

No. 14728

Supreme Court of Illinois

Montanye

vs.

Hatch

STATE OF ILLINOIS,
SUPREME COURT,
THIRD GRAND DIVISION.

No. 103

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

Mantoye
25
1864

1864

SUPREME COURT OF ILLINOIS:

THIRD GRAND DIVISION.

April Term, A. D. 1864.

JOHN MONTANYE, Pl'ff in Error }
 ^{vs.} }
ISAAC HATCH AND WILLIAM }
POTTER, Administrators of the Es- }
tate of CHESTER POTTER, deceased, }
Def'ts in Error.

ARGUMENT OF PLAINTIFF IN ERROR,

BY LELAND & BLANCHARD.

STATEMENT OF CASE.

August 15, 1855, John Montanye and Chester Potter, deceased, by agreement in parol, entered into a partnership in business of buying and selling grain at Somanauk, Illinois, by the firm name of Potter & Montanye, Continued business until Dec. 21st, 1856, when Potter died.

On the tenth of June, 1857, the defendants in Error as the Administrators of Chester Potter, deceased, filed their bill of complaint in the DeKalb Circuit Court, alleging that Montanye had in his possession assets belonging to the firm of Potter & Montayne, and refused to account to them for the same; that there was a large amount due from Montanye on a proper accounting for which they pray. Oath waived.

January 20th, 1858, Montanye filed his answer under oath, giving a statement of the partnership transactions, and denies having assets belonging to said firm. Def'ts in Error filed replication in answer.

At the June special term, 1863, Kellum & Coon withdrew their appearance from Montayne in his absence, without his knowledge or consent, and

permitted an ex parte hearing of the cause ; and it it was decreed that complainants as Administrators recover 'of Montanye \$1,445, with interest from June 3d, 1862, and have execution therefor.

ARGUMENT.

No account of the partnership affairs has ever been taken, and the court below could not properly have known from the few facts in proof what the balance on final settlement really was, any more than it could judge of the weight, size, kind, of any animal from a bone shirt button which once formed part of it.

The facts in proof are so meager that it is impossible to imagine a balance of account which they tried to prove.

It may not be possible from the imperfections of human testimony to get at the exact state of the accounts between partners, but there should be an account stated having the semblance that it might probably be accurate. It is evident that the balance found in this case has no more chance of being the true one than as though the court below had drawn six of the digits by chance out of a box and used them in the order drawn, the first four for dollars and the next two for cents.

The law seems to be well settled that whether in the old action of account at common law or in the more convenient and now more commonly adopted method in a court of Equity, the court does not investigate originally the state of accounts in cases like that at bar, but Auditors in the former and the Master in Chancery in the latter by compelling the production of books and papers by examination under oath of the parties, and by other evidence ascertains if possible the balance upon a full statement of all the partnerships accounts.

Story's Equity Jurisprudence, Sec. 450, 524, 660, 664, 671, 672.

The principal of the case in our own reports (*Lee vs. Abrams*; 12 Ill. 116) appears to be applicable; there should at least be something that appears like an attempt to investigate all the partnership affairs and find a balance on a full settlement of the whole matter, especially where there is an account after dissolution.

A balance decreed upon proof such as this record contains without a reference to the Master is a novelty in Equity Jurisprudence as to the practice in relation to investigating accounts before the Master in England and this country.

See 2 Daniel's Chancery Practice from 1418 to 1444 and the American notes.

The cause should be sent back to the court below with directions to refer it to the Master have the account stated, the only decree at the time the case was disposed of should have been for an account and an order of reference to the Master, or if the court below considered it proper to do the Master's work it ought to have done it before jumping to a conclusion which the evidence before it could not properly warrant.

Collyer on Partnership, Section 316.

or more properly where the proofs statements leave everything in such doubt and uncertainty that it is impossible to do justice the bill should be dismissed

Permillion vs Bailey 27 Ill 230

In cases similar to the one at bar, the first question presented to the court is whether an account shall be decreed or not.

By operation of law the death of one co-partner dissolves the partnership. The surviving partner is entitled to the custody and control of all the partnership assets, for the purpose of closing up the partnership business. Collyer on Partnerships, Sec. 127. And the legal representatives of the deceased partner cannot interfere with the surviving partners right of possession, and management of the partnership assets—except in special cases—until the debts are all paid, the effects of the partnership reduced to money, and the purposes of the partnership are accomplished, then and not till then is the legal representatives of a deceased partner entitled to an account from the surviving partner for his just share of the partnership funds.

Collyer on Partnerships, Section 127 and notes.

Now the personal representatives of a deceased partner are invst with no greater powers in that regard than the legal representatives for the latter are tenants in common with the surviving partner, in partnership assets. Subject to the surviving partner's right of possession for the purposes aforesaid.

Now if this were a bill filed by the regal representatives of the deceased partner, such a case is not made as to entitle them to a decree for an account.

For there is no allegation in the bill, nor does the proof show that the debts of the partnership are all paid—the effects reduced to money, and the purposes of the partnership accomplished. The exceptions referred to are where the surviving partner is guilty of mismanagement or improper conduct in reference to the partnership effects, then upon a proper application, a court of Equity will interfere—not to decree an account—but to enjoin and restrain such improper conduct by injunction, and may appoint a receiver to take charge of the partnership assets.

Madynick vs. Umible, 6 Beaven, 145.

Story's Partnership, Sec. 344.

Evans vs. Evans, 9 Paige, 178.

But this bill was not filed for that purpose: It is a bill purely for an account, and the court by the decree has found the surviving partners indebted to the firm without having stated an account. Let us briefly review the evidence.

GAGE says ambiguously that sometime Montanye used \$100, which he supposed was partnership funds before death of Potter.

CORNELL testifies to an indefinite number of partnership bags sold by Montanye and son in fall of 1855, prior to death of Potter.

HUNT testifies that Montanye told him he sold some bags belonging to firm.

ALFORES, that during partnership while Potter was alive, that Montanye told him at Chicago, in Dole's office that he had received \$2000, and must go home and pay it out.

LEWIS testified that in October, 1855, he purchased of Montanye wheat to the amount of \$223.05 and corn to the amount of \$77.00. Do not know as to ownership of same. This was in lifetime of Potter.

METCALF testified that in September, 1855, he bought wheat of Montanye & Potter, and paid Montanye, in the lifetime of Potter, \$60, and after his death, \$9.80.

MCCLEARY heard Montanye say he got \$500 of Potter and paid up some of our bills.

J. D. JOHNSON, station agent at Somanauk, reads entry on freight book: "Sept. 19, 1855, received for C. Potter four bales bags. Receipted for by John Montanye."

LEBARRON -Potter put into firm about 1700, as far as my knowledge goes. Assisted Potter & Montanye in looking over their business affairs. They represented to me, that at the time partnership was formed, Potter had in the hands of Dole & Co., at Chicago, upwards of \$1200 to his credit, and that Potter put in from time to time sums amounting to \$500.

Potter agreed to account for 225 bushels of oats. This is evidence from which the court found Montanye indebted to the firm in the sum of \$1.445.

We must say that it is the best burlesque we have ever seen upon Judicial proceedings.

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John Montague
vs

Isaac Hatch

Plffs. Briefs

Filed April 21. 1884
L. Leland
Clerk

and proceedings

We must say that it is the best evidence we have upon which

which the court found that the plaintiff is entitled to the sum of \$1,442.
The court agreed to account for the sum of \$1,442.

weight and that the plaintiff is entitled to the sum of \$2,000.
The court found that the plaintiff is entitled to the sum of \$2,000.
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for the John Montague.

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The court found that the plaintiff is entitled to the sum of \$2,000.

SUPREME COURT OF ILLINOIS:

THIRD GRAND DIVISION.

April Term, A. D. 1864.

JOHN MONTANYE, Pl'ff in Error, }
 vs.
ISAAC HATCH AND WILLIAM }
H. POTTER, Administrators of the }
Estate of CHESTER POTTER, dec'd, }
Def'ts in Error. }

BRIEF OF DEFENDANTS IN ERROR.

It is apparent by a single glance at the bill of complaint in this case, that the complainants were seeking after and praying for an account between complainants as administrators, &c., and the plaintiff in error. If we admit, however, that the bill of complaint was hastily and somewhat imperfectly drawn, and yet enough appears upon its face to show that complainants desired, and that the equities of the parties required an account, and the prayer will admit of relief, a party will not be turned out of court unheard.

McConnel v. Gibson, et al. 12 Ill. 130.

In this case the plaintiff in error appeared in court, filed his answer to bill of complaint, appeared and cross-examined over twenty witnesses, made his motion in court to suppress depositions, &c., had every opportunity to take evidence on his part, but neither took any or asked for a continuance for such purpose. Was all the time up to submission of proofs to court, represented by able counsel (whom judging from the facts developed by the evidence of witnesses, withdrew from case because he

had refused to pay them.) We insist it is now too late for him to seek redress in this court against the representatives of the deceased Potter, or a release from the results of his own wrong and neglect.

It matters but very little under our practice how the fact of indebtedness between partners is arrived at. It may be done by reference to the Master, or by the Judge in person, or by a jury by consent of the parties, or under the direction of the court, and then after all the judge may and often does set aside the finding of the jury and enter a decree based upon his own judgment as to what is right between the parties.

It is insisted by defendants in error that the rules of the English courts of Equity were creatures of practice and not of statute, and have never been adopted in this State to any extent. Our statute gives also to our Circuit Judges the right of adopting rules of practice. (See sec. 1st of Chancery Code.) The practice of our courts is universally the same in cases of this nature as in other chancery proceedings.

The case of *Lee v. Abrams*, 12 Ill. 116, referred to by pl'ff in error, has no application to this case, for it was brought under our statute and of course was the creature of and subject only to its provisions.

The testimony of LeBarron alone was sufficient to warrant the chancellor or a jury in finding a verdict even larger than the amount of the decree rendered against Montanye. LeBarron swears that Potter put into firm \$1,700, and states as the means of his knowledge that he was present when Potter and Montanye looked over their business accounts, and that parties agreed upon the sum of \$1,200 and \$500, which were passed to the credit of Potter, and all this by consent of Montanye. If this testimony does not show an indebtedness from Montanye to Potter of about \$1445, then all human testimony is worthless, and the admissions of parties (generally in all civil matters regarded as the best of evidence) no longer reliable. We insist also that the testimony of LeBarron shows a settlement of all accounts between Montanye and Potter as partners.

Again, we insist that if the testimony of LeBarron does not show an admission on the part of pl'ff in error, that he owed Potter the sum of \$1,445, the evidence of McCleary, Johnson and other witnesses, show conclusively the existence of such indebtedness over any and all counter claims.

Why, if plttf in error had any claim or claims whatever against Potter did he not present them to the Judge by way of depositions or otherwise for adjustment? The answer is a plain one. He had no such claims. He had the books in his custody all the time, yet dare not produce them, for the reason that they failed to show any of the items sworn to by witnesses on part of defts in error.

There is no law in our State prohibiting the Judge from doing all the chancery business in person rather than by Master, if he chooses to do so, and certainly he is as competent to the task as most *Masters* are within the range of our knowledge.

29 Ill. R. p. 500

The plttf in error saw proper, without exception, to investigate the case before the Judge by depositions, &c., and by such proceeding he is as much concluded as if proceeding had been before a Master.

We think that in justice to defts in error the decree of the court below should be affirmed.

GRAY, AVERY & BUSHNELL,

For Defts in Error.

*The attention of the Court is particularly called to the case of *Barla vs Lewis*. 29 Ill. 500*

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Supreme Court. Dec.

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3d. Geo. Dir.

Apr 1. 1864

John Montague

13
Joan March et al

Def. in error is Ding

Filed May 9. 1864
J. Lewis CM

G. A. & B.

Supreme Court of Illinois:

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1864.

JOHN MONTANYE,	}	ERROR TO DEKALB.
<i>Plaintiff in Error,</i>		
<i>vs.</i>		
ISAAC HATCH AND WILLIAM		
M. POTTER, Administrators of		
the estate of CHESTER POTTER,		
deceased,		
<i>Defendants in Error.</i>		

ABSTRACT OF RECORD.

- 1 Bill filed by defts in error, June 10th, 1857.
- 2 Bill alleges that Chester Potter, in his lifetime, and John Montanye, (plff in error,) about August, 1855, verbally entered into a co-partnership by name of Potter & Montanye, in business of buying and selling grain, at Somanauk, in said DeKalb county, for one year, each to furnish equal amounts of money and share equally in the profits and losses. Potter put in \$821.52 money, \$697.32 in wheat, 400 bags, worth \$100, \$24.40 in corn, subsequently \$1,283 in money, and divers other sums at different times.
- 3 DeKalb county, for one year, each to furnish equal amounts of money and share equally in the profits and losses. Potter put in \$821.52 money, \$697.32 in wheat, 400 bags, worth \$100, \$24.40 in corn, subsequently \$1,283 in money, and divers other sums at different times.
- 4 Montanye put in \$843.72 in money, bags, &c. Bought grain at Somonauk, and shipped to Chicago. Most of money received from sales came into hands of Montanye.

Filed April 2 1864
L. Selander

Potter died intestate, Dec. 21st, 1856.

5 During the partnership, Montanye was in the habit of receiving large sums of money belonging to said Co., and of drawing checks and bills of exchange on said partnership account, but has not entered all such transactions in the partnership books, and kept the said Chester Potter and your orators in ignorance with regard thereto as much as possible. Montanye drew bills and gave acceptances in firm name on private account.

6 Potter, in his lifetime, requested Montanye to account. He refused to render a satisfactory account; and since the death of Potter, has refused to pay over to complainants the partnership funds or to account to them.

Intends to cheat the estate out of the same.

7 At August term of DeKalb County Court, judgment rendered against estate of Potter in favor of Montanye for \$1,068.48. Complainants appealed to Circuit Court, and dismissed appeal at Oct. Term, 1856.

8 The claim so allowed was unjust in whole.

A large amount due estate from Montanye on a correct accounting.

9 Answer upon oath waived.

Prayer for an accounting.

