dodge } This day comes the said
Complainant by Morris Hervey Clarkson his Solicitors

24.

and on his Motion It is Ordered that leave be given to file Amended Bill in this Cause making the Trustees of the Illinois and Michigan Canal Defendants herein And it is Ordered that said Complainant close the proofs in this Cause by the first day of May next.

And thereafter to wit on the eighteenth day of March A.D. 1854 came the Plaintiff by his Solicitor and filed in the office of the clerk of the said Cook County Court of common Pleas his amended Bill which said Bill is in words and figures following to wit;

William F. Johnson

John C. Dodge

Complainant

T^h

In the Cook County Court
of common Pleas
In Chancery

The honorable Mark Skinner Judge
of the Cook County Court of common Pleas in Chancery
sitting:

Your Orator the above named complainant for amendment to his Bill of complaint filed in this cause on the Eighteenth day of January A.D. 1853 by leave of this Honorable Court for that purpose first had and obtained, further states and shews unto your honor, that he is informed by Defendants answers to said Bill filed in this Honorable Court on the seventh day of February A.D. 1853 and believes the fact to be that the Board of Trustees of the Illinois and Michigan Canal are seized in fee of the said tract of land in the said Bill of Complaint mentioned to wit;

The North Half of the West Half
of the North West Quarter of Section One in Township
Thirty nine. North Range Thirteen East containing

Forty acres of land more or less. And that the said ²⁶ John C. Dodge the above named Defendant did on the nineteenth day of May A.D. 1857 purchase the same from the said Trustees and then received from them the Certificate of such purchase usually given by the said Trustees in such cases, but what amount of the purchase money for said Forty acres of land was at that time or has been since paid by the said John C. Dodge to the said Trustees Your Orator the said Complainant is not informed and cannot state as to his belief or otherwise, and he prays that the said Board of Trustees of the Illinois and Michigan Canal may be made Defendants hereto and may be summoned to answer the premises aforesaid in order that Your Orator may by such answer discover how the fact is.

To the end therefore that such discovery may be had by Your Orator as aforesaid and that the said Board of Trustees of the Illinois and Michigan Canal may be by Your Honor decreed to convey the said premises to Your Orator on the payment to them by Your Orator of the balance of the said purchase money for the said herein described tract of land so to become due to them by the said Defendant John C. Dodge.

May it please your honor to grant unto Your Orator the People writ of summons to be issued out of and under the Seal of this Honorable Court directed to the Sheriff of Cook County therein, and thereby commanding the said Board of Trustees of the Illinois and Michigan Canal to be and appear before this Court on a day to be in and by the said summons limited then and then to answer the Original and this amended

Bill and to stand to and abide by such order and decree as the Honorable Court shall in Equity make in the premises -

Morris Harvey Clarkson
Solt for Compt

And thereafter Court on the said eighteenth day of March A.D. 1854 came the said Defendants by their Solicitor and filed in the Office of the Clerk of said Court their answer to the said amended bill which answer is in words and figures following to wit;

In Chancery.

The Cook County Court
of Common Pleas

The separate answer of the Board of Trustees of the Illinois and Michigan Canal to the answer and bill of complaint of William H. Johnson complainant against John C. Dodge to the Board of Trustees of the Illinois & Michigan Canal Defendants -

And these defendants the said Board of Trustees of the Illinois & Michigan Canal for answer to the said complainants answer and bill of complaint answering say -

That they admit that they are seized in fee of the said tract of land in the said bill of complaint mentioned to wit;

The north
half of the West half of the north West Quarter
of Section one in Township Thirty Nine North Range

27

thirteen East, containing Forty acres of land more or less; and that the said John C. Dodge became the purchaser thereof on the fourteenth day of May A.D. 1853, as stated in said amended bill of complaint and that these defendants issued a certificate therefor to the said John C. Dodge as is therein stated; These defendants further considering say, that said premises were purchased by the said John C. Dodge for the sum of Six Hundred and forty one ⁴⁰/₁₀₀ Dollars - That the said John C. Dodge has already paid to these defendants on account of such purchase the sum Three Hundred & Sixty seven ⁹/₁₀₀ - and that there is to be paid to these defendants therefor the sum of three Hundred & thirty ⁶³/₁₀₀ Dollars payable one hundred Seventy ⁰⁷/₁₀₀ Dollars on the fourteenth day of May A.D. 1854 and one Hundred & sixty ⁶⁰/₁₀₀ Dollars the fourteenth day of May A.D. 1855 including interest on said reserved payments -

These defendants further answering say that they are ignorant of all the other matters and things contained in the Bill of complaint filed in this cause and prays to be here dismissed with their costs in this behalf sustained -

The Board of Trustees of
Ills & Michigan Canal
by J. A. Arnold
Sole at

And afterwards, to wit on the Eighth day of January A.D. 1855. the following Depositions were filed in said Cause to wit,

Deposition of Nicholas P. Sglehart a
Witness for Complainant, taken under Agreement and to be
used in evidence in a suit pending in the Cook County
Court of Common Pleas, wherein William F. Johnson is
Complainant and John C. Dodge et al, are Defendants
in Chancery, the same being taken at the Office of and
before Henry L. Rusker, County Judge of Cook County
commencing this 4th day of May 1854.

The said Witness having been first duly cautioned
and sworn deposes & answers as follows.

1st Interrogatory by Robert Henry Solicitor for Compt.
What is your name, age, residence and

occupation?

Answer. My name is Nicholas P. Sglehart, I am
forty two years of age; reside in the City of Chicago,
and am a general real Estate Agent and Commission
Merchant.

2nd Interrog. by same for same.

Do you know the Complainant and defendant
in this suit; or either & which of them? and how
long have you known either and which of them?

Answer. I know the Complainant William F.
Johnson and ^{the Defendant} John C. Dodge. I have known Mr.
Johnson since 1834 and Mr. Dodge since August 1852.

3rd Interrog. by same for same.

Were you ever employed by the Deft Mr. Dodge
to sell as his Agent any real Estate in the County of
Cook? Were you ever employed to sell that portion
now in question in this Cause? If yes, state how
and when, and describe the particular tract—

Question objected to by Defts Counsel.

Answer. I have been, I was employed to sell that
price

About the 12th August 1852 I was employed to get offers or to see at what price I could find a buyer of this particular piece and report the same to Mr. Dodge. About the 3rd of September following I reported a bid of about Twenty five dollars an acre. Mr. Dodge declined that offer, and stated his price at Thirty dollars per acre as the lowest. One fourth Cash and the balance in one, two and three years. These limits and the terms named I entered at once on my Book under their proper head, and the tract as it stands on my Book is "the North half of the West half of the North west quarter of Section No. 1, Township No. Thirty nine, Range No. 13 East, 40 Acres.

4th Interrog. by same for same.

When you communicated the offer of \$25⁰⁰ an acre to the Defendant, Mr. Dodge, did you tell him for what Land it was offered; and was such offer made for the purchase of any real Estate previously placed in your hands for sale; and if so, by whom was the same placed in your hands?

Question objected to by Defts Counsel.

Answer. About the 3rd of September, in communicating to him the offer, I told him it was for the piece in question now. It was not in my hands at a given price for sale at that time. The piece of Land was placed in my hands by Mr. Dodge about the 12th of August, to get bids for

5th Interrog. by same, for same.

For what was the offer of \$25⁰⁰ per Acre made to the Defendant, Mr. Dodge, by you, and did Mr. Dodge at that time, or at any other time authorize the sale by you of any of his land at any specified price? If so

describe the land and state at what price?
 Question objected to by Defts Counsel.

Answer. The offer of \$25⁰⁰ per acre was not made by me to Mr Dodge for myself, but carrying out my Agency for him, I reported this offer of \$25⁰⁰ per acre for the 40 acres previously described by me, and being the 40 acres now in question. On the 12th of August at the land the price of Land now in question was placed in my hands, another piece was placed there Lot 19 in Section 33. Town 40 Range 14, about 5 acres and a half; this was placed like the other to get bids for. About the 3rd of September 1852 in reporting the offer of \$25⁰⁰ per acre previously named, and at that time Mr Dodge placed a limit on this Lot 19 of \$140 per acre, and of \$30.00 per acre on this 40 now in question and authorized me to sell these respective pieces at those prices.

6th Interrog^y by same for same.

Do you know the Land in question in this cause? If so, describe it?

Answer. I know it to be the North West quarter of the North West quarter of Section No 1. Town 39 Range 13 East.

7th Interrog^y by same for same.

Were you ever authorized to sell the Land mentioned in your answer to the last preceding Interrogatory? If so, by whom, when, and at what price?

Question objected to by Defts Counsel

Answer. I was. by Mr John C. Dodge about the 3rd of September 1852, at \$30.00 per acre one fourth down and the balance in one, two and three years, with six per cent interest on the deferred payments

8th Interrog^y. by same for same.

Did you at any time sell the land described in your answer to the 6th Interrog^y? If so, when, to whom, for what price and on what terms?

Answer. I did. I sold it on the 4th of September to Thomas C. Walters at Thirty dollars per acre, one fourth to be paid Cash on the execution of the Deed, the balance in equal payments in one, two and three years, secured by Mortgage for the deferred payments and received from said Walters Fifty dollars on account of the first payment which Fifty dollars I placed to the Credit of John C. Dodge on my Books, charging him with \$30.00 being 2 $\frac{1}{2}$ per cent commissions on \$1200 the amount of the Sale.

Further Examination continued by Agreement to May 5th at 9 o'clock A.M.

May 5th 1854. Examination further continued to May 6th at 9 o'clock A.M. on account of the absence of the Witness.

May 6th 1854 Examination is continued by Agreement to May 12th at 9 o'clock A.M.

May 12th Examination cont^d by Agreement to May 25th at 9 o'clock A.M.

May 25th 1854. Examination resumed.

Complainant by his Counsel offers and files as Exhibits in this Case the papers hereto annexed &

purporting to be the Affidavits of Complainant, of
Buckner S. Morris, of Henry Frick, and of Robert
Hervey and their proponents.

Interrog^y. 9th by Robert Hervey for Complt.

Did you give said Walters any Memorandum
of Sale, receipt or other writing for the purchase of the
Land in question? If so, do you know where the said
document now is, and have you preserved any copy
of the same?

Question objected to by Defts Counsel.

Answer. I gave him a Contract of Sale, dated Sept^r 11.
1859; I do not know where the Original is; I have a
Copy of it taken by letter press on tissue paper from the
Original.

Answer objected to by Defts Counsel.

10th Interrog^y. by same Counsel for same.

Look at the paper writing now shown you; and
look at the paper writing attached to the Original Bill
in this cause marked Exhibit A. and compare the
same with the Copy of the Contract of Sale, preserved by
you, and state whether said documents are or are not
true copies of the Original Contract, given to said Walters
at the time of said Sale?

Question objected to by Defts Counsel.

Answer. I have compared the papers carefully. the Copy
attached to the Bill, is an exact copy, I believe,
the Certified Copy from Records is the same as the
Original, except lacking an "S" at the end of "Agent" in
the first line of the body of the Contract, also two marks
inclosing the words "as Agents of Mr. John C. Dodge"
In the second line of the body of the instrument the Copy
is "Walter" instead of "Walters" as in the Original.*

The balance as far as I can discover is as in the Original

x see close of Deposition
for Amendment here.

I notice one or two flourishes of the pen in the original which are not in the Copy. The Copy retained by me in my letter book was taken by letter press from the Original and the writing in the same is a fac-simile Copy. The headings, which are printed on the original were those used by me, as my regular letter heads, and said printing is not transferred or copied in my letter Book Copy of said original, preserved by me and now in my possession.

Answer objected to by Defts Counsel.

11th Interrog^y. by same Counsel for same.

In whose handwriting is the said original Contract just referred to? By whom is it signed, and in what capacity?

Question objected to by Defts Counsel.

Answer. It is in my handwriting; it is signed by me in the name of A. F. Tylehart & Co. as Agents for Mr. John C. Dodge for the sale of the piece of land described in the Contract.

12th Interrog^y. by same Counsel for same.

Do you know of any Assignment or transfer of the said Contracts of Sale by said Walters to any one? If so, state when and how and to whom the same was made? Was it executed in your presence, have you the same now in your possession, or do you know where it is?

Question objected to by Defts Counsel.

Answer. I do, it was assigned some few days after the 11th Sept, 1852, the exact date I do not know. It was assigned to William F. Johnson by a written Assignment. I think on a separate piece of paper, but am not positive from recollection. The assignment was executed in my presence, but is not now in my

profession, neither do I know where it is.

Another objection to by Defts Counsel,

13th Interrog^y. by same Counsel for same.

Look upon the paper writing attached to the Original Bill in this cause marked Exhibit B. and state whether the same is, or is not, a copy of the said Assignment?

Question objected to by Defts Counsel,

Answer. I cannot from memory, say that it is an exact copy; but the substance is as I recollect the original to have been.

Answer objected to by Defts Counsel,

14th Interrog^y. by same Counsel for same.

Do you know in whose handwriting said original assignment was; and by whom was the same executed; and is the said William F. Johnson mentioned in your Answer to the 12th Interrog^y, the Complainant in this Cause?

Question objected to by Defts Counsel,

Answer. I believe I wrote it myself; if not, it was written by Henry Frink, not having the original I could not say positively; it was executed in my presence by Thomas C. Walter. The William F. Johnson mentioned is the Complainant in this suit.

15th Interrog^y. by same Counsel for same.

Did you after the said Sale communicate the same to the Defendant Mr Dodge? If yes, was such communication verbal or written? What was the date of such communication? Had you ever any conversation with the Defendant Mr Dodge, on the subject of said Sale? If yes, state the particulars of such conversation or conversations?

Question objected to so far as it relates to the communication

by writing.

35

Answer. I did communicate the Sale to Mr. Dodge on the day that it was made, the 4th of September; the communication was verbal, and a written one on the 8th of September 1852. At the time I communicated it on the 4th September above referred to, I asked Mr. Dodge for his papers of title so that we could draw the proper papers and have the sale closed. Mr. Dodge was very busy it being Saturday, asked me to let it remain until Monday the 6th September, that is, the furnishing the Title papers, this was the substance of the conversation on Saturday. After the receipt of letter of the 8th of September, Mr. Dodge called at my office, on the 9th of September, or perhaps on the evening of the 8th. He called to complain somewhat of my letter to him, acknowledging its receipt. I explained to him in conversation, that his not furnishing his Title papers on Monday the 6th of September 1852, had caused Mr. Walters to feel angry in the premises, and he, Walters, disposed to give me as much trouble as he could unless the papers were immediately procured by Mr. Dodge, to him, Walters; and to close the matter if possible, was the reason I had written to him on the 8th. Mr. Dodge still appeared angry in the premises growing out chiefly from the remarks in my letter, which he deemed harsh towards him and declined rather at that interview to execute the papers or furnish them for me to draw them. I remonstrated with him in a general conversation; we had quite an interview, stating that we had had the property in charge since about the 12th of August 1852 that he on the 3rd of September had placed it with us specifically for sale at Thirty dollars an acre, and authorized us to sell it at that price, and no less; I

Monday

referred also in the conversation to his confirming the Sale on Saturday the 4th September 1852, when we reported it to him, and of his promise to furnish me the title papers on the following Monday. Also to the fact that we had issued a Contract for this property as his Agents, and had received Fifty dollars on the same, and urged him to close it up and settle. He declined and went off rather angry.

About the 17th of September 1852, I reported another Sale of Mr. Dodge's property left by him with me, which Mr. Dodge confirmed and signed the Contract, and then referred to the old 40 acres in dispute in a milder tone than he had previously used in relation to it. stating that he wished me to settle it in some way for him; that somebody had made him a lender in gold; some fast young man, he said, and wanted me to tell him who it was, he also said he thought the property ought to bring more, if I could get him out of this scrape with Walters, he would still let me have the selling of it, and some other property he had for Sale he would give me; and that he wished to purchase some good property, and a general friendly conversation in which he wished me to attend to all his Land matters from time to time as he should report to me. As far as I remember we had no further conversation from that day until up to about the 1st of October 1852, when Mr. Dodge handed me some other pieces of property for Sale, and also, at that time, this same 40 Acres now in dispute limiting it at \$50.00 per acre. There was a little conversation about this 40 Acres and the affair with Walters, Mr. Dodge wishing me, if possible, to settle it for him. I expressed a readiness & willingness to do so if I could

37

but told him I had no control of it in any way, and especially referred to the fact that the matter was then placed in the hands of Morris, Hervey & Clarkson and had been assigned to Johnson, all of whom at that time I supposed to be my strong enemies; but that I was willing to do anything that I could, but urged Mr Dodge to see Mr Morris himself, as he was an old acquaintance, with whom I thought he could make the best arrangement, that could be made in the matter. About the 13th of October pursuing Mr Dodge placed other property in our hands for sale amounting to \$10,000. and at that time spoke again of this matter, but he had not been able to arrange it. Mr Dodge still urged me to settle it if I could, expressing in these latter interviews a good deal of friendship for me, and wished I would get him out of this scrape if I possibly could, so that he would not be bothered any more. From about that time up to about the 1st of Janry 1853 we had brief conversations with Mr Dodge as we met from time to time on business, I having sold for him during that time some \$10,000 worth of property. I learned from him and he from me that we were both unable to effect a compromise of it. On the 13th of January 1853 Mr Dodge & myself as far as I remember now, had our last interview on this subject, at least in an amicable way. He said he had learned from some interview with Mr Morris that some legal process had been or was about to be instituted against him at which he expressed himself angrily, and withdrew all property of his on my Books for sale, and told him my agency for him had ceased, spoke of reducing it to writing, this revocation of agency

* See close of Deposition
for explanation of Answers.

and authority to sell property, which I told him it was not necessary to do. Since then our intercourse has not been amicable, having then no further business for him.*

16th Interrog^y by same Counsel for same.

Did Mr Dodge state to you what amount of money in gold had been tendered to him; and for what purpose said tender was made and about what time?

Question objected to by Defts Counsel.

Answer. I don't think he named the exact amount to me that was tendered to him. Mr Dodge spoke of some pert young man having called there with gold in his hand, wishing him, Dodge, to receive it in payment for some Land sold Walters by Tylehart. Mr Dodge said in substance that he told him, the pert young man, that he did not want his Gold, and that he had better put it into his pocket and go away; or words to that effect. The time was subsequent to the 8th of September 1852, say from three to ten days. Mr Dodge named to me about the time that it occurred.

17th Interrog^y by same Counsel for same.

Have you the Original Contract of Sale executed by you as Dodge's Agent and before referred to, from Dodge to Walters, in your possession, or do you know where the same is to be found?

Question objected to by Defts Counsel.

Answer. I have not. I do not know.

18th Interrog^y by same Counsel for Consult.

Did the Deft Mr Dodge in the conversation you had with him on the subject of the Sale of the Land in question in this cause on the 4th of September 1852, or in any subsequent conversation question your

authority to make said Sale as his Agent? 39
Question objected to by Defts Counsel.

Answer. He did not on the 4th Septem^r but fully confirmed it; stating that on the following Monday, the 5th Sept^r, he would furnish his Title papers to draw the suitable papers to Walter. At our conversation after the reception of my Note of the 8th Sept^r, he expressed it as his opinion that my Agency, or that Contract which I signed, would not hold him, being displeased with the contents of my letter of the 8th declined to fulfil it.

From that time up to the 13th January 1853, there was no talk of a want of authority on my part, but on that day at the time he withdrew all property for Sale from my Office, I think he renewed the remark that he didn't believe that contract would hold him any how, or words to that import. In the interval between Sept. 17. the date of his confirming the first Sale since the Sale of the 40 Acres we were on good terms, Mr. Dodge treating me with quite marked attention, and handing in business to the Office frequently; and I had agreed to do what I could, at Mr. Dodge's request towards releasing him from his first Sale and Contract with Walter; and during the interval last named between the 17th Septem^r, 1853 and the 13th Jan^y 1853, Mr. Dodge never disputed having given such authority.

Answer objected to by Defts Counsel.

19th Interrog^y by same Counsel for Compl^t.

Did you or did you not on the 4th Septem^r 1852 or at any time subsequent thereto, state to the Defendant, Mr. Dodge, that you were aware that you had no authority to sell the Land in question as his Agent, and that you regretted such Sale had been made?

Answer. I never said I was aware, I had no authority,

to Mr. Dodge or to any body else. but I did tell Mr. Dodge in conversation, that if he intended not to fulfil his contract, I regretted having had anything to do with him or his land as operations like the one with Walter would injure my house if they were not carried out.

20th Interrog. by same counsel for Complt.

Did you or did you not ever agree to procure Mr. Walter, the purchaser of the land in question, to cancel the sale?

Answer. I never did.

21st Interrog. by same counsel for Complt.

Did you or did you not ever state to the Deft Mr. Dodge that you had offered Walter, the purchaser of the Land in question, one hundred and fifty dollars out of your own pocket, to cancel the sale?

Answer. I never did in so many words. I did say to Mr. Dodge during the fall of 1852, at the time we were doing considerable business with Mr. Dodge, that if Mr. Dodge would arrange the matter some way, I would give a hundred dollars & my commissions on that sale towards it, giving as a reason, that that was the only instance, where our sales had not been consummated, and that I would sooner give what I had made out of his, Dodge's, subsequent business rather than have a thing of that kind unclosed.

Further Examination continued to 9 o'clock A.M. May 26th 1854.

May 26th 1854. Examination resumed pursuant to Adjournment.

22nd Interrog. by same counsel for Complt A. Hervey Esq.

To the said Walters who you state in your

41

answer to the 12th Interrog^y, assigned to the Com-
plainant in this cause the contract of sale made by
you to him as Agent for the West John. C. Dodge,
for the 40 Acres of Land in question in this cause,
and which Assignment you state in your said
Answer to the 12th Interrog^y was executed by said
Walter in your presence, the same Thomas. C.
Walter to whom you sold said land and gave said
contract; or another and different person? And do you
know where the said Walters resided at the time of
your making said contract of Sale to him?

Question objected to by Defts Counsel.

Answer. He is the same person, and resided at
Cincinnati, Ohio.

23rd Interrog^y by same Counsel for Complt.

Was there at any time subsequent to the 14th
Sept^r 1852 any other sum of money (beyond the \$30.
acknowledged in the contract given by you to said
Walters for the Sale of the Land in question in this
Cause) paid or tendered to you? If yes, by whom
was the same paid or tendered to you? What was
the amount? Where was it so paid or tendered? On
whose account? for what purpose? In what descrip-
tion of money? And in what capacity was such
payment or tender made to you?