10 That judgment of County Court be vacated.

11 Prayer for general relief.

29 Answer of Montanye filed January 20th, 1858.

80 Admits partnership formed August 15th, 1855, in buying and selling grain. Share equally in the profits and losses.

When partnership formed, Potter had contracted for six or eight hundred bushels of wheat, but had not paid for it. The wheat was to go into the assets and be paid for by the firm

That the firm continued in the business of buying grain and shipping to Chicago for sale until Dec. 21, 1855, when Potter died intestate. During the life of Potter, the firm had paid out for the purchase of produce, \$11,123.63, and the net proceeds received for the sale of produce so bought amounted to \$10,175.04. Potter in his lifetime converted to his own use between two and three hundred bushels oats and about twenty bushels of wheat that belonged to the firm.

About 1000 bushels of wheat of the firm was shipped in the name of Potter.

At commencement of partnership, put in \$100 in money, which was all the money put in at that time by either partner. Potter also put in about \$24 worth of corn, which is all put in by said Potter.

Montanye put in, during existence of partnership, as follows:

August 20, 1855,	Cash for bags,	-	-	-	\$ 78 20
" "	" "	-	-	-	52 00
" 22,	" "	-	-	-	172 00
" 24,	" "	-	-	-	190 12
" "	" "	-	-	-	19 77
" "	" "	-	-	-	130 00
32 "	" "	-	-	-	50 00
" "	" "	-	-	-	25 19
" 25	" "	-	-	-	55 67
" 27	" "	-	-	-	120 84
" "	" "	-	-	paid Dremo	50 00
Total,					\$943 58

Which was all the individual money of Montanye paid for benefit of firm. Also, paid \$20 to Patrick Morisey for work for firm, and to James Roots two dollars for same, and to Edward Montanye about ten dollars for firm. Potter sold and converted to his own use about \$15 worth of lime of the firm. Admits Potter gave time and attendance to business of firm until Oct. 10, 1855, when he went to New York, and died shortly after his return.

Denies having any money, property or chose in action belonging to said firm.

33 Admits that since the death of Potter he has sold \$200 worth of bags of the firm, and received besides \$20 in money, which is all that has come into his hands since the death of Potter, and has paid over \$400 of firm debts since Potter died.

Has in no way carried on firm business since Potter died, except to settle up the business.

Denies ever refusing to settle with complainants said partnership matters, since August, 1856.

Admits that prior to that time they asked of him a statement of both private and partnership business between him and said Potter, to which he objected; but offered them, and is now ready and willing to have the individual and Co. matters settled up, but insists that each should be separate and distinct. That their private matters have been settled in Probate Court in DeKalb county, as alleged in bill.

Denies that said judgment was obtained fraudulently; that the same was due him at that time.

35 Answer verified by affidavit of Montanye.

71 Replication to answer.

31 EVIDENCE.

Deposition of Alvanus Gage:

40 Montanye and Chester Potter commenced business as partners, at Somonauk, in August, 1855, I know of \$100 of money given into the hands of Montanye, but don't know whether it was Potter's or Potter's & Montanye's. This was the same day or next day after partnership formed. It might have been before.

41 I suppose Montanye received the \$100 for his private use.

Montanye said to Potter, in my presence, that he had taken

\$100 to use for himself that had been put in to buy grain with; that Mr. Potter thought they would want to use; that he did not think they would, but wanted to know if I would lend him \$100 if they should want it, till he returned from Chicago.

43 This conversation was in August, 1855.

42 I think it was after they went into company and after Mr. Potter had requested Mr. LeBaron to write such a letter (informing them that Montanye was his partner) to Chicago, that the \$100 was received by Montanye.

44 *Cross-Examination.*—I was a witness in a suit in the Circuit Court of DeKalb Co., in which Montanye was plaintiff, and the complainants, Hatch and Potter, as Administrators, were defendants. I think I testified there as I have to-day. I think the \$100 claim was allowed.

I understood from the amount of claims proved and the amount presented, that the \$100 was deducted by the Court as an off-set to the claim of Montanye.

I think this suit in the County Court was in the summer of 1856.

46 Deposition of Stephen N. Cornell:
Testifies as to partnership.

48 I think there were three bales of bags when I came here, standing in the stoop of the store, and then Col. Montanye told me they belonged to him and Mr. Potter. I don't know what became of them. I took them into the store occupied by J. Montanye & Son. Part of one bale was sold out of store. As to the balance I am not positive. Those sold were for 30 cents a piece.

49 I understood the proprietors of the store to be J. Montanye & Son. J. Montanye is the defendant in this suit.

At the request of Montanye, I made entries in the books of

Montanye & Potter, of money paid for grain by Montanye & Potter.

52 The bags were sold on account of Montanye & Son, in the fall of 1855.

Witness stated he was a witness in the suit in the County Court.

Deposition of Daniel J. Hunt:

55 Testifies to the partnership between Montanye & Potter.

55 Montanye wanted me to go with him to the Wright House and get some bags that belonged to the partnership. He afterwards told me that he took the bags to Mr. Potter's barn. Afterwards complained that the administrators would not let him have them, but subsequently told me that he had got them with their consent. I helped him sort them out. He afterwards told me he had sold some of them.

56 *Cross-Examination.*—Some of the bags were good and some about worn out. From 20 to 40 of the bags belonged to other parties.

57 Deposition of Harry L. Alföres.

Testifies as to partnership.

58 During said partnership or subsequent, Mr. Dole, the commission merchant in Chicago, paid to Montanye \$2,000. It was the latter part of September or first of October, 1855.

In May, 1856, after the death of Potter, I purchased of Montanye 500 bags, which he said belonged to him and Potter.

57 *Cross-Examination.*—Montanye told me at Chicago, in Dole's office, that he received \$3,000, and that he must go home and pay it out. Saw him receive a package of money. It was last of September or first of October, 1855.

60 Montanye did not state to whom the money belonged.

61 I did not see any money counted out by Dole and handed to Montanye.

Deposition of Edward W. Lewis:

63 Montanye and Chester Potter claimed to be in partnership in fall of 1855.

64 I bought of Montanye, on the 9th of October, 1855, 109.20 bushels of spring wheat, 62.40 bushels winter wheat. Oct. 30, 1855, I bought 137.28 bushels corn. The wheat amounted to \$223.05, and the corn to \$77. Paid the money to John Montanye; don't know as to ownership of wheat; it was in the company's warehouse. A portion of the corn was bought by Chester Potter—the balance I know nothing about. The bags the wheat was in were marked P. & M.

65 A portion of the wheat I bought was in Mr. Stevens' bags, put in the warehouse by Stevens. Stevens said it belonged to him.

66 Montanye sometimes said he had the agency of the wheat, and sometimes the care and control of it.

67 Deposition of George Metcalf.

Speaks of the partnership.

68 Sept. 3d and 4th, 1855, I purchased some wheat of Potter & Montanye, and paid Montanye for the wheat—\$60 before Potter died, and \$9.80 after.

69 *Cross-Examination.*—Montanye said the wheat belonged to the firm, and he supposed he had a right to take pay for it.

70 Potter said he was going East and I could pay Montanye for the wheat; it would be the same thing.

75 Deposition of Le Barron suppressed.

82 Deposition of James McCleary:

84 Heard Montanye say he had \$500 of Potter's money.

89 Montanye said he had got \$500 of Potter and paid up some of our bills, as near as I can recollect.

90 Deposition of J. D. Johnson:

91 Station Agent for C. B. & Q. R. R. at Somonauk, and have custody of their freight books. Produces the book.

92 Reads entries on the book as follows: "Sept. 19, 1855, received for C. Potter, 4 bales bags." Under the head of remarks, I find it receipted for by John Montanye.

93 Was not agent in summer or fall of 1855.

First became agent in May, 1858.

97 Deposition of Charles H. LeBarron:

99 Chester Potter put into the firm about \$1,700, as far as my knowledge goes. The receipt on the freight book is the signature of John Montanye.

101 A bale of bags usually contains one hundred. Bags weigh from 90 to 100 pounds to the bale.

102 *Cross-Examination*.—I saw no money or property paid into the firm by Chester Potter.

Direct Resumed.—I was at the house of Chester Potter, and assisted him and Col. Montanye in looking over their business affairs. It was there represented to me, by the consent of both parties, that Chester Potter did have at the time said co-partnership was formed, in the hands of C. S. Dole, of Chicago, upwards of \$1,200 to his credit, which was passed to the credit of said Chester Potter, in looking over the affairs of the said Potter & Montanye. Also, that the said Chester Potter did put from time to time into the firm, sums of money or property amounting to about \$500.

The object in looking over the accounts was to see how much money and property they had in the firm, and to see how much grain

had been bought and sold, and what was the profit and loss in their grain transactions.

104 To my best recollection, the losses figured up to about \$800. This was about the middle of September, 1855.

105 Potter agreed to account to firm for some 225 bushels of oats which he had sold on private account, at twenty-five cents a bushel. There was not a final settlement of the partnership matters.

106 Potter & Montanye ordered me to place the \$1,200 (which Potter had with Dole when partnership formed), to the credit of Potter.

107 I was ordered by Potter & Montanye to place the sums heretofore named to the credit of Potter. I examined no accounts except the grain receipts of C. S. Dole & Co.

108 I mentioned when I came home, that their grain accounts were in such a condition that it was almost impossible to tell how much they made or lost.

111 The profit and loss was made up from amounts of grain bought and sold, not from any capital paid into the firm by Potter or Montanye.

112 June special term, 1863, Charles Kellum and A. B. Coon withdraw their appearance for the defendant (Montanye.)

113 Cause heard June special thrm, 1863.

115 And it was *Ordered, adjudged and decreed*, that said complainants, as such administrators, have and recover of the said defendant, John Montanye, \$1,445, with interest from June 3d, 1862, and have execution therefor.

March 12th, 1863, Montanye filed affidavit asking for stay of proceedings.

119 June 1st, 1863, order entered for staying execution.

120 September 15th, 1863, motion made by Montanye to vacate the decree.

Petition assigning causes for vacating the judgment.

124 His Solicitors withdrew their appearance for him without his knowledge or consent.

131 Motion to vacate overruled.

LELAND & BLANCHARD,
Solicitors.

ERRORS ASSIGNED.

1st. The Court erred in its finding for complainants.

2d. In not making a decree dismissing the bill.

3d. In rendering a decree for complainants without an account being stated between the partners and a final adjustment of the partnership matters.

STATE OF ILLINOIS,
SUPREME COURT. } ss. The People of the State of Illinois.

To the Sheriff of De Kalb County, GREETING:

Because, In the record and proceedings, and also in the rendition of the judgments of a plea which was in the Circuit Court of De Kalb County, before the Judge thereof, between Isaac Hatch & William M. Potter administrators of the estate of Chester Potter deceased plaintiffs, and John Montauze

defendant, it is said that manifest error hath intervened, to the injury of the said defendant

as we are informed by his complainant the record and proceedings of which said judgments we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law: Therefore, We Command You, That by good and lawful men of your County, you give notice to the said Isaac Hatch & William M. Potter

that they be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the record and proceedings aforesaid, and the errors assigned, if they shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Isaac Hatch & William M. Potter

notice, together with this writ.

Pinckney H. Walker

Witness, The Hon. John G. Eaton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this fourth day of March in the year of our Lord One Thousand Eight Hundred and Sixty-four.

L. Deland

Clerk of the Supreme Court.
J. R. Rice



103
De Kalb 3
John Montague
No. vs.
Isaac Hatch &
William M. Potter

SCIRE FACIAS.

FILED... April 6... A. D. 1864
L. Solond
Clerk.

I have served this writ by reading the
same to the within named William
M. Potter this 31st day of March 1864
the within named Isaac Hatch met
found in my County
Hence I was of plenty
\$250 By J. C. Phelps
Henry T. Loper
Thos. J. Throff

Deputy



John Montague }
as Deft Belovs } De Kalb.
Isaac Hatch }

William M. Potter Administrator of the
Estate of Chester Potter deceased

Clk of Supreme Court will issue
de fa in above cause & by
Soland Blanchard

Ottawa March 5, 1864

John ¹⁰³⁹ Montague

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Loaac Health
~~at~~ William Potter
adms &c

Principle

Spaace
William
Shaleh

Filed March 5. 1884

L. Leland Bell

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,
To the Clerk of the Circuit - Court for the County of De Kalb Greeting:

Because, In the record and proceedings, as also in the rendition of the judgments of a plea which was in the Circuit Court of De Kalb - County, before the Judge thereof, between Isaac Hatch & William M. Potter administrators of the estate of Chester Potter deceased -

complaints and John Montague

defendant..., it is said manifest error hath intervened, to the injury of the aforesaid Defendant

as we are informed by his complaint... and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgments thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Prickensy B. Watson

Witness, The Hon. JOHN D. CATON, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this fifth day of March in the Year of Our Lord One Thousand Eight Hundred and Sixty four

L. Leland

Clerk of the Supreme Court.

J. B. Rice Deputy



103 ~~44~~ 3

John Montague

No. 103

vs.

Isaac Hatch et al

WRIT OF ERROR.

~~This Writ of Error is made a
Supersedeas, and as such is to be
obeyed by all concerned~~

Clerk.

FILED A. D. 186

Clerk.



STATE OF ILLINOIS,
SUPREME COURT. } ss. The People of the State of Illinois,

To the Sheriff of Kane County, GREETING:

Because, In the record and proceedings, and also in the rendition of the judgments of a plea which was in the Circuit Court of De Kalb County, before the Judge thereof, between Isaac Hatch & William M. Potter administrators of the estate of Chester Potter deceased plaintiffs, and John Montanye

defendant, it is said that manifest error hath intervened, to the injury of the said Defendant

as we are informed by his complainant the record and proceedings of which said judgments we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law: Therefore, We Command You, That by good and lawful men of your County, you give notice to the said Isaac Hatch and William M. Potter

that they be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the record and proceedings aforesaid, and the errors assigned, if they shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Isaac Hatch & William M. Potter

notice, together with this writ.

Prudence McWalter
Witness, The Hon. John D. Eaton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 1st day of March in the year of our Lord One Thousand Eight Hundred and Sixty-four

L. Leland

Clerk of the Supreme Court.

J. B. Rice Deputy



Kans 968

John Moulange

No. 103 vs. 3

Isaac Hatch and
William M. Potter

SCIRE FACIAS.

FILED. Apr. 8. A. D. 1864.

L. Leland Clerk.

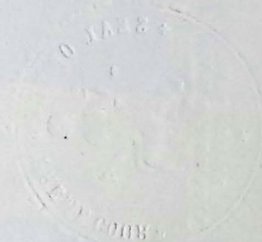
Sheriff fees

Service — 50

Mileage — 200

Return 10
\$2.60

Spencer, this will
the 28th day of March
by reading the same to
the within Isaac Hatch
J. L. Moulange
Sheriff of
Isaac Hatch County
William M. Potter
will be found
in my County
J. L. Moulange
Sheriff



Wm not forming part of opinion -

Statement of Cr in Circuit Court.