Answer. There was by William F. Johnson
the Plaintiff here: the amount tendered was Two
hundred & fifty dollars, a few days subsequent to the
14th of Sept^r 1852. the exact day not remembered:
on the account of William F. Johnson, and in fulfillment
of the Contract for the said 40 Acres referred to: in
Gold; as the Agent of Mr John C. Dodge.

24th Interrog. by same counsel for Complt.

Has such tender made to you before or after the execution of the Assignment before referred to by you from said Thomas L. Walter to the Complainant?

Answer. It was made after the Assignment to Johnson and I think on the same day of said Assignment.

25th Interrog. by same counsel for Complt.

State particularly what Lands the Defendant Mr. Dodge placed in your hands for sale; and the dates; the prices of the same fixed by him; the quantities sold by you, and the prices and dates; and whether such Sales were confirmed by the Dist. Ct. Dodge, or not?

Answer. On the 12th August 1852, the piece now in dispute was placed in my Office, also lot 19 in Sect 33 Town 40. Range 14, without price. On the 3^d of September the limits to the first named piece was \$30 per acre and for the latter piece \$140 per acre. The former piece was sold at the limits on the 4th September 1852, and the latter piece at the limits about the 13th September 1852. On Oct. 1. 1852, the piece now in dispute, 40 acres, was placed in my Office at a limit of \$50 per acre, also the West half of the North West $\frac{1}{4}$ Sect 8. Town 38, Range 13 at a limit of \$10 per acre. Also the West $\frac{1}{2}$ of lots 7 and 8 in Block 78 of Russell, Mather & Roberts Addition, at a limit of \$500 for the two, the latter pieces only were sold about the 12th Oct. 1852 at the limits to wit, \$500. On the 13th Oct. three pieces were placed in my Office, the East $\frac{1}{2}$ of S. W. $\frac{1}{4}$ of S. E. $\frac{1}{4}$, and the West half of the South E. $\frac{1}{4}$ of the S. E. $\frac{1}{4}$, both in Sect 13 Town 39. Range 13. being 20 acres each. Also the N. W. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$ of Sect 19 Town 39. Range 14. 40 acres, these were limited at \$100 per acre each, and were all sold.

43

on or about the 11th Nov^r 1852 at \$120 per acre being an advance of \$20 per acre over the first limits. These were all the lands, as far as I remember, sold for account of Mr. Dodge, and he confirmed the whole of said sales at the times they were made, and executed the proper papers of conveyance to the purchasers, with the exception of the 40 Acres in dispute.

Further Examination continued
by Agreement of parties to May 30 at 2 P.M.

May 30. Examination resumed pursuant to adjournment and proceed to the Cross Examination

1st Cross Interrog^y by H. G. Miller Esq^r counsel for Defendants

When did you for the first time, see Mr Thomas C. Walter the person to whom you say you sold this land?

Answer. About 1850.

2nd Cross Interrog^y by same counsel for same.

Where?

Answer. At Cincinnati, Ohio.

3rd Cross Interrog^y by same counsel for same.

Where did he then reside?

Answer. At Cincinnati, Ohio.

4th Cross Interrog^y by same counsel for same

By whom were you introduced to him,
and at what place?

Answer. I don't think I ever was introduced to him.

5th Cross Interrog^y by same counsel for same.

When and how did you make his acquaintance, and who was present?

Answer. I knew Mr Walter there as a Master Builder, and never had any special personal acquaintance with him until he came to Chicago, about August 1852, and

16

44

Also. *See end of Deposition for Amendment to this
Ans.

6th Cross Interrog. by same counsel for same.

When, where and how did you make his
personal acquaintance, and who was present?

Answer. About August 1852, I met him on State Street
near Madison Street, he was on horse back; he stated
he had just arrived in Town; hailed me as I was
coming, I think, from Dinner; claimed he was an old
acquaintance, and probably asked me if I knew him;
I gave him to understand I did, and invited him to call
and see me, stating where I could be found. No one
was present as I remember except the ordinary street
passers.

7th Cross Interrog. by same counsel for same.

Had you ever spoken with him before
that time?

Answer. I think I had on one occasion.

8th Cross Interrog. by same counsel for same.

When and where was it?

Answer. At Cincinnati, about the year 1850.

9th Cross Interrog. by same counsel, for same.

What was the occasion of your speaking to
him, at that time?

Answer. I had a Note of his, or one on which his name
was, in my charge for collection, and he called to pay it.

10th Cross Interrog. by same counsel, for same.

Was that the time when you first became
acquainted with him?

Answer. I think that was the first time I ever spoke
to him.

11th Cross Interrog. by same counsel for same.

Did you make his acquaintance at that time?

Answer. I was convinced it was Mr. Walter, or Mr. Walters,

45

I wasn't sure which at the moment, he paid his Note. perhaps was in the Office from two to five minutes; he was not introduced to me, that was the extent of the acquaintance at that time.

12th Cross Interrogatory by same counsel for same.

How long had this Note been in your hands for collection? And was he the maker of the Note?

Answer. I have previously said, the Note was under my charge for collection, it had been so probably a few weeks, I don't recollect the exact time. I held it on the day of its maturity. I am not sure whether he was the maker, or whether simply his name was on it.

13th Cross Interrogatory by same counsel for same.

How was his name written on the Note?

Answer. I presumed it was written with Ink; I am not sure whether on the bottom as drawer, or on the back as indorser. I don't remember how it was written, whether abbreviated or in full, I recollect that I took the name for Walters, subsequently I have been satisfied his name is Watter.

14th Cross Interrogatory by same for same.

Who was the Owner of that Note?

Answer. It was in the Phoenix Bank of Guiciniatti. I am not sure who owned it; or whether it was a discounted Note, or placed for collection.

15th Cross Interrogatory by same for same.

For what amount was it given, and who, if any, were the other parties to it?

Answer. It was some several hundred dollars, the exact amount I don't remember, and the name of Vancken Kunder, a big butcher of Guiciniatti, was connected with the Note. I think Mr V. Kunder's name was the only other name on it.

16th Cross Interrogatory by J. N. Arnold for Defendants.

By whom was the Note placed in your hands
Answer. I was acting teller at the time at the Bank,
and it came under my control as part of the bills maturing
at the time.

17th Cross Interrogatory by same for same.

Did you advise Walters to buy this land?

Answer. I named it to him, that I had it for sale, and
may have advised him that it was a good operation.

18th Cross Interrogatory by same for same.

Did he buy it to keep, or with a view to sell on
speculation?

Answer. I am not sure what his views were, I think
he designed to sell it as soon as he could make something
on it satisfactory to himself.

19th Cross Interrogatory by same for same.

Was it to be left with you for sale?

Answer. There was no contract of that kind, nor was
there any arrangement definitely to that purpose.

20th Cross Interrogatory by same for same.

Was it left with you for sale? By Walters?

Answer. It was partially left with at one time, which
was after Mr Dodge failed to make the papers of Conveyance,
Mr Walters not wishing to hold anything in that particular
shape, as he alleged.

21st Cross Interrogatory by same for same.

What did Walters want you to do with it?

Answer. He wanted to get the conveyance if he could, if he
couldn't he wanted to sell it, in preference to going to law,
or having any fuss with it.

22nd Cross Interrogatory by same for same.

Did he so instruct you?

Answer. I don't remember any special instruction on this

47

subject, he frequently spoke of his desire to get the honeydew papers of Mr. Dodge.

23rd Cross Interrogatory by same for same.

Did he tell you if he or you could not get them to sell it without going to law?

Answer. I don't think he ever gave any definite instructions in reference to it, so far as placing it under my entire control, but frequently said in substance that he would prefer making something out of it, and not go to law if he could help it.

24th Cross Interrogatory by same for same.

When did he leave Chicago?

Answer. I think he left temporarily sometime in September 1859, and then returned to Chicago, where he now resides.

25th Cross Interrogatory by same for same.

What if anything was said by him or you, in regard to what you were to have on the resale of the land?

Answer. I don't think any definite arrangement was made in regard to that; I don't remember that anything was said.

26th Cross Interrogatory by same for same.

Will you state that nothing was said on that subject?

Answer. I don't think that anything was said in reference to compensation to me for the future sales of the property.

27th Cross Interrogatory by same for same.

Are you positive that nothing was said.

Answer. I am positive that I never had any definite conversations with him in reference to the commissions for the sale of said property, but charged him some small commissions after the transfer to Johnson, the exact amount I do not remember.

28th Cross Interrogatory by same for same.

For what services were those commissions charged?

Answer. Johnson, previous to buying it, consulted me about the condition of the Land, I think I was the indirect means of the Sale, and charged for those services.
29th Cross Interrog. by same for same.

Has Walter ever paid you those commissions? and if so, when and how, and has he your receipts?

Answer. He has paid me sometime in September 1852 at or about the time of the transfer, I don't know whether I gave a receipt or not, nor whether he has a receipt or not, it was paid in money, I think out of the proceeds of the Sale to Johnson.

30th Cross Interrog. by same for same.

You say you spoke to Mr Johnson about the Land, and assisted in selling, did you tell him Mr Dodge refused to recognize the Sale to Walter?

Answer. I did not tell him that because that was not the fact I told him that Mr Dodge refused to execute the papers.

31st Cross Interrog. by same for same.

Did Mr Johnson consult counsel as to Mr Dodge's liability, before making the purchase?

Question objected to by S. A. Irwin for complaint.

Answer. I think I have understood from Mr. Johnson subsequently to that time that he had consulted Counsel.

32nd Cross Interrog. by same for same.

Did you not furnish a statement of the facts prior to the Sale to Johnson, to be laid before Counsel?

Answer. The Contract with Walter by me as Agent, was in Johnsons possession, and I told him I was fully authorized to sell the property and make such a Contract these were about all the facts we furnished to Johnson, my impression was that he wanted to consult Counsel.

33rd Cross Interrog^y by same for same.

49

Did you suggest the name of any counsel? if so, who?

Answer. I think I may have suggested the name of Mr Henry Frink, knowing that Mr Johnson had already employed Messrs Morris, Hervey & Clarkson in a large suit against myself, and they being his general lawyers

34th Cross Interrog^y by same for same.

Had you, prior to this Sale, ever consulted counsel in regard to Mr Dodge's liability?

Answer. I had consulted Henry Frink.

35th Cross Interrog^y by same for same.

Was it before or after you saw Johnson

Answer. Previous to having any conversation with Mr Johnson, about the Sale.

36th Cross Interrog^y by same for same.

Did you suggest to him Frink to buy or take an interest in this property as a retainer, or otherwise?

Answer. Not to my knowledge, I never did.

37th Cross Interrog^y by same for same.

Is it your recollection that he was retained without any interest in the property?

Answer. I never knew or heard that he had any interest in it.

38th Cross Interrog^y by same for same.

What time in September 1852 did Mr Johnson arrive here?

Answer. I am not able to say, it was either the latter part of August, or early part of September

39th Cross Interrog^y by same for same.

Did you propose to sell him this property?

Answer. I think I advised him to buy it during our conversation. It is my impression that Walters first

suggested it to him.

40th X Interrog^y by same for same.

Did Walters make the suggestion at your instance?

Answer. I don't remember that I suggested it first, they were both businessmen, and acquainted with each other.

41st Cross Interrog^y by same for same.

How do you know that Walters suggested it first? was you present?

Answer. I only judge from inference, remembering Johnsons coming into my office to get the details about that Land

42nd Cross Interrog^y by same for same.

Did you ever see the land? if so, when, and who was with you at the time?