Potter was credited with	\$ 1200 ⁰⁰
Also	500
	\$ 1700

Also 1/2 of money rec by Montaupe after paying debts of the firm as per statement below	100
	\$ 1760

Potter was charged with 1/2 losses	\$ 300 ⁰⁰
" for Liner sold	15 ⁰⁰
	315 ⁰⁰
Am't of dross -	
	\$ 1445 ⁰⁰

Montaupe was charged for money rec from sale of bags	\$ 200 ⁰⁰
" do " rec otherwise	20 ⁰⁰
" " " sale of corn & wheat	300
	\$ 520

Montaupe was credited with debts paid by him	400
1/2 of which Cr Potter as above	
	120
	60

Notz. If Montaupe were charged with interest from the filing of the bill June 10. 1857. to June 3. 1862 nearly 5 years. It would amount to more than every possible error in the dross against him - as per statement below -

Suppose Potter was credited with

\$ 1200⁰⁰

Also "

500⁰⁰

\$ 1700⁰⁰

Suppose Potter was charged with

1/2 Losses

\$ 300⁰⁰

Liens sold

15⁰⁰

225 bushels of Oats

56²⁵

Wheat sold 20 bushels.

15⁰⁰

1/2 Difference between what grain cost salient & sold for
as stated in answer, which is probably 1/2 per cent included } 24.29

1/2 Amt of debts after deducting money which
Montauque admits he received } 90.00

500.54 = \$ 500.54

\$ 1199.46

Interest 5 years at 6 per cent

360

\$ 1559.46

Montauque says he paid debts

\$ 400

He admits he no

\$ 200

Also

20

220

1/2 \$ 180

90⁰⁰

103-3

Montauque

State

Computation

United States of America
State of Illinois DeKalb County

Shew before the Honorable
Isaac G Wilson Judge of
the Thirtieth Judicial Cir-
cuit in the State of Illinois
at the October Term of the
DeKalb County Circuit Court
begun and held at the Court
House in Byram on Monday
the 5th day of October in the
year of our Lord one thousand
eight hundred and fifty
seven and of the Independence
of the United States the eighty
second

Present, the Hon Isaac G Wilson Judge

Wilas Tappan Sheriff

C S Jacobyn State Atty

Attest, James H Beveridge Clerk

Court opened by Proclamation

Be it Remembered That heretofore, to-wit:
on the 10th day of June A.D. 1857, there was
filed in the Office of the Clerk of the Circuit
Court of said DeKalb County, as entered and

for Injunction wherein Isaac Hatch & Co-partners
William M. Potter, Administrators of the Estate
of Chester Potter Dec^d were Complainants and
John Montanye was Defendant; which said
Bill, together with the order of the presiding
Judge of said Court, thereon endorsed, are
in words and figures following, to-wit:—

To the Honorable Isaac
G. Wilson Judge of the
13th Judicial Circuit in
the State of Illinois, and
Judge of the De Kalb County
Circuit Court, in Chancery
sitting

Humblly complaining show unto your
Honor, your orators Isaac Hatch and William
M. Potter of the County of De Kalb and State of
Illinois, Administrators of the Estate of Chester
Potter late of said De Kalb County deceased, That
the said Chester Potter, as your Orators have been in-
formed and believe in his lifetime to-wit:— on or about
the 15th day of August A.D. 1853, and one John Mon-
tanye, by a certain verbal contract or agreement,
entered into a copartnership under the name title
and style of . Potter & Montanye, in the business
of buying at Lomenau in said De Kalb County

3
sending to market) and selling grain. for the space
of one full year from the said 15th day of August,
1833. in and by which said Contract or agreement
the said Chester Batten and John Montanye were
each to furnish an equal amount of money, each
to devote so much of his time in the buying
sending to market, and disposing of said grain
as should be necessary. and to share equally in
the profits of said business. and generally to share
the profits and losses of said co-partnership

And your orators further shew unto your
Honor. that they have been informed. have good
reason to believe and verily do believe. that the
said partnership business was accordingly entered
upon and carried on by the said Chester Batten
& John Montanye. and that the said Chester
Batten put into said co-partnership business funds
to a very large amount. in money. wheat. corn oats
bags &c. to-wit: Eight hundred and Seventy one
Dollars in money. at the time of the commence-
ment of said term of co-partnership = Six Hun-
dred and Ninety seven $\frac{32}{100}$ Dollars in wheat;
400 bags worth One hundred Dollars - Twenty
four $\frac{40}{100}$ Dollars in Corn; and afterwards the
further sum of twelve hundred and eighty
three Dollars in money and divers other sums
of money at different times the amount of which
is now unknown to your Orators. That the said

4
Montanye put into the funds of said co-partnership the sum of Eight hundred and forty three $\frac{17}{100}$ Dollars in money bags &c. That the said Chester Patten and the said John Montanye remained in said business, as co-partners buying grain at said Somenauk - sending the same to Chicago by Rail Road, and then selling the same or consigning to Commissaries or agents and by them sold and the money sent to said co-partners: But in most, if not all cases going into the hands of the said Montanye

And your orators further show unto your Honor that the said Chester Patten died intestate in said County of DeKalb on or about the 2nd day of December A.D. 1855; And that at a term of the County Court in and for the said County of DeKalb, on the 7th day of January A.D. 1856 that being one of the regular days of said Term, your orators were, by said Court duly appointed Administrators of the Estate of the said Chester Patten deceased. And your Orators further show unto your Honor that they have been informed by Counsel and believe that said partnership became dissolved by the death of the said Chester Patten, although said term of one year had not then expired - there having been no express stipulation to the contrary.

And your Orators further show unto your

Honor. that after the entering into said co-partnership by the said Chester Batten and the said John Montanye, and during the time they were doing business as such co-partners, the said John Montanye, as your Orators have been informed, have good reason to believe, and verily do believe, was in the habit of receiving large sums of money belonging to said Company, and of drawing checks and bills of exchange on said partnership account; but that said Montanye did not, and has not duly & regularly entered all such transactions in the partnership books of account, but did and has entered therein only a small part of such transactions, and endeavored to keep and did keep the said Chester Batten, and keep his personal representatives, your Orators, in ignorance with regard thereto, as much as possible, and that the said ~~John~~ Montanye drew many bills and gave many acceptances in the name of the said partnership firm, not in respect of the partnership concerns, but for his own private purposes.

And your orators further shew unto your Honor that they verily believe that the said Chester Batten during the continuance of said co-partnership gave all the attention to the business of the same that was due thereto from him by the terms of said Contract, or agreement of co-partnership, and acted in all things in said business with due fidelity towards

6
said John Montague. And your Orators further
show unto your Honor that they have been inform-
ed and believe that the said Chester Batter before
his death, by himself and others, made frequent
applications to the said John Montague to render
an account of the partnership matters, what has
become of the funds put into the same by the said
Batter, and of the gains or profits made in the
said business - but that the said Montague perse-
veringly neglected and refused to render any
satisfactory account in the matters: and that
since the decease of the said Chester Batter
and the appointment of your Orators admin-
istrators of said Estate as aforesaid, the said
Montague has persistently refused to pay and
to your orators the said partnership funds
rightfully, legally and equitably belonging to
said Estate, or to account for the same in any
manner, or to render any account of the same
to your Orators: and that your Orators believe
that it is the settled intention of the said Mon-
tague to cheat and defraud your Orators, and the
said Estate out of the same believing that he
thinks that he has managed said Partnership
accounts and matters in so secret and covert
a manner that it will be impossible for your
orators to ferret out the matter and bring the
same to light by sufficient and competent

7
testimony And your Orators further
show unto your Honor that at the July 2,
1856 Term of the De Kalb County Court, the
said John Montanye presented a large claim
for adjudication and allowance against the
Estate of the said Chester Patter deceased
large items of which were for money loaned by
the said Montanye to the said Chester Patter
which your Orators then believed and still be-
lieve was the money of the said Chester Patter
but which items were allowed said Montanye
by said Court: That your Orators there and
then resisted the claim of said Montanye
because it was unjust and also pretended claims
in favor of said Estate as set-off which were
rejected by said Court on the ground that they
were partnership matters of which said Court
had no jurisdiction That such proceedings
were had in the premises that at the August
Term 1856 of said Court, a Judgment was
rendered by said Court in favor of said Mon-
tanye against your Orators as such administra-
tors for the sum of Ten hundred and fifty
eight & ⁷⁴/₁₀₀ Dollars & cts. That from said Judg-
ment your Orators took an appeal to the
Circuit Court of De Kalb County. That at the
October Term of said Circuit Court 1856 your
Orators dismissed said appeal for the purpose

if commencing a Suit in a Court of Chancery where they believed they would have a more adequate remedy

Your Orators further shew unto your Honor that the whole amount of the said Claim allowed by said County Court against your Orators as aforesaid including costs of said Circuit Court is about Eleven Hundred Dollars, not a Dollar of which as your orators verily believe is justly and equitably due the said Montanye but on the contrary they believe that on a fair accounting by the said Montanye to said Estate the said Montanye will be largely indebted to said Estate now and above said Claim or Judgment. And that they believe they can make it so appear by evidence on a full and fair trial in this Honorable Court. That they have been informed and believe that it is the intention of the said Montanye to compel your orators to pay said Claim or Judgment out of the assets of said Estate, and that he will do so unless restrained by an injunction of this Honorable Court. That your Orators are acquainted with the pecuniary circumstances of the said Montanye as they believe, and that they do not believe that he will be able to pay the large amount that they expect to recover of him in this Suit; or if he should be able so to do, they believe it to be

9
the so firmly settled intention of the said Montague
to cheat and defraud said Estate. That he would
put his property out of his hands, or leave the coun-
try to effect his darling object.

And your Orators humbly insist, that the
said John Montague ought, to come to an account
& settlement of said partnership dealings and
transactions from the commencement thereof
and that, if need be, some proper person ought, to
be appointed by this Honorable Court to receive
and collect the debts and moneys due and to accrue
due if any.

And your Orators further shew unto your
Honor that if said co-partnership was not dis-
solved by the death of the said Chester Patten
that the time has long since elapsed when said
time of co-partnership would expire by its limita-
tion - All which actings and doings of the said
John Montague are contrary to equity and good
conscience. Your Orators therefore pray that
the said John Montague, may be summoned to
answer this Bill of Complaint, not on oath -
an answer on oath being hereby expressly waived
and that an account may be taken of all and
every the said partnership dealings and transac-
tions from the time after the commencement of
thereof; And also an account of the moneys
received and paid by the said Chester Patten

and the said Montague respectively; in regard
~~that~~ your orators being willing and ready offer-
 ing to account for the partnership dealings
 and transactions which have been carried on by the
 said Chester Patten in the premises; that the whole
 matter involved in the claim prosecuted in the suit
 had before said County Court as aforesaid may
 come in review and be re-adjudicated by this Hon-
 orable Court, if consistent with law and equity
 and the said Judgment rendered by said County
 Court may be ~~vacated~~ ^{vacated}, set aside, and held for
 naught to that end, and that the said Defendant
 may be decreed to pay to your Orators for said
 Estate what upon the taking of the said accounts
 shall appear to be due; and if the said Judg-
 ment of said County Court shall not be set
 aside by this Honorable Court, that the same
 be set off to the amount that shall be found
 due on said accounting; and that the said De-
 fendant be decreed to pay the balance to your
 orators; and in the meantime that the said De-
 fendant John Montague, his agents, Solicitors
 attorneys or assigns may be restrained by the
 order and injunction of this Honorable Court
 from paying out, using, or disposing of any
 of said Partnership funds to the injury of
 said Estate; also from collecting, asking
 for, or receiving the said Judgment recorded

against your Orators before said County
 Court or by the said Circuit Court on the dis-
 missal of said appeal, or any part thereof
 also from commencing any suit, or other
 proceedings on the appeal bond executed when
 said appeal was taken; or from doing any
 other act or thing to recover or obtain the
 aforesaid Judgment or any part thereof
 until the Judgment of this Court, he had in
 the premises; And that your Orators may
 have such further other and further relief in
 the premises as shall be agreeable to equity and
 good conscience. And further, to stand to
 perform and abide the such further order
 direction and decree therein as to your Honor
 shall seem meet. And may it please your
 Honor to grant unto your Orators a Writ of
 Injunction issuing out of and under the Seal of
 this Honorable Court to be directed to the said
 John Montanye his agents, Solicitors, attorneys
 or assigns to restrain him ^{and each of them} from
 paying out selling or disposing of any said
 partnership funds to the injury of said Estate
 Also from collecting asking for or receiving
 the said Judgment recovered against your
 Orators before said County Court, or before the
 said Circuit Court, on the dismissal of said
 Appeal, or any part thereof, or from commencing

ring any suit or other proceeding on the appeal
Bond executed when said appeal was taken,
or from doing any other act or thing to recover or
obtain the aforesaid Judgment or any part
thereof until the Judgment of this Court be
had in the premises.

And your Orators shall ever pray &c
(signed) Isaac Hatch
W^m W. Potter

May²⁹ James
Of Council for Complainants

State of Illinois p33
Rock County On this first day of June
A.D. 1857, came before the
undersigned Isaac Hatch one of the Complai-
nants in the foregoing Bill of Complaint who being
by me first duly sworn on his oath says that
the matters and things in said Bill stated in so
far as they are stated on his own knowledge are
true in substance and in fact; and in so far as
they are stated upon information and belief he
believes them to be true.

Subscribed and sworn to before me this 1st
day of June A.D. 1857
Jas H. Beneziger
Clerk (signed) Isaac Hatch

13

State of Illinois }
 De Kalb County }

On this 12th day of Oct
 1857. came before me the
 undersigned William M

Patterson after the Complainants in the foregoing Bill
 of Complaint, who being by me first duly sworn on his
 oath says that the matters and things in said Bill
 stated in so far as they are stated of his own
 knowledge are true in substance and in fact,
 and in so far as they are stated upon informa-
 tion and belief he believes them to be true
 Subscribed and Sworn
 to, before me this 12th
 day of Oct, 1857.