Answer. I never was on it, so far as I know.

43rd Cross Interrog^y by same for same.

Did Walter ever see it to your knowledge?

Answer. Never.

44th Cross Interrog^y by same for same

Did Johnson?

Answer. Never to my knowledge.

45th Cross Interrog^y by same for same.

How long was the negotiation between you and Walters pending?

Answer. Some two or three days in all, perhaps a little longer.

46th Cross Interrog^y by same for same.

Did you advise Mr Dodge of it while pending?

Answer. I did on the 3rd Sept when I took him a distinct offer for it.

47th Cross Interrog^y by same for same.

Who made that offer?

Answer. Walter, and J. S. Baker was another; I had several offers at \$25.00.

48th Cross Interrog^y by same for same.

57

Have you had any business transactions with
Walters since?

Answer. I have.

49th Cross Interrog^y by same for same.

Real Estate operations?

Answer. No, They were money transactions.

50th Cross Interrog^y by same for same.

Are they closed?

Answer. No, they are not entirely settled.

51st Cross Interrog^y by same for same.

Was the Sale to Johnson made with a view to the
institution of a suit to compel Dodge to make a deed
of the property?

Question objected to by Counsel for Compl^t.

Answer. I don't know what Mr. Johnsons entire views
were, he took it without any guarantee from Walter, with
the right to sue in case he, Johnson, should have to.

52nd Cross Interrog^y by same for same.

When Dodge refused to make the Deed, did not
Walter say he would have nothing more to do in the matter,
and would not advance any money to make the payments?

Question objected to by Counsel for Compl^t.

Answer. He didn't say anything of the kind to me.

53rd Cross Interrog^y by same for same.

Who placed the Contract between you and
Walter on Record

Answer. It was done by me or by my direction.

54th Cross Interrog^y by same for same.

Was Mr. Walter in Town at that time?

Answer. I think he was.

55th Cross Interrog^y by same for same.

Had the Contract remained in your possession?

Answer. It had not.

56th Cross Interrogatory by same for same.

How long had it been in your possession before you placed it on record?

Answer. I could not tell without reference to my books. I keep those things pretty fully narrated at home.

57th Cross Interrogatory by same for same.

From whom did you receive the answered paper?

Answer. I don't remember whether it was Walter or Johnson.

58th Cross Interrogatory by same for same.

What is your best recollection?

Answer. I have no special recollection, about which one it was. I think it was one or the other of them, but it may have been some one else connected with the case.

59th Cross Interrogatory by same for same.

Will you state positively that it had not been in your Office for the next Thirty days previous to your putting it on Record?

Answer. Without reference to the record or my books I could not. I have no distinct recollection of it.

60th Cross Interrogatory by same for same.

Will you swear that it had not been there for the sixty days preceding its record?

Answer. Without refreshing my memory I would not swear as to the dates of receiving it for record, or the day of its record, but think I can ascertain both.

61st Cross Interrogatory by same for same.

For sixty days previous to the 25th day of September 1852 will you swear that the paper was not in your office?

Answer. I will not swear in reference to not having possession of it during that time, for the reason that from

53

about the 17th September 1852 many of the papers of William F. Johnson had been deposited in my safe and are still there, and this paper may have been there or may not, I cannot say.

62nd Cross Interrogatory by same for same.

Was it in your possession at the time of its acknowledgment before Esqr Kereval?

Answer. I am not prepared to say.

63rd Cross Interrogatory by same for same.

Do you mean to say that when you went before Esqr Kereval, and acknowledged a paper, you don't know where the paper was?

Answer. I have no distinct recollection of it, but presume the paper must have been produced.

64th Cross Interrogatory by same for same.

Have you any distinct recollection of your ever having acknowledged such a paper at all?

Answer. My recollection is not distinct about it.

65th Cross Interrogatory by same for same Defendants.

Have you any recollection of it?

Answer. Yes, I have.

66th Cross Interrogatory by same for same.

Did you state in answer to the last Interrogatory but one, that you had no distinct recollection of it at all, and is such the fact?

Answer. I did state that my recollection is not distinct as to the time or circumstances of the acknowledgment and such is the fact.

Examination contd to 9 CLK A.M.
May 31st 1854.

Examination resumed May 31st present

25

as on yesterday.

67th Cross Interrogatory by J. N. Arnold for Defts.

Can you swear positively that you ever went before Esqre Kercheval and acknowledged the said paper?

Answer. Yes, I went there, and acknowledged it, I refreshed my memory last night, in reference to the matter being the first time I have thought of it since Sept. 1859, it being acknowledged at the suggestion of Mr Henry Frink, who had been consulted with reference to Walters rights.

68th Cross Interrogatory by same counsel for same.

Have you seen Mr. Frink since the adjournment last evening?

Answer. Not to speak to him I may have seen him at a distance this morning.

69th Cross Interrogatory by same counsel for same.

When did you last see that paper, and where?

Answer. My recollection is not very distinct, but I think I took it from the Records Office after its being recorded. It must have been in Novemb or Decemb 1859, about that time. My impression is I passed it at once over to William F. Johnson, the party to the suit here. I have never seen it since to my knowledge.

70th Cross Interrogatory by same counsel for same.

Had you it when you consulted Mr Frink the first time?

Answer. I dont think I had, I have always retained a copy.

71st Cross Interrogatory by same counsel for same.

Had you it the second time?

Answer. I am certain I never showed it to Mr Frink at all, the original. I dont think I had it in my possession while I was consulting him.

72nd Cross Interrogatory by same counsel for same.

Was it written on the day of its date?

Answer. The contract was

73rd Cross Interrogatory by same counsel for same.

Was that on the day of the Sale?

Answer. It was.

74th Cross Interrogatory by same counsel for same.

Was this Land entered on your Books for Sale?

Answer. It was.

75th Cross Interrogatory by same counsel for same.

Is the Sale there entered?

Answer. It is.

76th Cross Interrogatory by same counsel for same.

Have you ever sold this land to more than one person?

Answer. I assisted in selling the Contract for the Land from Walter to Johnson, in addition to making the original Sale. I have effected no Sale since in any way of its

77th Cross Interrogatory by same counsel for same.

Do these two Sales appear on your Books?

Answer. They do.

78th Cross Interrogatory by same counsel for same.

Do any other, and was there any other?

Answer. Not of this property, no other Sales have been made by me of this property.

79th Cross Interrogatory by same counsel for same.

Was it ever entered again for Sale, after the Sale to Johnson?

Answer. Mr Dodge had it entered over for his account.

80th Cross Interrogatory by same counsel for same.

What time was this?

Answer. I think it was about the first of October 1832.

81st Cross Interrogatory by same counsel for same.

Did you try to sell it for him?

Answer. I did not.

82nd Cross Interrogatory by same counsel for same.

Did you enter it on your Books for Sale?

Answer. It was entered by my clerk during my absence, Mr Dodge having requested it.

83rd Cross Interrogatory by same counsel for same.

What was the name of this clerk?

Answer. H. Anderson. He is still in my employ.

84th Cross Interrogatory by same counsel for same.

You spoke of selling other lands for Mr.

Dodge. Did you ever execute any paper as his Agent?

Answer. I never did, but for this case.

85th Cross Interrogatory by same counsel for same.

Did you do anything more than Report to him the terms, and he execute the papers?

Answer. I reported the terms; drew all the papers except in one instance, and Mr Dodge always executed them, except in the case in dispute.

86th Cross Interrogatory by same counsel for same.

Upon what terms was this land entered upon your Books for Sale in October 1852?

Answer. I think it was \$50.00 per acre.

87th Cross Interrogatory by same counsel for same.

Were there other sales, all or any of them, while this land was so entered on your books?

Answer. A portion of them were.

88th Cross Interrogatory by same counsel for same.

In the alleged contract it is stated that the deed is to be made to Walters, or any other party &c. Why was this put in?

Answer. I selected that phraseology, believing it to be proper, giving him the right to substitute; as is usual in

89th Cross Interrogatory by same counsel for same.

Was the original contract made to Thomas, L. Walters?

Answer. The contract was made with and to Thomas, L. Walter, but was written Thomas, L. Walters, I supposing at the time that that was his name, and that it was correctly spelled; as explained in my direct testimony.

90th Cross Interrogatory by same counsel for same.

Did you ever alter that contract after it was written?

Answer. I never did.

91st Cross Interrogatory by same counsel for same.

Do you know how the Record of the paper comes to read Walter, instead of Walters?

Answer. I do not, I presume it to be a mis-copy.

92nd Cross Interrogatory by same counsel for same.

Did you ever tell the clerk to write it Walter, that that was the true name, or say anything about it.

Answer. I never spoke to him or any of his clerks on the subject.

93rd Cross Interrogatory by same counsel for same.

If the record is a correct transcript of the Original when filed, has not the Original been altered or changed, since it went out of your hands?

Answer. I am satisfied that the original was Walters, and it was never altered by me at any time, nor by any one else to my knowledge; and if correctly copied in the Records Office, should read Walters in my opinion.

94th Cross Interrogatory by H. L. Miller, counsel for Deft.

What is the true name of the person to whom you say you sold this land?

Answer. Thomas. L. Walter.

95th Cross Interrogatory by same counsel for same.

When and how did you ascertain that his name was Thomas L. Walter and not Thomas L. Walters as described by you in the Memorandum of Sale?

Answer. It was discovered about the 8th September 1852 how, I do not remember, but on that day, I notified Mr Dodge, by a written communication, a fac simile copy of which is preserved on my letter book, of the Sale of the Land in dispute to Thomas L. Walter.

96th Cross Interrogatory by same counsel for same.

When did you discover that you had mistaken his name in the Memorandum of Sale, which you say was executed by you, and what circumstances led to that discovery?

Answer. I judge from this Memorandum (the witness putting his hand on the letter book) that it was made about the 8th day of September 1852, it made no particular impression on my mind. I don't remember that there was any special circumstance that led to the discovery.

97th Cross Interrogatory by same counsel for same.

Had any person called your attention to it?

Answer. I don't think there had.

98th Cross Interrogatory by same counsel for same.

Will you swear positively that no person had called your attention to it?

Answer. I think Walter himself may have said he didn't use any 's' in his name, I have an indistinct recollection that he did in a casual conversation with him. I am sure no one else ever spoke to me in reference to the subject.

99th Cross Interrogatory by same counsel for same.

When did this Mr Walter first call at your office in Chicago?

Answer. I think it was in the latter part of August 1852; I cannot give the date at present.

100th Cross Interrogatory by same Counsel for same.

Did he call in pursuance of any invitation from you to do so?

Answer. I gave him an invitation, having met him in the Street, to call and see me; that was not the sole cause of his calling however, for he said he was coming anyhow.

101st Cross Interrogatory by same Counsel for same.

For what purpose did he come to Chicago at that time?

Answer. I don't know of my own knowledge. He conveyed to me the idea that he was making arrangements to come and live here permanently.

102^d Cross Interrogatory by same Counsel for same.

Did he purchase any other property of you than the piece in question?

Answer. He did not.

103^d Cross Interrogatory by same Counsel for same.

How long was he in Chicago previous to his making this purchase?

Answer. He had been here perhaps ten days. I am not definite in regard to it.

104th Cross Interrogatory by same Counsel for same.

Had the Defendant an Office in the City of Chicago at that time, where he might have been found? and how far was it from your Office?

Answer. Mr. Dodge had an office some Square and a half from my Office, where I have frequently saw him subsequently to the 12th of August 1852.

105th Cross Interrogatory by same Counsel for same.

During this negotiation did Mr. Walter call upon Mr. Dodge?

Answer. Not that I know of.

106th Cross Interrogatory by same Counsel for same.

Has he ever seen Mr Dodge?

Answer. I don't know.

107th Cross Interrogatory by same Counsel for same.

Has Mr Wm F. Johnson in Chicago at or previous to the time of the Sale to Walter?

Answer. He was in Chicago about that time.

108th Cross Interrogatory by same Counsel for same.

Was he then acquainted with Walter?

Answer. I don't know of my own knowledge, they were old acquaintances, and I presume they knew each other.

109th Cross Interrogatory by same Counsel for same.

Has Johnson at that time been informed that this property was for Sale?

Answer. He had not been informed of it by me, nor had he been informed by any one to my knowledge.

110th Cross Interrogatory by same Counsel for same.

When was Johnson first informed that this Sale had been made to Walter?

Answer. A few days subsequent to the 4th Sept 1882, the exact time I cannot remember.

111th Cross Interrogatory by same Counsel for same.

By whom?

Answer. I don't remember who first told him, whether Walter or myself.

112th Cross Interrogatory by same Counsel for same.

When was he informed, and who was present?

Answer. As far as my telling him is concerned he was informed in my office. I don't remember of any body being specially present, it was a public office.

113th Cross Interrogatory by same Counsel for same.

Did you not then suggest to him the idea of his

purchasing this land?

61

Answer. I did try to sell it to him and assisted in closing the purchase, and sale to him.

114th Cross Interrogatory by same Counsel for same.

Did you not then expressly advise that Dodge might be compelled to give a deed for this land?

Answer. I gave it as my views that he could be held, I did not express any special desire, as I remember.

115th Cross Interrogatory by same Counsel for same.

Did you not make the Sale to Johnson for that purpose?

Answer. No, I made the Sale to Johnson because he bought it, I had no control of Mr Johnson or the land.

116th Cross Interrogatory by same Counsel for same.

Was not something then said about compelling a Deed from Dodge?

Answer. There was a general talk about it in the Office.

117th Cross Interrogatory by same Counsel for same.

Was not the Sale made to Johnson with that view?

Answer. Not by me, it was not, I don't know Johnson's views.

118th Cross Interrogatory by same Counsel for same.

Did not the parties then expect to commence legal proceedings for that purpose?

Answer. I don't know what they expected; my business was to sell it for Walter, which embraced my entire relation with Johnson in the premises.

119th Cross Interrogatory by same Counsel for same.

Will you swear that you did not then know that the parties or either of them, then contemplated the commencement of legal proceedings for the purpose of

compelling a conveyance of this land?

Answer. I did not know what they contemplated with reference to the legal proceedings.

120th Cross Interrog^y by same Counsel for same.

Did you not then know that Johnson contemplated the commencement of legal proceedings for the purpose of compelling a conveyance of this land?

Question objected to by Counsel for Comptt.

Answer. I did not.

121st Cross Interrog^y by same Counsel for same.

Did you not then know that Walter expected that legal proceedings would be necessary for the purpose of obtaining conveyance of these lands?

Question objected to by Comptt's Counsel.

Answer. I think he did think they would be necessary.

122nd Cross Interrog^y by same Counsel for same.

Was the sale to Johnson closed at the time the assignment of the Contract was drawn and executed?

Answer. It was.

123rd Cross Interrog^y by same Counsel for same.

Where was the Assignment drawn?

Answer. I think in my Office.

124th Cross Interrog^y by same Counsel for same.

Who was present?

Answer. Myself & Walter, and I presume Johnson; and I am not certain but that Mr Henry Frink was.

125th Cross Interrog^y by same Counsel for same.

Was Mr Frink there at the time it was drawn?

Answer. I am not certain.

126th Cross Interrog^y by same Counsel for same.

Who drew the Assignment?

Answer. Mr Frink & myself, and I am not sure which.

127th Cross Interrog^y by same Counsel for same.

What is your first recollection on the subject?

Answer, My impression is that I drew it myself.
128th Cross Interrogatory by same Counsel for same.

Has Mr Johnson present and did he over
look the drawing of it?

Answer, I am sure he didn't overlook it, for Mr
Trunk was acting as Counsel for him at the time, it is
my impression he was present.

129th Cross Interrogatory by same Counsel for same.

In whose possession were the papers left?

Question objected to by Comptrolr's Counsel.

Answer, They were handed to Mr Johnson at that
time.

130th Cross Interrogatory by same Counsel for same.

Were they left by him in your possession

Answer, I have no distinct recollection in reference
to the possession of them.

131st Cross Interrogatory by same Counsel for same.

At what time was this Affidavit drawn
and executed?

Answer, Some day subsequent to the 4th Septemr.
1852. I don't remember the day.

132nd Cross Interrogatory by same Counsel for same.

When and where did you first become acquainted
with Mr Johnson?

Answer, My first personal acquaintance with him
was in May 1837 at New Orleans.

133rd Cross Interrogatory by same Counsel for same.

Where were you and he then residing

Answer, At Cincinnati, Ohio.

134th Cross Interrogatory by same Counsel for same.

Has your personal acquaintance with him been
continued from that time to the present?

Answer. I have known him ever since.
 136th Cross Interrogatory by same Counsel for same.

What led to your acquaintance with him at that time?

Question objected to by Compt's Counsel.

Answer. We were both in New Orleans on business, and met in the Office of Joseph Landis & Co., they doing business for both Johnson's & my house.

136th Cross Interrogatory by same Counsel for same.

Have you ever had any business connections with Johnson prior to your coming to Chicago?

Answer. I have done business with him frequently.

137th Cross Interrogatory by same Counsel for same.

Had you never previous to your coming to Chicago, joined in any speculation or enterprise with him?

Answer. I never had any partnership with him in any shape.

138th Cross Interrogatory by same Counsel for same.

Had you never been connected with him in any speculation?

Answer. I have done a good deal of business for him and his House for the last seventeen years, but never had any partnership, or joint connection with him in interest.

139th Cross Interrogatory by same Counsel for same.

Have you ever had any business connection with him since you came to Chicago?

Answer. Not as partner, nor as joint in interest with him; I have done a good deal of business for him.

140th Cross Interrogatory by same Counsel for same.

Have you not purchased real Estate with him or on your joint account, since you have been doing business in Chicago?

Answer. No.

141st Cross Interrogatory by same for same.

Have you never owned or been jointly interested in real Estate in Chicago?

Answer. No.

142nd Cross Interrogatory by same for same.

Did you not sell a tract of land called the Myrick tract to William T. Johnson?

Answer. I have sold him some lots in that Myrick tract; a few.

143rd Cross Interrogatory by same for same.

Have you not sold him large amounts of real Estate since you have been doing business in Chicago?

Answer. I have sold him considerable amounts

144th Cross Interrogatory by same for same.

Have you never acted as his Agent in buying or selling real Estate since you have been doing business in Chicago?

Answer. I have in selling, but not in buying.

145th Cross Interrogatory by same.

When did your Agency for him commence?

Answer. About the first of January 1853.

Further Examination continued to June 1st at 8½ o'clock A.M.

June 1st contd again to June 8th at 9 o'clock

June 8th 1854 Examination resumed pursuant to adjournment.

146th Cross Interrogatory by same. A. G. Miller Defts Counsel.

Did Mr. Walter ever sign or execute any contract or Memorandum in writing, by which he became

bound to carry out the terms of Sale on his part?

Answer. He never did to my knowledge.

1117th Cross Interrogatory by same for same.

Did he ever pay you any money on account of this Sale you say you made to him?

Answer. He did; Fifty dollars.

1118th Cross Interrogatory by same counsel for same.

When, and where was present, if any one?

Answer. It was paid on or about the 11th of September 1859 at my Office; I don't remember, particularly who was there besides myself and himself.

1119th Cross Interrogatory by same counsel for same.

Are you sure that it was on the 11th of September that this Fifty dollars was paid to you?

Answer. I am.

150th Cross Interrogatory by same counsel for same.

Why do you say that that it was on or about the 11th that this money was paid, as in your answer to the last Interrogatory, but not?

Answer. Because that is the usual mode of answering questions in reference to dates.

151st Cross Interrogatory by same counsel for same.

Was it before or after you saw Mr Dodge on that day that this money was paid to you?

Answer. Before.

152nd Cross Interrogatory by same counsel for same.

Have you ever repaid this money to Mr. Walter or any portion of it?

Answer. I have not.

153rd Cross Interrogatory by same counsel for same.

Have you ever accounted to any one for it?

Answer. I papered the amount to Mr. Dodge's credit.

charging \$30.00 against it as my Commissions on ⁹⁷ Sale,
and \$20.00 now stands to the credit of Mr. Dodge on my
Books

154th Cross Interrogry by same Counsel for same.

Was any account taken of this \$50. or any
portion of it, in your subsequent transactions with Mr. Dodge.
Answer. I informed Mr. Dodge that I had \$20.00 for
him growing out of that Sale, he preferred not receiving it,
as he said, hoping that some settlement might be made
with Walter, so as to close it up without conveying the
property in dispute.

155th Cross Interrogry by same Counsel for same

When was this, and where, and who was
present?

Answer. It was the first or second time that I paid
Mr. Dodge money for Sales made for him, previous to
the 4th Sept 1852, the exact date not remembered. The
place at Mr. Dodge's Office. No one present that I remember
of except our two selves.

156th Cross Interrogry by same Counsel for same.

How long subsequent to the 4th Sept was it?

Answer. It may have been about the 12th Oct 1852;
I remember very distinctly that I was paying him money
for Sales made for him, and proposed to include the \$20.
as stated previously, and these Sales alluded to were confirmed
by Mr. Dodge about the 15th Sept 1852, about the 12th
Oct 1852 & about the 11. Nov 1852, and at one of these
confirmations, this offer was made to pay the \$20. The
exact date I cannot remember.

157th Cross Interrogry by same Counsel for same.

Do you mean the exact date, of the confir-
mations or the exact date of the offer to pay the \$20.00?
Answer. I alluded to the offer in my last answer.

158th Cross Interrogatory by same Counsel for same.

At which of these confirmations was the offer made?

Answer. My impression is that it was the first or second, but cannot state distinctly as I have previously said.

159th Cross Interrogatory by same Counsel for same.

What is your best impression as to which of the confirmations at which the offer was made?

Answer. I think it was the second one, being in October.

160th Cross Interrogatory by same Counsel for same.

Was this the first time you offered to pay him \$200 on account of the Sale which you say you made to Walter?

Answer. I think it was the first time I named it orally, that I wished to pay it, but had previously written him within a few days after the Sale was made, that I had received \$50 on his account for the Sale of the Land.

161st Cross Interrogatory by same Counsel for same.

When did you first become acquainted with Mr. Dodge, the defendant in this suit?

Answer. About August 1852.

162nd Cross Interrogatory by same Counsel for same.

During what part of August? what day of the Month?

Answer. About the 12th 1852.

163rd Cross Interrogatory by same Counsel for same.

Are you positive that it was on the 12th Aug 1852?

Answer. That is the date of Memoranda of having received property to be placed on my books as being in the market, and to the best of my recollection I so received property on the first day of our personal acquaintance.

164th Cross Interrogatory by same Counsel for same.

Where was this and who was present?

Answer. At Mr Dodge's Office, he and I were present
no one else to the best of my recollection.