(signed) William M. Patterson

Joel H. Berenside Clerk

(Order for Infraction): -

State of Illinois :

The Clerk of the Circuit
 Court of De Kalb County will issue an Infraction
 upon the Complainants filing bond in
 the penal sum of \$1500⁰⁰ with security
 to be approved by said Clerk. Conditions
 according to Law.

General Illinois }
 June 8th 1857 }

Isaac G. Wilson
 Judge, 3rd Circuit

Endorsed: Filed June 10, 1857.

And afterwards to-wit: - on the 20th day of June A.D. 1857 there was filed in the office of the Clerk of said Court the following Infirmit Bond: to-wit: -

Know all men by these Presents that we Isaac Hatch and W^m M. Patter as principals and Lorenzo D. Patter. Alvanus Gage as surety, are held and firmly bound unto John Montague in the penal sum of Fifteen Hundred Dollars lawful money of the United States to the payment of which well and truly to be made, bind ourselves our heirs, executors, administrators & assigns, jointly severally & firmly by these presents, signed and sealed by us this 20th day of June A.D. 1857.

The condition of the above obligation is such that whereas the above bounden Isaac Hatch and W^m M. Patter have this day filed their Bill of Complaint in Chancery for an Injunction in the office of the Clerk of the Circuit Court in and for the County of DeKalb and State of Illinois on which an Injunction is about to issue by order of the Hon Isaac G. Wilson presiding Judge of said Court in and for said County. Now if the said Isaac Hatch & W^m M. Patter shall pay or cause to be paid all such damages and costs as shall be awarded against the Complainants; ^{in said said Injunction shall be dissolved} then the above obligation to be void

15- otherwise to remain in full force and
virtue (signed) Isaac Hatch (Seal)
William M Patton (Seal)
L D Patton (Seal)
Abner Gay (Seal)

On which is endorsed: -

Approved & Filed June 20, 1857

Jas H Beveridge Clerk

And afterwards, on the 26th day of August A.D.
1857, there was issued out of the office of the
Clerk of the aforesaid Court the following
Summons & Instruction, in the above enti-
tled cause, to-wit: -

(Summons)

State of Illinois
De Kalb County } The People of the State
of Illinois to the Sheriff
of said County - Greeting: - We command you
that you summon John Montano, if he shall
be found in your County, personally to be and
appear before the Circuit Court of said County
on the first day of the next Term thereof to
be holden at the Court House in Sycamore
in said County, on the first day of the next
Term thereof to be holden at the Court House
in Sycamore in said County on the 1st
Monday of October next to answer unto a

contain Bill of Complaint this day filed in
said Court on the Chancery side thereof by
Isaac Hatch and Wm W Patten, administrators
of the Estate of Chester Patten dec^d; and have
you then and there this writ with an endorse-
ment thereon. in what manner you executed the
same,

Witness James H. Fenwick. Clerk of our
(L.S.) said Court, and the Seal thereof at
Lycamore this 10th day of June A.D.
1857, Jas H Fenwick Clerk

On the back of which there appears the
following:—

I hereby appoint John W Goodell my
Special Deputy to execute this writ

Silas Lappan Sheriff

I return this writ duly served upon the within named
reading John M. Morton this 2nd day of August
1857 J W Goodell Deputy

Decs - Copy 50
Serge 50
26 miles 100
Ret 100
\$2.40

Filed Aug 26. 1857. Jas H Fenwick CLK

(Injunction)

State of Illinois }
De Kalb County }

De Kalb County Circuit Court
The People of the State of

17
Olliv's to John Montague. his agents Solicitors
attorneys or assigns. to each & every of them (stat-
ing) —

Whereas it has been represented to us in our
Circuit Court, in Chancery sitting in the part of
Isaac Hatch and William M. Patten, administra-
tors of the Estate of Chester Patten deceased Complain-
ants that they have lately exhibited their Bill of
Complaint in our said Circuit Court against
you the said John Montague defendant pray-
ing to be relieved touching the matters therein con-
tained and stating, among other things that you
actings and doings are contrary to equity and
good conscience: — We therefore in consideration
of the premises, and of the particular matters stated
in said Bill of Complaint, do strictly enjoin
command and restrain you the said John
Montague, your agents Solicitors, attorneys, and as-
signs, and each and every of you, under the
penalty of Five Thousand Dollars to be levied
of your goods and chattels, lands and ten-
ements to our use, that you, and each of you
do absolutely refrain and desist from paying
out, using or disposing of any of said Partnership
funds, referred to in said Bill of Complaint to the
injury of said Estate; also from collecting, ask-
ing for, receiving the said Judgment, in said
Bill of Complaint mentioned and described reco-

* I have seen early Court having ordered
that said execution be issued according
to the prayer of said Bill of Complaint
Complainants having given bond
with security approved by the said Court.

18

and against said complainants before the De Kalb County Court, or by the said Circuit Court on the dismissal of the appeal to said Court, or any part thereof - also from commencing any suit or other proceeding in the appeal Bonds executed when said appeal was taken, or from doing any other act or thing to recover or obtain the aforesaid Judgment or any part thereof until the further order of this Court.

(28)

Witness Jas H Beneridge clerk of our said Court, & the Seal thereof at
Sy camel in said County this 20th
day of June 1857

Jas H Beneridge
CLK

On the back of which there appears the following:

I hereby appoint John W Goodell my Special
Deputy to serve the within writ of Injunction

Seas Tappan Sheriff

I return the within writ duly served by reading to
the within named John Montany, and at the same
time, delivering a copy of the same this 25th
day of August 1857.

Per - Service 50

Ret 10

26 miles 130

1,90

Endorsed: Filed Aug 26, 1857.

Jas H Beneridge clerk

19

And afterwards on the 6th day of October A.D. 1857, the same being one of the days of the October Term of said Court for said year the following, among other proceedings were had and entered of record in said Court, to-wit: -

27

²⁰²³ Isaac Hatch & William M Patter Admors Chester Patter dec^r	} Bill for Injunction & Relief
vs John Montanye	

This day came the complainants by Mayo & James their solicitors, and the defendant by Kellum & Coon also comes, and moves the Court to dissolve the injunction in this cause: and the Court having fully heard said motion, order that the same be sustained, and that the injunction herein be dissolved

And on the 9th day of October A.D. 1857, there was filed the following, in said cause to-wit: -

State of Illinois De Kalb County, ss John Montanye	} Judgment at the request Term of the Probate Court of said County Judgment for \$1065.⁰⁰
vs William Patter & Isaac Hatch, admors of the Estate of Chester Patter dec^r	

To the above named defendants: Gents—
Please take notice that I demand the amount
of the above Judgment from you, & Interest &
costs, in accordance with the order of said Pro-
bate Court

Oct 9th 1857

John Montanye

On the back of which there appears the
following:—

I hereby certify that I have served the
within Notice by delivering to William Patten
a true copy thereof on the 9th day of October
1857

J. Tappan

By Saml Williams

clerk of the Court

Endorsed:— Filed Oct 8, 1857

Jas T. Pennington Clerk

And on the 9th day of October A.D. 1857
there was filed in the office of the Clerk
of said Court the following copy of the order
dissolving the Injunction in said cause, which
said copy of said order is as follows to-wit:—

United States of America vs.
State of Illinois

Appears before the Hon-
orable Isaac Atherton Judge of the District

21

Judicial Circuit in the State of Illinois, at the
October Term of the DeKalb County Circuit Court
begun and held at the Court House in Sycamore
on Monday the 5th day of October in the year
of our Lord one thousand eight hundred and
fifty seven, and of the Independence of the United
States the eighty second;

Present the Hon Isaac G. Wilson Judge

"

Delas Tappan Sheriff

& L. J. Ashby State Atty

Attest James H. Pennington Clerk

Be it remembered that on Tuesday the
6th day of October - being the 2nd day of said
Term the following among other proceedings in
said Court was had to-wit: -

Isaac Hatch & William
M. Patten Administrators of
the Estate of Chester Patten
decd.

vs
John Montague

} Bill for Disjunction &
Relief

Oct 6th - This day
came the defendant by Kellum & Leorn his solic-
itors, and files his motion to dissolve the injunction
heretofore granted in this cause, and the
Court after the argument of Counsel being
fully advised in the same, sustains said motion

and dissolves the Infjunction. It is therefore ordered by the Court that the ~~Judgment~~ defendant have Judgment against the complainants for his costs and charges about his motion expended, to be paid in due course of administration

To which is attached the following Certificate

State of Illinois
DeKalb County

I, James A. Beveridge
Clerk of the Circuit Court
in and for said County do hereby certify that
the within and foregoing is a true and full
copy of the order dissolving the Infjunction entered
of record in the within entitled cause
Witness my hand and the Seal of
said Court at my office in Sycamore
in said County this 9th day of
October A.D. 1857.

James A. Beveridge Clerk

On the back of which there appears the following:

I have served the within copy of order of the
Circuit Court by exhibiting the same to William
W. Patten, who read the same

Oct 9th, 1857

J. S. Pappan

By Garin Sullivan

Recd 70th

Enclosed: - Filed Oct 9, 1857

Sept 1857

James A. Beveridge Clerk

23

And on the said 9th day of October 1880, the same being one of the days of the October Term of said Court for said year the following proceedings were had in said court and entered of record in said Court to-wit:—

20²³ Isaac Hatch et al }
 Admrs Chester Patten dec } Bill for Injⁿ & ^{any}
 2/7 John Montanye } Relief.

This day came the parties by their Solicitors, and within motion leave is given the Complainant to amend their Bill and thereupon came the defendant, and moves the Court for Damages on the dissolution of the Injunction in this cause.

And afterwards to-wit: on the 10th day of October 1880, the same being one of the days of the October Term of said Court for said year the following proceedings were had and entered of record in said Court to-wit:—

20²³ Isaac Hatch et al }
 Admrs Chester Patten dec } Bill for Injⁿ & ^{any}
 2/7 John Montanye } Relief.

24

This day came the parties by their Solicitors and the defendants motion for Damages on the dissolution of the Injunction humi. having been fully heard and considered. It is ordered that the defendant be allowed Costs of one dollar in addition to the Interest,

And afterwards on the 12th day of October A.D. 1857, the same being one of the days of the October Term of said Court for said year the following proceedings were had and entered of Record. to-wit, —

2073 Isaac Hatch ^{vs}
William M. Potter ^{adversely}
Chester Potter ^{dec}

Bill for Inj^{un}
& Relief

257

John Montanye

This day came the parties by their Solicitors, and the Complainants move the Court for an Injunction on their amended Bill. And the Court being fully advised orders that said motion be allowed on condition that the said Complainants file their Bond in the sum of One hundred dollars with Henry Potter as surety; and thereupon on motion of the defendant it is ordered by the Court that the time for answer be A-

tended until the 1st of January next,

95-

And afterwards on the 23^d day of October A.D. 1857, there was filed in the office of the Clerk of the aforesaid Court the following Infraction Bond, to-wit:—

Know all Men by these Presents that we Isaac Hatch, and William W. Potter as principals, and Henry Potter as Surety, are held and firmly bound unto John Montague in the penal sum of Two Thousand Two Hundred Dollars, lawful money of the United States, to the payment of which well and truly to be made, we bind ourselves, our heirs, executors, administrators and assigns jointly severally and firmly by these presents signed and sealed by us this 13th day of October A.D. 1857.

The condition of the above obligation is such that whereas the above bounden Isaac Hatch and William W. Potter, did on the 12th day of October A.D. 1857, pray for an Infraction to issue from the office of the Clerk of the Circuit Court in and for the County of ^{and of the State of} De Kalb, in a certain cause therein pending on the Chancery side of said Court wherein Isaac Hatch and William W. Potter administrators of the Estate of Chester Potter deceased are complainants, and John Montague is defendant, And whereas an Infraction

^{without} is issue by order of said Court in accordance with said Prayer; Now if the said Isaac Hatch and William W Potter shall pay or cause to be paid all such damages and costs as shall be awarded against the Complainants in case said Injunction shall be dissolved then the above obligation to be void, otherwise to remain in full force and virtue

(signed)

W^m W Potter (seal)

Isaac Hatch (seal)

Henry Potter (seal)

On which is endorsed as follows:—

Dated Oct 23, 1857

Justices of the Peace

And afterwards on the 26th day of October A.D. 1857, there was issued out of the office of the Clerk of said Court, the following Writ of Injunction in said cause, to-wit:—

State of Illinois vs De Kalb Circuit Court
De Kalb County

The People of the State of Illinois to the Sheriff to John Montanye his agents Solicitors, Attorneys or assigns \$ to each and every of them, Greeting

Whereas it has been represented to us and

27

said Circuit Court in Chancery sitting on the part of Isaac Hatch and William W Potter administrators of the Estate of Chester Potter dec^d Complainants. that they have exhibited lately in said Circuit Court against you the said John Montanye defendant praying to be relieved touching the matters and things therein contained and stating among other things that your actions and doings are contrary to equity and good conscience. And said Court having ordered that an Injunction issue according to the prayer of said Bill the said Complainants having given Bond with security approved by the said Court. We therefore in consideration of the premises and of the particular matters stated in said Bill of Complaint do strictly enjoin command and restrain you the said John Montanye your agents, Solicitors, attorneys or assigns and each and every of you under the penalty of Five Thousand Dollars to be levied of your goods and chattels lands and tenements to cause that you and each of you do absolutely refrain and desist from paying out, using or disposing of any said Partnership funds to the injury of said Estate; also from collecting asking for, or receiving the said Judgment recovered against said Complainants before the County Court, or before the Circuit Court on the

dismissal of said appeal in said Bill of Complaint mentioned or any part thereof, also from commencing any suit or other proceeding on the appeal and executed when said appeal was taken, or from doing any other act or thing to recover or obtain the aforesaid judgment, or any part thereof until the judgment of this Court be had in the premises.

(S)

Witness James H. Benridge Clerk of
our said Court, and the Seal thereof
at Syracuse this 26th day of October
1857

James H. Benridge Clerk

(Sheriff's Return)

I have duly served the within Writ by reading
the same to the within named John Montague
this 30th day of Nov., 1857.

J. Tappan Sheriff
By J. M. Goodell Deputy

On which is endorsed:—

Filed Dec. 4, 1857.

James H. Benridge Clerk

29

time that the said Complainants file their Bonds in the sum of Twenty two hundred Dollars with Henry Potter as surety; and therefore on motion of the Defendant it is ordered by the Court that the time for answer be extended till the 1st of January next.