165th Cross Interrogatory by same counsel for same.

How long had you been doing business in
Chicago at that time.

Answer. Since September 1851, when I commenced.

166th Cross Interrogatory by same counsel for same.

For what purpose did you call upon Mr. Dodge
at that time? and were you strangers to each other previous
to that time?

Answer. I think it was to learn something with reference
to the Board of Trade with which he was connected;
and we had not personally known each other before that
interview.

167th Cross Interrogatory by same counsel for same.

What did you wish to learn from him, with
reference to the Board of Trade?

Question objected to as irrelevant by Compt's counsel.

Answer. I wanted to gather some of its principles, and
see whether it was any object for me to join them.

168th Cross Interrogatory by same counsel for same.

Was that your sole object in calling upon
him at that time?

Answer. The object in addition was to form acquaintances
generally; with him and all other old Citizens, and to give
publicity to my business pursuits.

169th Cross Interrogatory by same counsel for same.

Was your object in going there in any way
connected with your business as Land Agent?

Answer. It was incidentally.

170th Cross Interrogatory by same counsel for same.

Was it your principal object in calling upon him?

Answer. No, it was an incidental object.

171st Cross Interrogatory by same Counsel for same.

Who first alluded to lands or the sale of lands?

Answer. I think I did, at the time I gave him some of my business cards,

172nd Cross Interrogatory by same Counsel for same.

State all that there was said by and between you on that subject, and in the order in which it was said.

Answer. The conversation was brief on the subject of Lands: I spoke of our business, and of the great pleasure it would give me at all times, to serve him or his friends, either in buying or selling. Mr. Dodge in substance replied that he had a good deal of property for sale, for himself and others, and frequent orders to sell for purchasers; and seemed to be pleased with having made my acquaintance, he spoke of several pieces he had then for sale, and gave me a description of two of them to enter on our books, and see the best offers I could get for them, and to report to him. This was about the substance of the conversation in reference to lands: the exact words I don't remember, nor the precise manner in which they were introduced.

173rd Cross Interrogatory by same Counsel for same.

Who was connected in business with you at that time?

Answer. None, but myself; and the business, was carried on under the name of N. P. Aglehart & Co.

174th Cross Interrogatory by same Counsel for same.

Has any one been connected with you in business since that time?

Question objected to by Comptee's Counsel

Answer. I believe I shall not answer the Gentleman

that, being my own private affairs.

71

175th Cross Interrogatory by same Counsel for same.

Why do you say that you spoke to him Mr. Dodge, of our business, as in your answer to the 172nd Cross Interrogatory if you was then doing business alone?

Answer. As a style of expression, which I have chosen to adopt when speaking of the business of my house, carried on as before stated under the name of A. P. Ogden & Co.

176th Cross Interrogatory by same Counsel for same.

At the time you say you made this sale to Walter was any one connected with you in business, or had there been previous to that time since the 12th of August 1852?

Answer. At the time of my making the sale to Walter there was no one connected with me in business, neither has there been since the 12th August 1852.

177th Cross Interrogatory by same Counsel for same.

When you say Mr. Dodge gave you the description of two pieces to enter in your Books as in your answer to the 172nd Cross Interrogatory, was that description given in writing; or how was it given?

Answer. He gave it to me and I memorandum'd it down in writing in his Office.

178th Cross Interrogatory by same Counsel for same.

Have you the Memorandum alluded to in your possession? or do you know where it is?

Answer. I don't remember whether I have it or not, I am not in the habit of preserving Memorandums of that kind, made by myself.

179th Cross Interrogatory by same Counsel for same.

At the time of your first interview with

Mr. Dodge did you desire him to let you have any lands to see what offers could be obtained for them?

Answer. I did not ask for them on those express terms, but I accepted of them at his request to see what offers I could get.

180th Cross Interrogatory by same counsel for same.

On what terms did you ask for them?

Answer. I proposed to accept of the agency of any lands he had for sale, and try to sell them.

181st Cross Interrogatory by same counsel for same.

When did you next see Mr. Dodge on the subject of lands, or the sale of lands?

Answer. On the 3rd of September following

182nd Cross Interrogatory by same counsel for same.

Where was it? and who was present?

Answer. It was at Mr. Dodge's Office, I don't remember that any one was present except our two selves.

183rd Cross Interrogatory by same counsel for same.

For what purpose did you call upon him at that time?

Answer. To report to him an offer for this 140 acres now in dispute.

184th Cross Interrogatory by same counsel for same.

Who made the offer, when was it made, and how much was it?

Question objected to by Compt's counsel.

Answer. It is a rule of my office not to report the names of buyers or sellers of property thro' me until the sale is agreed on. I reported to Mr. Dodge an offer, I think of \$55,00 per acre. The offer was made on the 3rd of Sept. 1852.

185th Cross Interrogatory by same counsel for same.

How long before that time, the 3rd Sept 1852,

was it that you first spoke to Mr. Walter, on the subject of selling him this 40 Acres?

Answer. I don't remember the exact time
186th Cross Interrogatory by same Counsel for same.
Was it on that day?

Answer. I am not positive.
187th Cross Interrogatory by same Counsel for same.

What is your best impression?
Answer. I may have seen him on that day, with
reference to it, I sold it to him on the 11th. I remember
very well, after I got the authority.

188th Cross Interrogatory by same Counsel for same.
Had you seen him with reference to it before
the 3^d of September?

Answer. I don't remember distinctly, it was a matter
of no moment at the time, and made no impression on
me.

189th Cross Interrogatory by same Counsel for same.
Do you not remember of having seen him
with reference to the purchase of this Land, before the
3^d of Sept^r?

Answer. I don't think I did with reference to that
purchase before that day.

190th Cross Interrogatory by same Counsel for same.
Did you see him on that day with reference
to the purchase of this Land?

Answer. I don't remember that I did, I saw him on
the 11th and sold it to him.

191st Cross Interrogatory by same Counsel for same.
Will you swear that you did not see him
on the 3^d Sept^r with reference to the purchase of this
land?

Answer. I will not swear anything with reference to

that except what I have said.

192^o Cross Interrogary by same counsel for same.

Is there no circumstance by which you can call to mind the fact of your having seen him before the 4th of Sept^r with reference to the purchase of this Land?

Answer. I don't remember any at the moment, happy to receive any suggestions from the Spectator that will result in a satisfactory answer to him.

193^o Cross Interrogary by same counsel for same.

State all that was said by & between you & Mr Dodge in your interview with him on the 3^e Sept^r 1852 in reference to this Land, and in the Order in which it was said, give the exact language employed by each of you on that subject?

Answer. I called on Mr Dodge on the 3^e Sept 1852 and reported to him an offer of \$25.00 per acre for the Land in dispute, he thought he would not sell it at that mentioned that it had cost him about \$16.00 the May previous, and tho' it would pay pretty well, he wanted me to get him a little more for it, he also asked me my advice as his Agent in it, whether he had better sell it at that price, I advised him not to take less than \$28 or \$30 an acre for it, and told him I thought he could get it. He then fixed the price at \$30 per acre, one fourth Cash the balance in one, two & three years with interest, and at that price and terms he authorized me to sell the 40 Acres now in dispute; this was the substance of the interview, and as near the language used by either party as I can get at it at this time.

194th Cross Interrogary by same counsel for same.

Was anything else said by him at that time on this subject?

Answer. That was about all.

193th Cross Interrogatory by same counsel for same.

75

Did he say anything about your getting more than that sum, or anything of that kind?

Answer. I don't remember that he said anything about getting more, he expressed himself as very anxious to sell it for \$30 if I could procure that price for it.

196th Cross Interrogatory by same counsel for same.

When did you next see Mr Dodge?

Answer. On the next day, the 4th.

197th Cross Interrogatory by same counsel for same.

Where was it, and who was present?

Answer. At his Office, I don't remember any present excepting ourselves.

198th Cross Interrogatory by same counsel for same.

How long did you remain at his Office at that time?

Answer. A few minutes perhaps five.

199th Cross Interrogatory by same counsel for same.

State all, if anything was then said by and between you, with reference to this Land, and in the order in which it was said, giving the precise language employed by each of you on that subject?

Answer. I reported to Mr Dodge the Sale of it at \$30 per acre - $\frac{1}{4}$ Cash, the balance in one, two & three years with interest, and asked him for his Title papers, so that I might draw the conveyance, Mr Dodge was very busy at the time with some Insurance matters, it being I believe on Saturday, said he could not hunt up the papers before Monday conveniently & wanted me to let it be till that time - that he would hand me his Title papers on Monday - he said the Sale was all right, but that he was so busy, he could not attend to it that day - that was about all that was said at that interview, and in the

language as near as I can at this moment recollect it.

200th Cross Interrog^y by same Counsel for same.

You say in your answer to the 193rd Cross Interrog^y that Mr Dodge authorized you to sell this land; how was this authority given; was it in writing, or a mere verbal authority?

Answer. It was verbally given.

201st Cross Interrog^y by same Counsel for same.

When and where did you next see Mr Dodge?

Answer. I didn't see him again until about the 8th of Septem^r, when I saw him at my office.

202nd Cross Interrog^y by same Counsel for same.

Are you sure that it was on the 8th, when you saw him the next time?

Answer. I am not sure without reference to papers now in my office.

203rd Cross Interrog^y by same Counsel for same.

To what papers do you wish to refer to ascertain the time when you next saw him?

Answer. Particularly to my letter written to Mr Dodge, asking him to close this Contract of Sale, which was dated and written about the 8th Sept^r.

204th Cross Interrog^y by same Counsel for same.

Are you sure that Mr Dodge called upon you on the day when that letter was written?

Answer. It was either that or the following one that he called.

205th Cross Interrog^y by same Counsel for same.

Have you while answering the two questions last addressed to you had before you the minutes of the testimony previously given as taken by the Commissioner, and have you referred to those minutes while giving your answers?

Question objected to by Compt's Counsel as incompetent.

Answer. The whole of the deposition so far as I know are within my reach, and I did make an effort to refresh my memory in reference to the date of the letter to Dodge, but did not succeed in finding the place where I had mentioned it previously.

206th Cross Interrogatory by same Counsel for same.

At what hour of the day did Mr. Dodge call at your Office?

Answer. I cannot remember the hour, nor whether it was in the forenoon or afternoon.

207th Cross Interrogatory by same Counsel for same.

Is it your best impression that he called upon you on the day when the letter was written, or was it on the day succeeding that day?

Answer. I have no impression about it, only that he called, as he said, as soon as he could after reading my letter.

208th Cross Interrogatory by same Counsel for same.

Until you saw him at that time had you any idea that he hesitated about consummating the sale to Walters?

Answer. I had not.

209th Cross Interrogatory by same Counsel for same.

How long did he remain at your Office at that time, & who was present while he was there?

Answer. It was a short interview, perhaps five minutes, a little more may be. I don't remember that any one was present especially; I presume some of the Clerks were in; I didn't charge my memory.

210th Cross Interrogatory by same Counsel for same.

What did he say his object was in calling upon you?

Question objected to by Counsel for Compt.

Answer. He called in consequence of having received that letter I wrote him. He did not like the expressions contained in it, appeared to be somewhat angry in consequence of its receipt.

211th Cross Interrog^y by same counsel for same.

Was the conversation then had between you, about anything else than the letter referred to?

Answer. The letter and the Land was the object of his visit, I don't remember of anything else.

212th Cross Interrog^y by same counsel for same.

Did you then state to Mr Dodge, that you would try & have the Sale cancelled if you could; or use any language to that effect?

Answer. Mr Dodge at that interview, or a subsequent one, said he would like me to help him out of the difficulty if I could, that he would rather now not sell the property; thought it might bring a little more. I gave Mr Dodge to understand that I would give him any aid that I could in the matter. I advised him he had better try & arrange it himself, and to see Judge Morris who I understood had charge of it for Johnson.

213th Cross Interrog^y by same counsel for same.

Did you tell him you thought you could induce Mr Walter to give up the Sale or use any language to that import?

Answer. I never did.

214th Cross Interrog^y by same counsel for same.

Did you tell him that you would try to induce him?

Answer. I told him I was very anxious to have that matter settled, and that I would do anything that was consistent to bring it about.

215th Cross Interrog^y by same counsel for same.

79

At the time you had this interview with Mr. Dodge had you then acknowledged the execution of the Memorandum of Sale to Walters?

Answer. I am not sure; I think the acknowledgment was made about the time of writing the letter to Dodge of the 8th of Septem^r, I think on the same day.

216th Cross Interrog^y by same counsel for same.

Was it before or after Mr. Dodge called upon you?

Answer. My impression is, that it was before.

217th Cross Interrog^y by same counsel for same.

When and where did you next see Mr. Dodge, and who was present?

Answer. Subsequent to the 8th, I next saw him about the 14th Sept^r at his Office. I don't remember any one being present. I don't remember Mr. Dodge ever having any clock while I was dealing with him.

218th Cross Interrog^y by same counsel for same.

Have you while answering the last three or four Interrogatories had before you the minutes of the testimony, previously given as taken by the Commissioner, & have you not seen constantly referring to them while giving your answers?

Question objected to by Compt's counsel.

Answer. I have had them in my reach, and having read saw during the morning to pass off the tediousness of the examination, I have within the past half hour or so, taken casual peeps at the testimony taken up to the 1140th Cross Interrogatory, with a view of whiling away the time, not needing any refreshing on the subject.

219th Cross Interrog^y by same counsel for same.

What was your object in calling on Mr. Dodge on the 14th of Septem^r?

Answer. To inform him of another Sale I had made

for him and to ask him for his papers to draw the conveyance.

220th Cross Interrogatory by same counsel for same.

Was there anything at that time said by Mr Dodge with reference to this 140 acres which you say you sold to Walters?

Question objected to by Comptrols Counsel.

Answer. There was.

221st Cross Interrogatory by same counsel for same.

State all that was then said by him upon that subject?

Question objected to by Comptrols Counsel.

Answer. We had quite an interview at that time, Mr Dodge urged me if possible to get him clear of that Sale, stating in substance that he had a good deal of real estate business to do; had a good deal to sell, & wished to purchase a considerable of good property; and wanted me to do it all for him on his Agent, upon these considerations he urged extra efforts on my part to get him clear of that old Sale, if it was possible. I agreed to aid him in any way I could from time to time in the premises urging him however to go to Mr Morris & the Attorneys, & that I thought he could do better than I could, as they had the control of the case, and I didn't think them at that time very friendly towards me, and didn't see how I could do him much good in the premises. Thus is about the general conversation.

222nd Cross Interrogatory by same counsel for same.

Did Mr Dodge pay anything else to you at that time in relation to your Sale to Walters, or in relation to anything that has transpired since the Sale to Walters?

Answer. I think I have embraced the substance of the interview of the 17th Septemr, and I don't remember any

thing beyond what I have stated.

223rd Cross Interrogatory by same counsel for same.

Are you sure that you then told him that the matter was in the hands of Morris & Co., and that you then referred him to them?

Answer. I remember referring him to Mr Morris very distinctly, or to Morris & Co. and also remember that Mr Dodge told me that some young lawyer, some part young man, or some expression of that kind, had tendered him some gold in payment on this 110 acres, and he wanted me to tell him who it was, if I knew, and I remember several things happening in reference to this 110 acres, between the 11th of September 1852, and the 1st of January 1853, but it is difficult from memory and without notes, to locate the date of each interview, and what particular conversation took place at a particular date. I may not have referred him to Mr Morris in the interview on the 17th of Septemr, though it is my impression I did. I know I did refer him to Messrs Morris & Co. at some one of the interviews between the dates named.

224th Cross Interrogatory by same counsel for same.

When did you next see Mr Dodge after the 17th of Sept., where was it; & who was present?

Answer. I saw Mr Dodge frequently after the 17th of Septemr, but always privately, when I reported sales to him. I think I reported him the first sales after the 17th Septemr, about the 12th of October, as I have previously testified in detail, when I had my letter and account books present, and referring to dates & items, from memory I cannot give the exact dates or date. This interview was at his Office; I don't recollect of any one being present.

225th Cross Interrogatory by same Counsel for same.

Did you see Mr Dodge, or have any interview with, at any time between the 1st of Sept. and the 12th of October? If yes, when & where was it, and who was present?

Answer. I have no doubt I saw him frequently, but have no entry of any kind that will enable me to say whether we had any interview in that time or not.

226th Cross Interrogatory by same Counsel for same.

Did you make an entry in your Books of the different interviews, you had with him from the 1st of Sept. to Jan. 1. 1853?

Answer. My entries were of receiving property for sale or of getting property previously left, these entries & the proper Cash entries and the receipts usually of the Comptroller afford memoranda of business interviews. These memoranda I have in reference to interviews with Mr Dodge.

227th Cross Interrogatory by same Counsel for same.

In your interview with him on the 12th of October 1852, did Mr. Dodge say anything to you in reference to the 40 acres in dispute; If yes, state all that he then said upon the subject?

Question objected to by Saml^ls Counsel.

Answer. Yes, Mr Dodge at all the interviews we had in reference to the buying and selling of his property, spoke of this Sale of the 40 acres, and wished me to get him out of it if possible. This was reiterated again on or about the 12th of October. At this time Mr. Dodge was quite friendly with me, and wanted me to make use of all the efforts I could to settle this matter, with Hallid.

228th Cross Interrogatory by same Counsel for same.

Was this all that Mr Dodge then stated to you on that subject during your interview on the 12th of Oct. 1852?

Question objected to by Compt's Counsel.

83

Answer. It is impossible to fix as I have previously stated, the exact conversation had on the particular day: we had plenty of other conversations in reference to this 40 Acres commencing subsequently to the 16th Sept 1852, & running to January 1853. The substance of all these conversations I can give, but cannot from memory fix the exact date of each specific conversation; Mr Dodge therefore may have said a few more words in his interview of the 12th of October.

229th Cross Interrogatory by same Counsel for same.

When and where did you have your next interview with Mr Dodge? and who was present?

Answer. Without my Memorandum book, or without refreshing of some kind, I cannot fix the date now, but we continued to have interviews up to January 1853, Mr Dodge in the interim calling from time to time, at my Office with Lists of property for Sale, and I calling at his Office respecting Sales & paying over the proceeds. At most of these interviews the question of the 40 Acre Sale came up. I don't remember now who was present at any of these interviews except our two parties.

230th Cross Interrogatory by same Counsel for same.

Can you state when you had your next interview with Mr Dodge after the 12th of October 1852?

Answer. Without my Memorandum Book or without refreshing of some kind I cannot fix the date now.

231st Cross Interrogatory by same Counsel for same.

When did you have your last interview with Mr Dodge with reference to this Land? when was it, and who was present?

Answer. In the early part of January 1853 perhaps

about the 13th. I cannot fix the date exact without Memoranda at my Office. I think the interview was a private one, up stairs in my private room; this was the general one; he afterwards came into my Consulting room where my Clerks were, and wished to have all property on my Books withdrawn from Sale.

232nd Cross Interrogatory by same Counsel for same.

How long have you been in the business of General Commission Merchant, in Chicago, and how long in the business of Land Agent?

Answer. I commenced them both together the first of July 1852.

233rd Cross Interrogatory by same Counsel for same.

Have you not since that time, in connection with your business as Land Agent, speculated largely in real Estate on your own account?

Question objected to by Compt's Counsel as irrelevant.

Answer. I have bought considerable property on my own account; there is no connexion between that and the Land agency tho'.

Examination continued to June 14th at 9 o'clock A.M.

June 9th Examination resumed.

234th Cross Interrogatory by H. P. Miller, Counsel for deft?

Have you ever been engaged in any other business in Chicago, than that of General Commission Merchant and Land Agent?

Answer. I have

235th Cross Interrogatory by same Counsel for same.

From what time to what time?

Answer. From Sept. 1852 to July 1852.

236th Cross Interrogatory by same Counsel for same.

Did William H. Johnson ever make you any tender of money in account of the purchase of your lot by Walter? If so, when was it, where was it, and who was present? State also the amount of such tender?

Answer. He did make a tender, about the 8th Sept 1852, at my Office 35. Clark Street, there was no one present, specially, that I remember of, the amount was \$250.00 in gold. It was after dinner, about three o'clock in the afternoon.

Direct Examination resumed.

26th Interrog. by Robert Henry Solicitor for Compt.

To the person to whom you sold the 140 acres in dispute in this cause, as the Agent of Mr Dodge, and who is called in your Memorandum of the Sale Thomas L. Walters, and who subsequently assigned the said Contract by the name of Thomas L. Walters, to the Compt the same person or another & different person?

Question objected to by Defts Counsel

Answer. He is the same person

On reading over the deposition, the witness makes the following corrections and amendments to his Answers heretofore given.

To the answer to the 10th Interrog the witness adds "In addition to the variances noticed between the Original Contract & certified copy, the last word in said certified copy is "made" instead of "named" as in the Original."

The witness further desires to say in explanation of his answer to the 13th Interrog. in the closing sentence, after the word, "amicable" wishes it to read "and have done no further business for him."

The witness further amends his answer to the 5th,

cross Interrog. by saying "where I then resided," instead of "and I also" at the close.

The witness further deposes that whenever the words "me" or "us" occur in the deposition reference of the witness to his business house, he means it to be understood in the singular number, and as intending any one in company with him.

(signed) A. J. Sylehaast

1st Cert

Further Examination of the foregoing witness, had by agreement of the parties by their counsel this 18th day of October 1854.

Present J. J. Clarkson for Complainant
and Henry S. Miller for Defendant

24th Interrog. by J. J. Clarkson Solicitor for Compt

Look upon the paper now here shown you marked Exhibit (C) and state whether or not it is the Original Memorandum of the Sale of the property in question made by you to Thomas L. Walter, as Agent for John L. Dodge, and which is referred to in the Interrogatories Nos 9, 10 & 11 of your Examination in Chief? Compare the same with the Certified Copy attached to this your deposition and state whether this is the Original of which that is a Certified Copy.

Answer. The paper marked Exhibit C is the Original paper referred to in those Interrogatories, I have compared it with the Certified Copy attached, and find it substantially the same and that it is the Original of which that is the copy.

28th Interrog. by same Counsel for same

Examine the paper writing now here shown you marked Exhibit 'D' and state whether or not it is the Original Assignment from Thomas L. Walter to William

87

To Johnson, the complaint, referred to in Interrogatories in chief Nos 12, 13 & 14 and the Answers thereto, state further whether this paper writing and the one marked Exhibit "C" are or not the two Original papers referred to and mentioned in the Affidavits of William F. Johnson, Henry Frank, Buckner S. Morris & Robert Wemy attached to this deposition.