And afterwards to-wit: - on the 20th day of January A.D. 1858. there was filed in the office of the Clerk of the Circuit Court of said County. the answer of the said Defendant John Montanye to the Bill of Complaint of Isaac Hatch and William W Potter, which said answer is in words and figures following, that is to say: -

State of Illinois vs De Kalb County Circuit
De Kalb County Court, - April Term
1858 - In Chancery

The answer of John Montanye, Defendant to the Bill of Complaint of Isaac Hatch and William W Potter, Administrators of Chester Potter Defendants

This Defendant, now, and at all times hereafter, saving and reserving to himself all manner of benefit & advantage of Exception to the many errors and insufficiencies in

the Complainants said Bill of Complaint contained. for answer thereto, or unto so much or such facts thereof, as this Defendant, is advised is material for him to make answer unto, he answers & says: -

That, he admits that he went into partnership with said Chester Potter, now deceased, about the 13th day of August 1853 as alleged in said Bill of Complaint - and that by the terms of said partnership they were to continue in business for the space of one year in buying and shipping produce, and that they were to share equally in the profits and losses of the business: - That at the time of entering into said partnership, said Potter had contracted for Six or Eight hundred bushels of Wheat (but had not paid for it) which was to, and did go into the assets of the firm, and was he paid for by them: that in pursuance of said agreement of Co-partnership they entered upon the business of buying produce and shipping the same to Chicago for sale - and continued in the same up till the 21st day of December 1853. at which time said Potter died intestate as alleged in said Bill: that during their continuance in business in the lifetime of the said Potter, they paid out for the purchase of such produce, the amount of Eleven Thous-

31

and one hundred & twenty three ⁶³/₁₀₀ Dollars, and that the moneys or net proceeds received for produce so bought by them, amounted to the sum of Ten thousand one hundred and seventy six ⁴/₁₀₀ Dollars (\$10,176.04) - that said Patten in his lifetime received and consented to his own use between two and three hundred bushels of Oats, which were paid for by the firm & about twenty bushels of Wheat - that about one thousand bushels of Wheat purchased by the firm was shipped in the name of the said Patten but belonged to and was ^{paid} for by the firm, - that at the commencement of business, said Patten put into the business as capital One hundred Dollars which was the only money put into the business as Capital stock at that time, by either partner - also twenty four Dollars worth of Corn which was the only amount of money or other property put into the business by said Patten That this Defendant put into the business during the continuance of said Partnership the following sums:-

August	200	\$55	Cash for Bags - -	\$78.00
"	"	"	"	52.00
"	22	"	"	172.00
"	24	"	"	190.12
"	"	"	" for Bags	19.77
"	"	"	" for Bags	13.00

32

August 24 th	1855	Cash	50.00
"	"	"	20.79
"	25	"	53.67
"	27	"	120.83
"	"	" Part Dismiss	50.00

Amounting in all to the sum of \$943.58
 Nine hundred and forty three ⁵⁸/₁₀₀ Dollars, which
 sums were the private individual money of this De-
 fendant, and was paid out for the benefit of the
 partnership in the payment of produce &c.
 That this Defendant has also paid Patrick
 Morrey the sum of Twenty Dollars for work
 performed for the benefit of the firm, and
 to James Root two Dollars for like services
 and the sum of about ten Dollars to Edward
 Montague for Store account against the
 firm. That said Potter sold and converted
 to his own use about fifteen Dollars worth of
 wine belonging to said firm. He admits
 that said Potter gave his time and attention
 to the business of the firm till about the 1st
 of October, 1855, at which time he left and
 went to the State of New York on a visit
 leaving this Defendant to carry on the bu-
 siness - That shortly after said Potters return
 he died - This Defendant denies that he now has
 any money property or chose in action
 belonging to said firm - but he admits that

30

he has since the death of said Potter, sold
 two hundred dollars worth of bags belonging to
 said firm, and has received twenty dollars in money
 besides - which is all the property or money or the
 avails or proceeds of the same, which has since the
 death of said Potter come into his possession or
 control belonging to said firm: That this De-
 fendant has since the death of said Potter paid
 over four hundred dollars of debts against said
 firm which were contracted before the death of
 said Potter, and that he has in no wise continued
 carried on the business of the firm since the
 death of said Potter, except to settle up the business.
 He admits that the Complainants were appointed
 administrators of the estate of the said Chester Potter
 deceased, and are now the administrators thereof
 as charged in said Bill. He expressly denies
 that he ever refused to settle with the Complam-
 ants & close up said partnership business since
 August, 1856. - but he admits that they called upon
 him previous to that time & asked for a statement
 of both private and partnership business, and
 place both private and partnership business
 between him & said Potter, together, to which
 this Defendant objected - but was willing to
 and offered them, & is ready at all times to
 have the individual and company matters
 settled up, but he then insisted as he

now does, that each should be separate and distinct - That their private matters have since been settled by due course of Law in the Probate Court in DeKalb County at the time alleged in said Bill - at which time he obtained a Judgment against said Estate for the amount charged in said Bill of Complaint, but he expressly denies the same was obtained fraudulently as therein charged; but he claims now as he then claimed & proved, that said Judgment was due and owing this Defendant from said Estate for money loaned and advanced to him, said Chester Patten & paid for the use of said Chester Patten at his request, which money was so loaned, advanced laid out, and expended by this Defendant out of his own private means, and had no connection with their partnership business, but was used by the said Chester Patten on his own private account. This Defendant further answering denies all confederating as charged in said Bill.

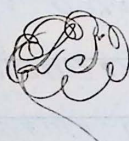
Without that any other matter or thing material or necessary for this Defendant to make answer unto and not herein or hereby well & sufficiently answered unto confessed or avoided transacted or denied

35 is true to the knowledge or belief of this
Defendant - all which matters & things, this
Defendant, is ready to aver, maintain or
prove as this Hon Court, shall direct
and prays to be hence dismissed with
his reasonable costs damages and charges
in that behalf most wrongfully sustained
Hellen. Connors (signed) John Montano
Regent Salvo for
Deflt)

State of Illinois }
McHenry County }
This 15th day of January
1888 appeared the above named John Mon-
tano & made oath that he had heard read
the above memoir, subscribed by him and
knows the contents thereof and that those
matters and things therein stated to be of
his own knowledge, he knows to be true
and as to those matters and things stated
to be of his information and belief he
verily believes the same to be true; and
further that he is now a resident of
Beland ^{Station} La Salle County Illinois, and is
worth at least the sum of five
thousand Dollars over and above the

payment of his just debts, and has
now no intention. nor has he had for the
last three years of moving away or putting
his property out of his hands

Subscribed and (signed) John Montano
sworn to before me this
15th day of January
1858

 A. M. Brown
Notary Public

On which is endorsed as follows, to-wit:-
Filed Jan'y 20, 1858
Jas H Berenside
Clerk

And afterwards, to-wit:- on the 7th day
of April 1858, the same being one of
the days of the April Term of said
Court for said year, the following among
other proceedings were had and entered
of record in said Court, that is to say:

28 2073 Isaac Hatch, et al }
Advs vs Chertw Patterson } Bill for Inf^y and
John Montano } Relief

This day came the
Defendants by their Solicitors, and moves the
Court to dissolve the injunction herein.

37

And afterwards, on the 5th day of April A.D. 858, there was filed in the office of the Clerk of the aforesaid Court the following Depositions to-wit:—

(Notice attached to Depositions)

Isaac Hatch ^{and}
William M Potter
Administrators of the
Estate of Chester Potter
dec^d ^{vs}
John Montomery

In DeKalb Circuit
Court = In Chancery

You will please take notice that the above named Complainants Isaac Hatch and William M Potter, will attend at the Hotel of John W Goodell at Sommersville Station in said County of DeKalb on Tuesday the Second day of March A.D. 858, at ten o'clock in the forenoon of that day, for the purpose of taking before James H Beveridge, Clerk of the Circuit Court of said DeKalb County, or before some other person authorized by Law to take the same, the Depositions of Abner Gage, D. J. Hunt, Charles N Le Baron, Stephen Connell, Thomas Wright, Emerson Weston, George Metcalf, H Salford, Isaac Rutishauser, John S Stewart, C S Merriam, with Rail Road Freight Books, James McElery, Jo Henry Potter

J. B. Carpenter. L. D. Patten. A. J. Wright E. W. Lewis
and others of the State of Illinois. on the part of
said Complainant. Commencing at ten o'clock
in the forenoon, or as soon thereafter as may
be, and continuing from day to day until all are
served, at which time and place you will appear
and put cross-interrogatories if you see fit.

February 16th 1857

To the above named, Edward L. Mayo
John Montanyo and Solicitor for Complainant
T. Charles Kellum and
A. B. Coon his Solicitors

Isaac Hatch and
Wm M Patten admors
of Estate of Chester Patten de

vs
John Montanyo

De Kalb Circuit
Court,

In Chancery

Bill for Inj^{re} &c

Depositions of Alvanus Sage Stephen A Lorr-
nell. David J Hunt. Leona H Le Baron Harry
L Alford, Edward W Lewis & George Metcalf taken
in the above entitled cause now pending in the
~~above entitled cause now pending in the~~ De Kalb
County Circuit Court on the Chancery side thereof
before James H Beveridge. Clerk of said Court
at the house of John W Goodell at Lomax

89

Station on the 2^d & 3^d days of March A.D. 1855 in
pursuance of the annexed Notice

Complainants presents in person & by D. B. James
Esq. their Solicitor & by Judge Allen of Counsel
Defendant by Montague Stinson of Counsel.

Interrogatories propounded to the said Alvarus
Gage, a Witness produced and sworn as afore-
said, on the part of the said Isaac Hatch &
M^r W. Potter, Administrators of the Estate of
Chester Potter dec^d, and his answers thereto,

1st Interrogatory: What is your name, age, place of residence &
occupation (Defendant by his Counsel objects to
the Witness on the ground of his being on the
Bond of the Compl^t herein, as adm^r of Est of
Chester Potter dec^d)

Ans to 1st Int: — My name is Alvarus Gage - age 54
years - reside at Ironauk Village in De Kalb
Co. by occupation a farmer

2^d Int) Are you acquainted with the parties to this
Suit - the Complainants and defendant
and how long have you known them? —

Ans to 2^d Int: — I have known the Complainants ten
years - the defendant eight or ten years

3^d Int) Was you acquainted with Chester Potter in

his lifetime. and if so how long was you acquainted with him prior to his decease

Ans to 3rd Int; - I was. I think about eleven years before his decease

4th Int; - Have you any knowledge of the said Chester Patten & John Montanye, the defendants, being together as Partners in grain-buying - If so, when and where

Ans to 4th Int; - They were so engaged - they commenced in August, 1855 - at Samonauk Station in DeKalb County.

5th Int; - State whether or not you have any knowledge of the amount of Capital put into said business by said Patten - if yes, state what.

Ans to Int 5th - I have not,

6th Int; - State whether or not you have any knowledge of any funds, money, or other property, of the said Chester Patten or of Patten & Montanye going into the hands of said Montanye, or or about the ~~commencement~~ time of the commencement of said Partnership, or at any ^{other} time, if yes state fully

Ans to 6th Int; - I do know of One hundred Dollars going into the hands of said John Montanye

41

about that time, but could not say whether it was the property of Chester Patten, or of Patten & Montompe - My impression is that it was the same day & immediately after the partnership was entered into or the next day; but I am not positive; It might have been before the partnership was entered into.

7th Int State whether or not said Montompe received the said \$100. above alluded to for his private use or for the use of the partnership

Ans to 7th Int - I suppose it was for his private use (answer objected to)

8th Int; - Will you state the conversation that took place at the time between said Chester Patten and Montompe and yourself, at the time in relation to the \$100. above alluded to?

Ans to 8th Int, Mr Montompe said he had taken \$100 to use for himself, that had been put in there to buy grain with - that Mr Patten thought they would want to use it - that he did not think they would - but wanted to know if I would lend him \$100. if they should want it, till he returned from Chicago.

9th Int, - At the time Mr Montompe received the

\$100. - state whether or not anything was said by said parties about Montomys taking a notice to Chicago, informing parties there, that he (Montomys) had become a partner of Mrs Patten;

Ans to 4th Int; There was nothing said relative to that matter

10th Int; State whether or not at the time Montomys received the \$100. above alluded to, you had any knowledge that Montomys was to take a notice to Chicago, informing persons or parties there, that he (Montomys) had become a Partner of Mrs Patten

Ans to 10th Int; - I think it was after they went into company & after Mrs Patten had requested Mr LeBaron to write such a letter to Chicago that the \$100. was received by Montomys

11th Int; - State whether or not you have any knowledge of any funds or other property belonging to either said Chester Patten or to the firm of Patten & Montomys going into the hands of Montomys during said Partnership or previous to the death of said Patten to be used in his private account, if so state fully,

Ans to 11th Int: I have no knowledge further than I
43 have stated before

12th Int: - State at what time - what month and
year the connection above stated took place

Ans to 12th Int: - I think it was in August 1855 - I think about the middle of the month.
Subscribed and Sworn
to before me this 2^d day of March, 1855,
J. H. Benedict

Alvarus Sage

Cross Interrogatories, and answers thereto by the
Witness, on the part of the defendant.

1st Cross Int: Was there any one else present other -
than Montano & Patten & yourself at the time
spoken of by you in your examination in chief
in relation to the \$100. asked for by Montano?

Ans to 1st Int: - There might have been others within
hearing, and I think might not,

2^d Cross Int: - Can you give the whole connection
in relation to this \$100. at that time?

Ans to Cross Int: I think I could, or nearly

3rd Cross Int: ¹¹¹— Give the language which he used when he asked the money of Potter

Ans to 3rd Cross Int: — I did not hear him ask the money of Mr Potter

4th Cross Int: — Did Montanye tell you what he wanted to do with the \$100.

Ans to 4th Cross Int: He did not.

5th Cross Int. Did Montanye tell you for what particular purpose he wanted the \$100. to use.

Ans to 5th Cross Int — He did not.

6th Cross Int: — Did he say he wanted to use it in his private account, or on account of the Partnership

Ans to 6th Cross Int: I do not think he did

7th Cross Int — Were you a witness in a suit in the County Court of De Kalb County, in which the Complainants Hatch & Potter, as administrators of the Estate of Chester Potter dec^d & John Montanye Defendant, were parties to the Suit

Ans to 7th Cross Int: I was.

8th Cross Int; - Did you testify on behalf of the
 45 Dependents in that case in relation to this
 \$100.?

Ans to 8th Cross Int: I did.

9th Cross Int; - Was Montano the sole Plaintiff in this
 Suit & the Complainants in this case the Depend-
 ents - if so did you testify that this \$100 was got
 by Montano of Patten before the Partnership

Ans to 9th Cross Int; - I think they were - I think not -
 I think I testified as I have to-day.

10th Cross Int; - Do you know whether the \$100. claim
 was allowed or disallowed by the Court.

Ans to 10th Cross Int; - I think it was allowed

11th Cross Int; - Was the \$100. deducted by the Court as an
 off-set to the Claim of Montano

Ans to 11th Int; - I understood it from the amount of
 Claims proved, & the amount of Claims presented.

12th Cross Int: When was this fact in the County Court

Ans to 12th Cross Int; I think it was in the summer
 of 1856

⁴¹⁰
Subscribed & sworn to (signed) Alvarus Gage
before me this 7th day
of March 1858
Jas N Berwick Clerk

Interrogatories propounded to the said Stephen
H Cornell, a witness produced on the part of
the said Complainants, and his answers thereto
as follows: —

1st Int.) What is your name, age, occupation & place of
residence?

Ans to 1st Int: — My name is Stephen H Cornell —
my age thirty years. by occupation a Clerk & re-
sides at Fort Snelling in La Salle County.

2^d Int: — Are you acquainted with the parties to this
suit — the Complainants and defendant? if
so, how long have you known them?

Ans to 2^d Int: — I have known Mr Montague about three
years — I have seen the others occasionally about
two years.

3^d Int: — Was you acquainted with Chester Patten in his
lifetime? if so state how long you knew him pre-

47 would to his death?

Ans to 3^d Int: - I knew him by sight about a year previous to his death,

4th Int: - State whether or not you know of Chester Patten & Montague being in partnership in grain-buying & if so, state when and where?

Ans to 4th Int: - They were in Partnership here in Minnesota. It was in the summer or fall of 1855.

5th Int, State whether or not you have any knowledge of the amount of Capital money or other property put into said Partnership by Chester Patten?

Ans to 5th Int - I have not,

6th Int: - State whether or not you know of any money or other property of the said Chester Patten going into the hands or possession of said Montague during the said Partnership, or subsequent thereto - if so, state fully,

Ans to 6th Int: - No Sir - I don't know of any

7th Int State whether or not you have any knowl-

edge of some Grain bags going into the hands of said Montanys that belonged to said Chester Packer if so. state when and how many

Ans to 7th Int; - I think there were three bales of bags when I came here standing in the stoop of the Store, & the Col. Montanys told me they belonged to him and Mr Packer. I dont know what became of them. I took them into the Store after they had lain there a week or ten days after I came into the Store

8th Int; - Who occupied the Store into which these bags were taken

Ans to 8th Int; - The firm was called "J Montanys & Son"

9th Int; - State whether or not these bags were sold out of the Store?

Ans to 9th Int; Part of one bale I am positive was the balance I dont know.

10th Int; - What price did the bags sell for?

Ans to 10th Int; - I think we sold them at 30 cents each

11th Int; - Who were proprietors at the time these bags were sold

Ans to 11th Int: "J Montanye & Son" as I understood.

12th Int: - Was J Montanye alone named the same person who is defendant in this suit

Ans to 12th Int: - Yes - the same.

13th Int: State whether or not there was not four bales of bags taken into the Store?

Ans to 13th Int, I am not positive - I rather think there was but three

14th Int: State whether or not you at any time made any entries in the Company Books of Potter and Montanye. and if so, at whose request?

Ans to 14th Int: - Yes I did, by the order of John Montanye

15th Int, State what was the character of these entries whether they were entries of Grain Bills, or Moneys

Ans to 15th Int: They were entries of moneys that were paid for Grain purchased by Potter & Montanye

16th Int: State whether or not you ever made any en-

50

tries in these Company Books for cash & checks
rec^d by said Montano, if so, state fully (abstracted
to)

Ques. 16th Int; - None that I recollect

17th Int; State whether you acted as Clerk and kept
these company books & if so state for what length
of time

Ans. to 17th Int - I did not,

18th Int; - State how frequently you were called
upon by Montano to make entries in these
Company books

Ans. to 18th Int; - Some times once a day & again perhaps
not for a week - there was nothing regular
about it

19th Int - State if you know how the moneys of the
proceeds of the Sale of Patten & Montano's
Grain in Chicago were received whether
by "Express" or otherwise

Ans. to 19th Int; - I could not state - there was none
received while I was there, to my knowledge

20th Int; - State whether there was any grain
bought by Patten & Montano after you

57 came there:
Ans to 20th Int: Not to my knowledge:

Subscribed and sworn to before
me this 2^d day of March A.D. 1885

(signed) Stephen H. Cornell

Justices of the Peace (Clarks)

Cross Interrogatories and answers thereto by the Petitioner on the
part of the Defendant

1st Cross Int: In your examination in chief you stated that
the bags belonged to Potter & Montanye - Did Montanye
state in connection therewith who paid for the bags (objected)?

Ans to 1st Cross Int: - Not that I recollect of.

2^d Cross Int: You stated in your examination that the bags were
brought in to J. Montanye & Son's Store by you - at
whose orders was this done?

Ans to 2^d Cross Int: - I think the Col. (Montanye) told me to.

3^d Cross Int: - Who told you to open the bags?

Ans to 3^d Cross Int: - I don't recollect, whether the Col. (Mon-
tanye) or his son Edward told me to.

4th Cross Int: - Are you positive that either of them did?

Ans to 4th Cross Int: - Yes. I am.

5th Cross Int: - Do you know that John Montanye told
you to sell these bags?

Ans to 5th Cross Int: - I don't know whether it was him or
his son, - the one that told me to open them told
me to sell them.

6th Cross Int: - In whose employ was you at the time
and on whose account did you sell the bags?

Ans to 6th Cross Int: - I was employed by the firm of J Mont-
tanye & Son. John Montanye & his Son both spoke
to me to come - the bags were sold on the
account of J Montanye & Son

7th Cross Int: - About what time were these bags sold? -
what month & what year

Ans to 7th Cross Int: - I think it was in the fall of 1855.

8th Cross Int: - Do you know whether or not there was a
suit in the DeKalb County Court in which J Mon-
tanye & Son were Plaintiffs, & their complainants were
defendants, in which you was a witness, & when?

Ans to 8th Int: - There was a suit between these parties in
the County Court & I was a witness - It was late in
the summer of 1856.

9th Cross Int: - Was there an entry in the Books of Patten and
Montanye, ^{and Patten} charging Montanye & Son or Montanye
with these bags

Ans to 9th Cross Int: - That is what I never saw.

10th Cross Int: - Do you know what became of the bal-
ance of the bags which were not sold?
(Objected to)

Ans to Cross Int: I do not.

(Signed Stephen M Cornell

Subscribed and Sworn to

before me this 2^d day of

March 1858

Jas H Beveridge
 Clerk

Ans to 1st Int: - Not to my knowledge,
 Subscribed and sworn
 to before me this 2 day of (signed) Stephen H Cornell
 March 1888
 Jas H Benning Clerk

Interrogatories propounded to the said David J Hunt, a witness produced and sworn as aforesaid, on the part of the said complainants, and his answers thereto as follows:-

The Defendant by his Counsel objects to the relevancy of the testimony of his witness

1st Int: What is your name, age, occupation & place of residence

Ans to 1st Int: - My name is David J Hunt aged about 34 years by occupation a farmer, & reside at Adams in La Salle Co.

2nd Int: Are you acquainted with the parties to this suit complainants & Defendant, & if so how long have you known them

Ans to 2nd Int: - I am - I have known Mr Patten about 10 years - Mr Hatch about one year & Montague

about 8 years

3^d Int; - Were you acquainted with Chester Patten in his lifetime & if so how long did you know him previous to his death,

Ans to 3^d Int; - I was & knew him 10 or twelve years

4th Int; - State whether or not you know of a Partnership existing between Chester Patten & John Montanye in grain buying, & if so state when & where

Ans to 4th Int; - I think there were in partnership in the summer or fall of 1853, at this place.

5th Int; - State whether or not you have any knowledge of the amount of money or other property put into such partnership by said Chester Patten

Ans to 5th Int I have not

6th Int; - State whether or not John Montanye received any money or other property after said Chester Patten during said partnership, or at any other time. if you state what, and how much

Ans to 6th Int; - He did not receive any that I know

7th Int. 5^b Q. State whether or not, said John Montanyo at any time during said Partnership, or at any other time received any money or other property belonging to said firm. if yes state what

Ans. to 7th Int. - I don't know as he received any

8th Int. - State whether or not, said John Montanyo has admitted to you at any time that he received money or other property of said Chester Patter during the existence of said Partnership, or at any other time (alleged to)

Ans. to 8th Int. - I don't know that he ever did

9th Int. State whether you know anything further about this Partnership, or matters in controversy between the parties to this suit - if so state fully.

Ans. to 9th Int. - I don't know that I do - Montanyo wanted me to go with him to the Wright House & get some bags that belonged to the Partnership. He afterwards told me that he took the bags to Mr Patter's barn - afterwards complained that the administrators would not let him have them but subsequently told me that he had got them with their consent - I helped him to sort them out - he afterwards told me he had sold some of

59 them to different parties
Subscribed and sworn to } (signed) D. J. Hunt
before me this 3^d day of
March 1858.
Jas H. Pennington
Clerk

Graves Interrogatories and answers thereto by the
Witness, on the part of the defendant,

1st Graves Int; - What was the condition of these bags spoken
of by you in your examination in chief? Did you
see them more than once?

Ans to 1st Graves Int; I saw what was said to be the
same bags twice - the first time they were sacked
the second time I helped to sent them out - some
of them were very good bags - and some of them
were about worn out,

2^d Graves Int; In the conversation testified to by you
had with the defendant - did the defendant state
that any of these bags belonged to farmers, or other
parties (afflicted to)

Ans to 2^d Graves Int; He stated that a few of them did - and
he sent them out - perhaps from twenty to forty
belonged to other parties

Subscribed and sworn to be - (signed) D. J. Hunt
before me this 2^d day of March
1858.
Jas H. Pennington
Clerk

57

On January 1st proposed to the said Henry L. Alfond, a witness produced and sworn as the part of the said complainant, and his answers thereto as follows

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

Ans to 1st Int. My name is Henry L. Alfond age thirty six years by occupation a farmer & resides in the place

2nd Int. Do you know the parties to this suit the complainant and Defendant if so how long have you known them

Ans to 2nd Int. I have known Mr Potter about 15 years Mr Hatch about 12 years. & Mr Montague about 3 years

3rd Was you acquainted with Chester Potter in his lifetime and how long did you know him previous to his decease

Ans to 3rd Int. I was I know him 12 or 15 years.

4th Int. State whether or not you had any knowledge of Chester Potter & John Montague being in Partnership in grain buying & if so state when and where

Ans to 4th Int. Chester Potter, told me that he and Mr. Montague were in Partnership in buying grain that was in the year 1855 in the place (opposite to)

15^d
5th Int. State whether or not you ~~know~~ have any knowledge of any money or other property belonging to said Chester Patten going into the hands of John Montague during said Partnership or at any other time (objected to)

ans to 5th Int. I have not.

6th Int. State whether or not you have any knowledge of money being paid into the hands of John Montague in Chicago at any time during said Partnership or subsequent thereto & if yes, state by whom paid how much & when (objected to)

ans. to 6th Int. I believe so. It was paid by Mr. Clow the Commission Merchant in Chicago to Montague. It was \$3000. stated by Mr. Montague. It was during the latter part of September or the first part of October 1853. (objected to)

7th Int. State whether or not at any time after the decease of said Chester Patten you purchased of John Montague a quantity of Baps & if yes how many at what time was it to whom do they belong & what were they worth (objected to)

ans to 7th Int. I did. I purchased 500. I think it was the last days of May 1856. I think Mr. Montague told me they were baps that belong to him & Mr. Patten when they were in the grain business - they were worth

59

to auto racks (object to)
 1st Inter. State whether or not said Chester Potter, John Montague during the fall of 1855 were doing business at this place as partners in grain buying and 2nd Inter. I believe they were

W L Alfong

Subscribed sworn to before me

this 3rd day of March 1855

Jas H. Remick

Cross Interrogatories and answers thereto by the witness in the part of the defendant
 1st Cross Interrogatory. You state in your answer to the 6th Interrogatory in your examination in chief that John Montague told you that he had got \$3000. of Hole in Chicago. when was this commutation and under what circumstances.

Ans to 1st Cross Inter. The commutation was in Mr. Hole's office in Chicago I think on North Water Street. It was in the latter part of September or the first part of October 1855. I had some business with Mr. Hole & went in to his office and saw him & Mr. Montague standing by the counter talking about money matters. I saw Mr. Montague receive a package (supposed it to be a package of money). Mr. Montague told me that he had just received \$3000. & that he must go home and pay it out (the part of the answer in

60

Backus objected to answer suggested by Com-
plainant & Council to the witness and also object-
ed to because (incompetent)

2^d Cross Int. Have you stated all the conver-
sation in Sole's office at the time aforesaid
had between you & Montange in relation to said
\$3000.

Ans to 2^d Cross Int. I believe I have

3^d Cross Int. Did Montange state in that
conversation to whom the \$3000. belonged and if
so give the language ^{or words} in which he made such state-
ment

Ans to 3^d Cross Int. He did not state to who

4th Cross Int. Did Montange state in that conver-
sation for what she was going to pay out the money
& if he did not what purpose and what was
the language or words used by Montange (Spent to)

Ans to 4th Cross Int. I think he did not state

5th Cross Int. What is the individual name of
Mr Sole to whom you refer in your answer
and what is the name of the firm to which he
has belonged if any in Chicago what was the
nature of the business of the firm

61

ans to 5th Cross Int. I think his name is
le S or Charles S Hole. I think the firm name is
C S Hole & Co. their business was receiving produce and
selling on commission.

6th Cross Int. Where was the office of business of the said
firm.

Ans to 6th Cross Int. It was on North Water Street
in Chicago.

7th Cross Int. What member of the firm was present
in the office of C S Hole & Co at the time of the
said conversation & of whom the said package was
received

Ans to 7th Cross Int. I think it was C S Hole.