Answer. The paper is the same referred to in these Interrogatories & Answers, the two papers marked Exhibit "C" & "D" are the Original papers referred to in these Affidavits.

Cross Examination

237th Cross Interrog. by W. G. Muller Counsel for Defts

In whose handwriting is the Certificate of acknowledgment endorsed on the paper marked Exhibit "C" and referred to in your answer to the 27th direct Interrog. when & where was the same written?

Answer. It is in my handwriting & appears to have been written on the 8th day of September 1852, I have no better recollection, except what the date furnishes me, and I think it was written at my Office, as we usually prepare writings, acknowledgments &c. there, previously to taking them to the Justice of the Peace.

238th Cross Interrog. by same Counsel for same

Was it written before or after you saw Mr Dodge on the 8th or 9th day of September 1852, and had you previously consulted any Lawyer with regard to the propriety of making the acknowledgment, or the manner in which the Certificate should be written?

Answer. I think it was written after the interview with Mr Dodge, perhaps immediately after & Mr Frank Attorney at Law had been consulted on behalf of Mr. Walter generally in reference to it, and suggested the propriety of the acknowledgment, that it might be recorded: if it was

thought best.

239th Cross Interrog. by same Counsel for same.

Who consulted him and how long was it before the Certificate was written?

Answer. I did. I presume it was on the same day the Certificate was written. Mr. Frank was our general Lawyer, and we were in the habit of frequently consulting him on any matters connected with our business.

240th Cross Interrog. by same Counsel for same.

Had he been consulted with us reference to this matter previous to the 8th Sept. 1852?

Answer. I think not.

(Signed) F. S. Glehart.

2^d
Certificate

Copy.

Certified Copy of Contract referred to in the foregoing
Deposition

John C. Dodge to Thomas L. Walter, Agent,
Lumbering House 55 LaSalle Street
Chicago Ill. 11th September 1852.

We have sold as Agents for of Mr. John C. Dodge
to Thomas L. Walter Esq. The N $\frac{1}{2}$ of W $\frac{1}{2}$ of N W $\frac{1}{4}$
of Section 1 T 39 R 13 E, containing 40 Acres of Land
more or less at thirty dollars per acre on the terms to wit:
 $\frac{1}{4}$ in Cash on making of deed.

$\frac{1}{4}$ " one year

$\frac{1}{4}$ " two years

$\frac{1}{4}$ " three years with interest on the deferred

payments to be secured by Mortgage on the same premises
sold. It is understood that the Deed shall be made either
to said Walter, or any other party he may select or assign
to and to be closed by both parties within five days

89

We have received of said Walters the sum of Fifty dollars
on account of the first payment herein made.

N. P. Sglehart & Co
Agents for John C. Dodge
for Sale of this Land.

State of Illinois
Cook County S. S.

I Lewis C. Kercheval a Justice of the
Peace in & for said County in the State aforesaid Do hereby
certify That Nicholas P. Sglehart who is personally known
to me as the same person who under the firm name of
N. P. Sglehart & Co. subscribed to the within contract or
agreement as having executed the same as Agent of John
C. Dodge appeared before me this day in person and
acknowledged that he as Agent of John C. Dodge signed
sealed & delivered the said instrument of writing as his
free & voluntary act, acting as Agent aforesaid for the
uses and purposes therein set forth.

Given under my hand and seal this the 8th day
of September in the year of our Lord 1852.

L. C. Kercheval (Seal)

No 37990 Filed for

A. P.

Record Nov 25. 1852

State of Illinois
Cook County S. S.

I Louis T. Board Clerk of the
County Court and Ex Officio Recorder of in and for
said County Do hereby certify That the annexed is a
true and correct Copy of an Instrument filed in my
Office for Record on the 25th day of November A.D.
1852 and recorded in Book No. Fifty of Deeds at

page Three hundred and eighty.

In testimony whereof I have hereunto set
my hand and the Seal of said Court
at Chicago this fifth day of May AD
1854.

L. J.

L. D. Heard

Clk. to Court,

Copy Affidavits referred to in the foregoing Depositions

In the Cook County Court
of Common Pleas. In Chancery

William F. Johnson .. Complainant

— as —

John C. Dodge & The Board of Trustees
of the Illinois & Michigan Canal. Defts

William F. Johnson of the City of Cincinnati in the State of Ohio the above named Complainant, being duly sworn maketh Oath & saith that he held an Assignment of a Contract or Memorandum of Sale and the Original Contract itself signed by A. P. Tylehart & Co. Land Agents of Chicago in the State of Illinois to one Thomas C. Walters for the North half of the West half of the North West quarter of Section one (1) Township Thirty nine (39) North Range Thirteen (13) East of the Third Principal Meridian in the said State of Illinois and County of Cook containing 40 Acres more or less, which said Contract or Memorandum of Sale bore date the fourth day of September A. D. 1852 and was signed by said A. P. Tylehart & Co. as Agents for the above named Defendant John C. Dodge for the Sale of said Land and the Assignment of which said Contract from said Thomas C. Walters to this Deponent bore date the thirteenth day of September A. D. 1852 and was duly executed by the said Thomas C. Walters. Which said Contract or Memorandum of Sale was filed for Record on the Twenty fifth day of November A. D. 1852 in

the Records Office of said County of Cook and is. Recorded ⁹²
in Book No 35 of Deeds page 380 and this Deponent further
saith that in the latter part of the year 1852 he placed said
Contract of Sale and the Assignment thereof to this Deponent
in the hands of this Deponents Counsel at Chicago aforesaid
for the purpose of this suit And that he never since has had
said papers or either of them in his possession, nor has the
same or either of them now nor does he know where the same
are to be found And further that he has been informed that
the said documents have been lost And that they are not
in the power of this deponent to produce as evidence in this
cause.

Sworn before me at Cincinnati (signed)
in the State of Ohio this 11th day of William F. Johnson
May A. D. 1854.

(L. S.) Richard Will
Notary Public, Hamilton Co. Ohio

In the Cook County Court
of Common Pleas. In Chancery.

William F. Johnson

vs.

Complainant

John L. Dodge & The Board of
Trustees of the Illinois & Michigan
Canal

Defendants

Booker T. Morris of the City of Chicago in the
County of Cook
State of Illinois being duly sworn deposes & saith that he was
one of the Attorneys and Counsel employed by the above named

Complainant in this cause. That he has been informed and believes that the Original Memorandum of Sale of the Land respecting which this suit is pending and the Assignment thereof have been mislaid or lost.

That this Deponent has made diligent search amongst his papers for said documents, but has not been able to find the same, nor does he believe he has said documents or either of them in his possession, nor does he know where the same can now be found, and is confident he has them not.

Sworn before me at Geneva in Kane
County this 16th day of May A.D. 1854 } B. S. Morris.

L. Dearborn. Jltk Circuit Court
Kane Co. Ills

In the Cook County Court
of Common Pleas - Two Chancery.

William F. Johnson

— vs. — Complainant

John C. Dodge, & The Board of
Trustees of the Illinois & Michigan
Canal Defendants

Henry Frink of Chicago in the County of Cook &
State of Illinois being duly sworn maketh Oath & Saith that
he was employed as counsel in this cause on the part of the
above named Complainant.

That this deponent has been informed & believes that
the Original Memorandum of Sale of the Land respecting

94

which this suit is pending and the Assignment thereof have
been lost or mislaid. That this deponent had said papers in
his possession prior to the commencement of this suit.

That this deponent has made a search amongst his
papers for said documents but has not been able to find the
same, nor does this deponent believe that he has either of said
documents in his possession nor does he know where the same
or either of them can now be found.

Sworn before me at Chicago in the
County of Cook this 23rd day of } Henry Frick:
May 1854 }
L. D. Hoard. Clerk

In the Cook County Court
of Common Pleas. In Chancery.
William F. Johnson
— us — Complainant }
John L. Dodge & The Board of }
Trustees of the Illinois & Michigan }
Canal Defendants }

Robert Hervey of the City of Chicago and County
of Cook and State of Illinois being duly sworn maketh Oath
and Faith that he was a partner in the late firm of Morris
Hervey & Clarkson; Solicitors in this Cause for the above named
Complainant. That said firm had in their possession the
Original Memorandum of Sale of the Land respecting which
this suit is pending and the Assignment thereof to the above

Complainant.

That this deponent drew the Bill in this cause and made verbatim Copies of the said Memorandum of Sale and Assignment, which Copies are attached to the Original Bill. Filed in this cause and were respectively compared with the Originals by this Deponent.

That the papers of the said firm of Morris, Hervey & Clarkson are in this deponent's and said Clarkson's possession in their Office in Chicago. And that this deponent has made diligent search amongst said papers & everywhere else in his said Office for the said Memorandum of Sale and assignment thereof, but this deponent cannot find the said two documents or either of them. That the same are not amongst the papers of the said late firm, nor in the Office or possession of this Deponent or his present firm, nor does he know where the same or either of them can be found nor can he produce the same in evidence in this cause.

And this deponent further saith that he believes said documents have been lost or mislaid.

Suor before me at Chicago in
said County this 23rd day of May 1854 Robt. Hervey.

A. D. 1854

S. D. Hoard. Clerk.

96

And afterwards to wit: on the eighth day of January. A.D. 1855, the following among other proceedings were had in said court, which proceedings are in words and figures following to wit.

William F. Johnson	} In Chancery Bill
John C. Dodge & The Trustees of the Illinois & Michigan Canal	

And now comes the complainant by his Solicitor Morris Hervey Helgeson and the defendants by Arnold & Miller their Solicitors also come, and this cause having been brought on to be heard on Bill answer and testimony, and after hearing the argument of counsel and the court being now fully advised in the premises, doth order and decree that the said complainant take nothing by his said bill of complainant and that the same be dismissed at his cost and that said defendants have execution against the said complainant for their costs by them in this behalf expended.

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

97

I Walter Kimball Clerk of the
Cook County Court of Common Pleas within
for said County & State, do hereby Certify that
the above is a true, full and complete Tran-
script of all the pleadings, testimony, papers, and
Orders of the Court now on file in my office in
the case of William D. Johnston Complainant
and John C. Dodge Defendant in Chancery
currently pending in said County as the same
appear from the Original Papers & Records
of said Cause.

In testimony Whereof I have here-
unto set my hand and affixed
the Seal of said Court at Chicago
in said County this 5th day of
May A.D. 1856

Walter Kimball Clerk

State of Illinois - Supreme Court June Term
1856

William F Johnson

vs

John C Dodge &

Trustees of the Ills Mich Canal

Et al -

} Error to

William F Johnson assigns
to his prejudice in the foregoing and Annexed
Record as follows: to wit -

First: That the Cook County Court of Common
Pleas erred in dismissing the complainants
bill at his costs - and it should have been
decided in his favor.

Second: That the decree is wholly erroneous
and should have been for the complainant,
for a specific performance of the contract -
wherefore the plaintiff in error prays writ of
Error may issue and that said decree
may be reversed with costs &c

By Morris Waller of counsel
his atty.

Supreme Court

Wm. F. Johnson

v.s.

John C. Dodge et al

Term 1854

And the defendant by his
counsel comes and joins in error with
said complainant and says that no such
error appears in the record of said case as
said complainant has in his assignment of
error set forth.

J. A. Arnold

for counsel

Wm. F. Johnson

Wm. J. Johnston

John C. Hoage

Transcript

Filed June 7, 1856.

L. Leland
Clerk.

Fees Transcript & Copy \$28.00
Paid by Comptroller
J. F. [illegible]