8th Cross Int. Did you see any money counted out
by the said C S Hole and the same handed
to the said Mortgages at the time above alluded to
Ans to 8th Cross Int. I did not.

9th Cross Int. Did you see any one at that time
count any money and the same paid said Mortgages

Ans to 9th Cross Int. I did not.

W. L. Alford.

(Subscribed & sworn to before me)

this 31st day of March 1855.

Jas W. Bennett

Swearing to the said Edward
Wheeler a Witness procured and sworn as afore-
said in the part of the complainants and his
answers thereto as follows.

1st Interrogatory What is your name age occupa-
tion and place of residence

Ans to 1st Int. My name is Edward Wheeler age
Twenty eight years by occupation a farmer dealer
and reside in Lomax and Shelby County

2nd Int. Are you acquainted with the parties to the
suit if so how long have you known them re-
spectively.

Ans to 2nd Int. I saw I have known Mr. Watts but
a short time has months perhaps have known Wm
Patterson about two years & Mr. Montague since 1855

3rd Int. Was you acquainted with Chester Patten in
his lifetime & if so how long did you know him
previous to his decease

Ans to 3rd Int. I knew him from August 1855 up
to the time of his decease

4th Int. State whether or not you have any knowl-
edge of the said Chester ^{Pat.} & John Montague being

63

partners in grain buying if so when and where

Ans to 4th Int. They claimed to be partners in this place in the fall of 1855

5th Int. State whether or not you have any knowledge of what was put into said Partnership whether money or other property by said Chester Potter

Ans to 5th Int. I have not.

~~6th Int. State whether or not you have any knowledge of any money or other property belonging to the said Chester Potter or of the said firm of Potter & Mortgage going into the hands of said John Mortgage during said partnership or subsequently or after State fully which which is not true~~

~~Ans to 6th Int. They claimed to be partners in this place in the fall of 1855~~

~~5th Int. State whether or not you have any knowledge of any money or other property belonging to the said Chester Potter or of the said what was put into said Partnership whether money or other property of the said Chester Potter~~

~~Ans to 5th Int I have not~~

Q^d Int. Shall witness or not you have any knowledge of any moneys or other property belonging to the said Chester Patten or of the said Affairs of Patten & Montague going into the hands of the said John Montague during said Partnership or subsequently & if yes state fully which what & when

Ans to 6th Int. I bought some grain of Montague on the 9th of October 1855 I bought 109 ³/₄ Bushels Spring Wheat & 63 ³/₄ bush Winter Wheat - Oct. 31st 1855 I bought 137 ³/₄ Bush Corn - the Wheat amounting to \$ 223⁰⁰ & the Corn to \$ 77. I paid the money to John Montague.

7th Int. Shall witness or not you have any knowledge as to whom this Wheat & corn as purchased by you belonged & if so state fully

Ans to 7th Int. The Wheat I could not state anything about as to ownership it was in the Company's Warehouse the Corn a portion of it was bought by Chester Patten - one load I am positive of - the balance I know nothing about. Most of the bags the wheat was in were marked P.M. (as opposed)

Subscribed and sworn to before me E. W. Lewis
this 3rd day of March 1856
Jas McQuigley

65

And answers thereto
Cross Interrogations, by the witness on the part
of the Defendants

1st Cross Int. Do you ^{know} whether the wheat you have
spoken of in your Examination in Chief belonged
to one James Steens or not at the time you pur-
chased the same - that is the wheat in the bags

(Objected to)

Ans to 1st Cross Int. Where was a portion of the wheat
that I bought in Mr Steens Bags but in the
Warehouse by Mr Steens, at the time it was put in
that Steens said it belonged to him (Objected to by counsel)

2^d Cross Int. Do you know who bought the wheat
in the bags or any of them to the Warehouse before
you purchased the same of Montange (Objected to)

Ans to 2^d Int. Mr James Steens bought a portion of
them

3^d Cross Int. Do you know of your own knowledge
to whom any of the wheat you bought of Montange
belonged when purchased the same.

Ans to 3^d Cross Int.

I do not positively

4th Cross Int. Who was in possession of the wheat
at the time of the purchase or who was it that ex-
ercised exclusive control over the same

Ans to 4th Cross Int. From the time the Steens wheat

66

was put into the Warehouse intact. I purchased it
no person spoke to me about it: nor did I see
any one receiving control over it the whole of the
wheat was in the hands of the Rail Road Company
& they were receiving control over it for safekeeping

5th Ques Int. Was the Steins wheat as you call
it in your previous answer a part of the wheat
that you bought of Montange as stated in your
narration in chief & how much was there of it
that is the Steins wheat.

Ans 5th Ques Int. It was a part I ~~cannot~~ ^{could not} be
positive I think there were 25 Bags there was from
20 to 30 Bags. Our Steins Bags would hold about 2 1/2
Bushels each that is some of them - some were
smaller holding about 2 Bushels the majority of
them were of the larger Bags

6th Ques Int. do you know whether Mr Montange
sold that wheat as the agent of Steins or not -
that is the wheat in Steins Bags

7th Ques Ques Int. Mr Montange said that he had
the agency or control of it sometimes saying he had
the agency & sometimes the care and control of it
(obj'cted to)

Subscribed & sworn to before me this 3rd E K Loring
day of March 1865 Jas H. B. Dwyer
clerk

67

Interrogatory propounded to the said George Duttoy
as witness produced and sworn as aforesaid on the
part of the said Complainant and his answer
here to as follows.

1st Interrogatory What is your name, age, occupation
and place of residence

Ans to 1st Int. My name is George Duttoy age thirty
two years occupation a Farmer and residing in the
town of Comanant Reekald County

2^d Ques Are you acquainted with the parties to
this suit and if so how long have you known them
respectively

Ans to 2^d Int. I have known Mr Watts a year or
more Mr Potter over 20 years & Mr Moulange four
years

3^d Int. Was you acquainted with Chester Potter in
his lifetime and if so how long was you acquainted with
him formerly to his decease

Ans to 3^d Int. I have known him for 25 years

4th Int. State whether you have any knowledge of
Chester Potter and John Moulange being Partners
in grain buying & if so state when and where

Ans to 4th Int. I have it was in the summer & fall
of 1853 at this place

Q^d Int. State whether or not you at any time during said Partnership purchased grain of said Potten & Montange if so how much & when & where did you pay for it. State fully (Objected to)

A^d Int. I purchased some wheat of the firm of Potten & Montange on the 3rd & 4th of September 1853 on the 3rd day I purchased 32³/₄ Bushels on the 4th 25³/₄ bushels. I paid Cal John Montange for the wheat Sixty dollars I paid before the death of Mr. Potten & \$9⁰⁰ after (Objected to)

Q^{uo} Int. State whether or not you have any knowledge of any money or other property belonging to said Chester Potten or to the firm of Potten & Montange going into the hands of said John Montange during the continuance of said Partnership or subsequently & if yes State fully as to the time amount & also name & description of the property

Ans to Q^{uo} Int. I have no positive knowledge except what I have stated before

George Metcalf

Subscribed and sworn to

before me this 3rd day of March 1853

Jat. H. Beveridge

64

Cross Interrogatories and answers thereto by the witness on the part of the defendant

1st Cross Int. Did you know of your own knowledge to whom the wheat that you say belonged to the firm did actually ^{belong} & of which of the firm did you say the wheat

Ans to 1st Cross Int. Each of the firms told me that it belonged to the firm. I made the bargain with Chester Potter.

(Left objected to witness stating what Mr Potter said as to ownership of grain.)

2nd Cross Int. When and where did Montague tell you that the grain in question belonged to the firm of Potter & Montague and give the words Montague used

Ans to 2nd Cross Int. I do not recollect the precise time he spoke to me about it several times before I paid him for it he said it belonged to his firm & he supposed he had a right to take the pay for it. The several conversations had about it were held in this town I could not give Montague words

3rd Cross Int. What conversation did you & Chester Potter have about the pay for the wheat & did you pay all that was charged on Potter Books against you

70

I did not Patten tell you that he would
 settle with you for the wheat
 Aug 10 3d Army Int. He said I could pay my
 Mortgage that he (Patten) was going East & it
 would be the same thing. I never saw any
 Change on Patten Books

George Nutcaty

Subscribed and sworn to before
 me this 3rd day of March 1858

J. W. Beveridge
 Clerk

On which is endorsed as follows: -

Opened by order of Court & filed April 5, 1858.
 J. W. Beveridge Clerk

And afterwards to-wit: - on the 15th day of April A.D. 1858. there was filed in the Office of the Clerk of said County the Replication of the Complainants Isaac Hatch and William M. Patter. to the answer of the said Defendant John Montanye which said Replication is in the words and figures following that is to say: -

State of Illinois }
 De Kalb County }
 De Kalb County }
 April Term A.D. 1858

Isaac Hatch &
 William M Patter ad-
 ministrators of the Estate
 of Chester Patter deceased

vs
 John Montanye

In Chancery

The Replication
 of Isaac ~~Hatch~~ Hatch & Wm M Patter
 Complainants. to the answer of John Mon-
 tanye Defendant: These repliants saving
 and reserving unto themselves, all and all
 manner of advantage of Exception to the
 manifold insufficiencies of the said an-

sworn for replication thereunto say that they will
 aver and prove their said Bill to be true cer-
 tain and sufficient in the law to be ans-
 wered unto, and that the said answer of the
 said Defendant is uncertain, untrue and
 insufficient to be replied unto by
 these Repliants;

Without this that any other matter or
 thing whatsoever in the said answer
 contained material or effectual in
 the law to be replied unto, confessed
 and avoided traversed or denied
 is true.

All which matters and things
 these Repliants, are and will be
 ready to aver and prove, as this
 Honorable Court shall direct, and
 humbly pray, as in and by their
 said Bill they have already
 prayed,

Mayo^{and} James
 Com^{ts} Sal^{ts}

On which is endorsed as follows,
 to-wit:-

Filed Apr 15, 1855
 Jas H Denio/clg

73

And afterwards on the 17th day of April AD 1858. there was filed in the office of the Clerk of said Court the following Bond, to-wit:-

Know all Men by these Presents That we John Montanye and James L Knowlton of the County of St Alb and State of Illinois. are held and firmly bound unto William W Potter, and Isaac Hatch, administrators of the Estate of Charles Potter deceased. and their survivors in the penal sum of Three Thousand Dollars the payment of which well and truly to be made we bind ourselves, our heirs Executors & administrators jointly severally and firmly by these Presents Witness our hands and seals this 9th day of April AD 1858.

The condition of the above obligation is such that whereas the above named obligees. have heretofore as such administrators sued out of the Circuit Court of St Alb County ^{Ill} a certain Writ of Summons against the above claimant John Montanye upon a bill filed in said Court in the Chancery side thereof upon which Bill a Writ of Injunction has been granted by the Judge of said Court restraining the said Montanye from collecting a certain Judgment or allowance of \$1000 ^{\$124} in favor of the said Montanye against said Potters Estate in the County Court of said

74

County, and from doing certain other things in said Bill mentioned

Now if said John Montanye shall fully pay and satisfy whatever Judgment, order or decree of said Court that may be rendered or adjudged against him upon the final hearing & determination of said cause now pending in equity against him, then this obligation to be void, otherwise to remain in full force and effect.

(signed) John Montanye ~~and~~
James L Knowlton ~~and~~

On which is endorsed as follows:—

Filed April 17th 1858
J. H. Greenidge
Clerk

75-

~~Defendants by their Solicitors. and moves the Court to dissolve the Injunction herein;~~

And afterwards to-wit: on the 17th day of April A.D. 1858. the same being as yet one of the days of the April Term of said Court for said year the following proceedings were had and entered of Record in said Court to-wit: -

7023
2/3

Isaac Hatch et al
Adms' vs Chester Patterson
John Montague

{ Bill for Injⁿ
and Relief

This day came the parties by their Solicitors. on the Defendant moves the Court to suppress the Depositions of Le Baron; and the Court being fully advised sustains said motion and orders that the Deposition of Le Baron filed in this cause be, and the same is hereby suppressed; and thereupon, the Court being fully advised as to the Defendant's motion to dissolve the Injunction, orders that the Injunction herein be dissolved on the filing the Defendants with James L. Hamilton as security in the sum of Three Thousand Dollars.

Le Knowlton as surety in the sum of Three
Thousand Dollars

And afterwards to-wit: on the 8th day of
July 1880 there was filed in the office
of the Clerk of the District Court for said
DeKalb County, the following Substitutions
in the above entitled cause, to-wit:

(That attached to Substitutions)

James Hatch ^{and}
William M. Patten
Administrators of the
Estate of Charles Patten
deceased

John ^{vs} Montague

In DeKalb County
District Court

In Chancery

You will please take
notice that the above named Complainants
James Hatch and William M. Patten, will
appear at the Hotel of John M. Goodell
at Sumner Station in said County of
DeKalb on Tuesday the 6th day of July 1880
at ten o'clock in the forenoon of
that day for the purpose of taking before
James A. Pennington Clerk of the District

77

And afterwards to-wit:- on the 18th day of April 1858, there was filed in the office of the Clerk aforesaid Court, the following affidavits to-wit:-

State of Illinois }
De Kalb County } James L Knowlton
being duly sworn doth
say that he is worth above all indebtedness and
exemption from levy and Sale under process
of any Court at least three thousands Dollars,
and further says noth.
Subscribed & Sworn to } James L Knowlton
before me this 9th day
of April 1858.
Chas Kellum Notary Public

State of Illinois }
De Kalb County } Asa Miller being duly
sworn doth say that he
is acquainted with
the farm owned by James L Knowlton contain-
ing as he believes 160 acres and considers the
same worth at least \$20⁰⁰ to \$25⁰⁰ per acre.
Subscribed and Sworn to } Asa Miller
before me this 9th day of
April 1858
Chas Kellum
Endorsed as follows
Filed April 18. 1858
Jas H. Pennington

State of Illinois }
 De Kalb County } William Shephardson
 being duly sworn doth
 say that he is acquainted with the farm owned
 by James L. Knowlton, containing as he thinks
 160 acres, and considers the same worth at
 least twenty five Dollars per acre
 Subscribed and sworn William Shephardson
 to before me this 9th
 day of April 1858 }
 Chas Kellum
 Notary Public

State of Illinois }
 De Kalb County } Orono J. Wilson being
 duly sworn doth say that
 he is acquainted with
 the farm owned by James L. Knowlton, con-
 taining 160 acres, and considers the same
 worth at least \$25.00 per acre
 Subscribed and sworn
 to before me this 9th
 day of April 1858 } Orono J. Wilson
 Chas Kellum
 N.P.

On which is endorsed: -

Filed Apl 18. 1858

J. A. Beresford Clerk

And afterwards. to-wit: - on the 8th day of July AD 1858 there was filed in the office of the Clerk of the Circuit for said DeKalb County the following depositions in the above entitled cause. to-wit: -

(Notice attached to Depositions)

Isaac Hatch ^{and}	} In DeKalb County
William W Potter	
Administrators of the	} Circuit Court
Estate of Chester Potter	
deceased	} In Chancery
^{vs}	
John Montague	

You will please take notice that the above named Complainants Isaac Hatch and William W Potter will attend at the Hotel of John W Goodell at Simonauk Station in said County of DeKalb on Tuesday the 6th day of July AD 1858. at ten o'clock in the forenoon of that day for the purpose of taking before James H Beswidge Clerk of the Circuit

8/

Count, of said Alameda County, or before some
 other person authorized by law to take the
 same the depositions of Charles H. Baron
 Isaac Ratishauser, James M. Cleary,
 James M. Cleary Jr, Henry Patten, J. B.
 Carpenter, L. D. Patten, J. R. Johnston, with
 Rail Road Freight Brokers, Theron Patten
 & Geo. Metcalf, and others of the State of
 Illinois, on the part of said Complainants, com-
 mencing at ten o'clock in the forenoon, or as
 soon thereafter, as may be, and continue from
 day to day until all are taken, at which
 time and place you will appear and put
 in your Interrogatories if you see fit.
 June 22nd, 1858

To the above named
 John Montague and
 to Charles Kellum, and
 A. B. Con. his Solicitors

Edward L. Mayo
 Solicitor for Complainants

Isaac Hatch and
William M. Batta
admr^s of the Estate of
Chester Batten dec^d.

vs
John Montano

In the De Kalb
County Circuit
Court,

In Chancery

Depositions of James M. Cleary Jr. J. D. Johnston and Charles H. Le Baron taken in the above entitled cause now pending and undetermined in the De Kalb County Circuit Court in the Chancery side thereof in pursuance of the Notice thereto attached

Complainants present by C. L. — their Solicitors and also in person Defendant present in person and by J. H. Brown his Solicitor

Interrogatories propounded to James M. Cleary Jr. a witness produced and sworn on the part of the Complainants and his answers thereto as follows, —

Q. What is your name, age, place of residence, and occupation?

Ans. My name is James M. Cleary — age twenty

83
thirty years. I reside in Victor Township County
of Clark & State of Illinois - am a farmer,

Qnt 2^d Are you acquainted with Isaac Hatch & William
W Patten, administrators of the Estate of Chester
Patten deceased. Complainants and John Montanye
Defendant in this Suit? and if so, when, where
and how long you have known them respectively?

Ans. I am acquainted with all three aforesaid. I have
known Isaac Hatch and William W Patten
about 22 years - I have known John Montanye
the line three years next fall knew Mr Hatch
at Little Rock. Mr Patten and Mr Montanye
at Sennauk,

Qnt 3^d Were you acquainted with Chester Patten deceased
in his lifetime? and if so, when, where and
how long did you know him?

Ans. Yes Sir: I became acquainted with him
about 22 years ago on his farm in the town
of Sennauk - was acquainted with him until
his death

Qnt 4th Did you know the said Chester Patten ^{the said} and
John Montanye, acting as Partners in any kind of
business? and if so, in what kind and when and

where did they carry on said business? (abspected to by J. M. Brown Left Sale)

Ans. Yes Sir, I think I did: it was in buying grain at Simonauk Station I think about three years ago (abspected to by J. M. Brown Left Sale)

Int^d 5th Did you, or did you not know after said Chester Patter letting the said John Montanye have any money: and if so when and how much did he let him have: and how did you learn the fact? State fully

Ans. Well, I think I did - the fall the said Chester Patter & John Montanye bought wheat in Simonauk. I think Mr Montanye said it was five hundred dollars. Mr Patter and Mr Montanye ^{was} ~~were~~ saving myself, father and brother some money for grain. We wanted to get it, and Mr Patter was gone. Mr Montanye was just preparing to go away himself - We were urging Montanye for the money - Montanye said they were scarce of money that he supposed that Mr Patter if he was here had money. Montanye said that he had got five hundred dollars of Patters money

Cross Examined by the Defendant

85

Question 1st When did you first know the said John Mont-
tanyo?

Ans. It was the fall of the year the said Potter
& Montanyo bought grain at Simonauk - I think
the fall of 1855.

Question 2^d Did you not know of Chester Potter going
East; and if so did you know said John Mont-
tanyo before said Chester Potter went East?

Ans. I knew Mr. Chester Potter went East - and
I knew said Montanyo before said Potter went
East.

Question 3^d How did you know the said Chester Potter
deceased and said John Montanyo were acting
as partners in buying grain at Simonauk
and when did you first know the fact, and
how long did said Chester Potter deceased
said John Montanyo so act as partners?

Ans. I heard both say so, and others - shortly after
they first commenced buying grain as I think
I think they were in partnership until Chester
Potter's death.

Question 4th Which of the said partners bought

86 Grain of your father, yourself and brother?

Ans I do not know. I was not present when the Contract was made.

Question ^{5th} Do you or not of your own knowledge know that either of the said farmers, while in partnership as aforesaid bought grain of your father yourself and brother, and if so which one bought the Grain? (Objected to by Compt Sal)

Ans I know that Potter and Montano bought the grain of my father, myself and brother from the fact that I helped deliver the grain, and as I think, saw Montanoes Silver money on it.

Question ^{6th} How much Grain did you help deliver to said Chester Potter deceased and to said John Montano, and how much money did you see paid for said Grain? (Objected to by Compt)

Ans. I do not recollect the number of bushels or how many loads - nor do I recollect the amount of money paid on said Grain

Question ^{7th} Did you and your brother ever own any grain and if so did you sell any grain to said Chester Potter and John Montague, while they were acting in partnership in buying Grain in Sarnauk? (Objected to by Counsel)

Ans. I and my brother did own grain: as to my brother I cannot say. I do not recollect of selling any myself. It was all sold together. I think by my father, and it belongs to us three

Question ^{8th} Did you of yourself ever urge said John Montague to pay money owing to your father yourself and brother for grain just as said Montague was preparing to go away, and if so, when and where?

Ans. I did not say much myself. I was with my father, and he did most of the talking. It was out near the passenger house at Sarnauk

Question ^{9th} - When and where was the money for this Grain paid? ^{and how much money was paid} (Objected to by Counsel)

Ans. Most of the money for the Grain was paid at the Station in Sarnauk - The final settlement was made at our house

66 Do not recollect how much money was paid
at any particular time

Question 10th Who made the final settlement at your house
(objected to by Amblett Sal)

Ans I was not at home when the final settlement
(objected to by Amblett Sal)

Question 11th Do you of your own knowledge know that
any settlement for grain took place at your
House? (Objected to by Amblett Sal)

Ans I only know it from hearsay

Question 12th Was there ~~any~~ any difficulty between
you and said John Montague, and if so
does it still exist?

Answer Yes Sir, but it does not now exist

Question 13th Do or not you now cherish unfriendly
feelings against said John Montague?

Ans. I do not - I have nothing against him at all

Question 14th Did you hear said John Montague
at the time you were urging him to pay for

54 Chain. say whether the said Five Hundred
Dollars he got of Potter was Potters private
money, or was money belonging to the firm
of said Chester Potter deceased, and said
John Montanye?

Answer I did not hear him say.

Question 15th Did you ever hear said John Montanye
say what he did he with the said Five Hun-
dred Dollars, which you state that said
John Montanye said that he had got of said
Potter (objected to by Amble Sol)
Ans — Said Montanye said that he had got Five hundred Dollars of
Potter, and paid up some of our bills, as near as I can recollect.

Question 16th How old were you when you, your
father and brother sold Chain for the last
time to said Chester Potter deceased and to said
John Montanye

Ans I think I was in my twentieth year

Subscribed & sworn to (signed) James McCleary Jr.
before me this 6th day
of July A.D. 1808
Jas H. Pomeroy Clerk
By J. Kellogg Dep. Clerk

(Adjourned to meet at 7 o'clock to-morrow morning)

July 7th 1858 - 7 o'clock AM.

Resumed the taking of Testimony Parties present in person & by their Solicitors

Interrogatories propounded to J. D. Johnston a witness produced sworn and examined on the facts of the Complaints with his answers to the same: -

Int 1st What is your full name, age, place of Residence & occupation?

Ans John D Johnston, - age twenty five years Reside in Emmenauk - am Station agent for the C. B. & N. Rail Road at Emmenauk

Int 2^d Are you acquainted with Isaac Hatch and William M Patter administrators of the Estate of Chester Patter dec? Complainants in this Suit, and John Montague Defendant or either of them, and if so how long have you known them respectively

Ans I am not acquainted with Isaac Hatch am with Patter - am not personally acquainted with John Montague having only seen him for a few weeks past - Have known W. M. Patter about three months - Have not

Q1 seen Montague more than two or three times - know him by sight.

Int 3^d Were you or not in his lifetime acquainted with Charles Patten late of said Ironauk now deceased,

Ans He is.

Int 4th To what Rail Road Company do you refer in your answer to the 1st Interrogatory

Ans Chicago Burlington and Quincy Rail Road Company.

Int 5th Have you or not as the Station agent, of said Company, the custody their freight Books kept at Ironauk Station Albany Co in the Summer & fall of 1855? (objected to by deft.)

Ans. I have.

Int 6th Will you please present here the said Books of Freight received in the summer and fall of 1855. (Objected to by deft.)

Ans (The Witness here produced the Books) this is the Book

Ind 7th Please examine said Book and see if there are any Entries made therein of any property received at Simmamauk Station for Chester Potten and if you find any give the entry in the precise words and figures having including who Received & Receipted the same? (Objected to by deft)

Ans. I find the following "Sept 19th 1853: From Hand for W Potter Arctics Received 4 Bales Bgs. Weight or quantity 400. Rail Road Charges 40 cents Paid here" under the head of Remarks I find the above receipted by John Montage (Objected to by deft)

Ind 8th What is meant by 400 in said Entry? State if you know. (Objected to by deft)

Ans It is the weight of the bales or bags in pounds

Ind 9th State if you know. About how many Bgs it would take to weigh 400 Lbs? (Objected to by deft)

Ans That is something I don't know any thing about

Ind 10th Did or did not the Book of Entries here presented by you come into your hands as such Station Agent as a part of the Records of said said Station (Objected to by deft)

93
Ans

It did,

Cross Examined by the Defendant
Justin 1st When did you succeed as Station Agent at
Somanauk?

Ans

I succeeded W S Merriman.

Justin 2^d Do you know who was Station Agent at Somanauk at
the Summer and Fall of 1855?

Ans

I do not.

Justin 3^d Were you Station Agent at Somanauk in the sum-
mer & fall of 1855?

Ans

I was not.

Justin 4th When did you first enter on the duties of Station
Agent at Somanauk for the Chicago Burlington &
Quincy Rail Road Company?

Ans

The first of May 1858.

Justin 5th Did you ever have anything to do with or ex-
amine the said Fought Book here presented, what
called on to give in this deposition and if so
when and where and by whom was your atten-
tion first called to said Book?

94
Ans.

I never had anything to do with the examination of the Book till to day I took the custody of the Book when I took charge of the Books as agent of the Station.

Ques. 6th Do you of your own Knowledge know the Book here presented to be the Freight Book of the said Chicago Burlington & Quincy Rail Road Company kept by said Company in the summer and fall of A.D. 1853?

Ans. I have no Knowledge of my own that this is the Book. I found the Book in the Company's Office on my taking charge of the Books as agent.

Ques. 7th What if any words and figures you find on the inside and back of the Book here presented?

Ans. I found the following words "Freight Received Chicago & Aurora R.R."

Ques 8th Do you of your own Knowledge know the Book here presented to be the Freight Book of said Chicago Burlington & Quincy Rail Road Company in any other way than by an examination of said Book?

Ans. I do not.

Ques 9th When did you first examine said Book?

93
Aug. Today.

Qu. 10th When did you first see said Book?

Ans. Yesterday that is to notice it.

Qu. 11th When did you first take into your hands said Book here presented?

Ans. I cannot answer definitely in making changes in my Office I have moved them.
(Answer expected to be a more definite answer to the question)

Qu. 12th Are you frequently out of your office and if so where do you leave it any body in said Office?

Ans. I am frequently out of my Office and I never leave any one in my place my door is always locked when I am absent.

Qu. 13th Who delivered into your custody the Books you speak of?

Ans. They came into my hands as the successor of B. P. Munnion now the Books were delivered to me by B. P. Munnion.

Qu. 14th Did you notice at the time B. P. Munnion delivered you the Books the particular books here presented?

96
ans.

I noticed that there were Two Freight Received Books
and one Freight Forwarded Book his Book was
one of them.

Ques 15th do you mean that C. S. Merriman took the Book
then presented in his hand and delivered it to you
in hand?

Ans. No Sir he delivered it to me in common with the
rest of the Books and papers belonging to the Office.

Ques 16th did C. S. Merriman take the Two Freight received
Books and one Freight Forwarded Book and de-
liver them to you in hand

Ans. No sir.

Ques 17th Is or not all the delivery ever made to you of this
Book here presented the delivery to you of the
Chicago Burlington & Quincy Rail Road Company's
Office at Emporium

Ans. That is all the delivery made to me
J. L. Johnson.

Sworn to and subscribed before me
this 7th day of July A. D. 1858. Jas. H. Burroughs clks }
By J. B. Kellogg Not. pub. }
ans.

97

Interrogations propounded to Charles H. LeBaron
a Witness foreward sworn and examined on
the part of the complainants until his answer to the
same

Interrogatory 1st What is your full name age place of resi-
dence & occupation

Answer Charles H. LeBaron. age thirty five - Resided Oni-
da Knox County Illinois occupation Grain dealer.

Int. 2^d are you now acquainted with the parties to the suit
or either of them & if so when and how long have
you known them respectively?

Answer I know them all have known them all since the
spring of A.D. 1853 - have known Wm. Patton since
1854, in the summer - have known Isaac Sheth &
John Montague since the spring of A.D. 1853.

Int. 3^d Where did you reside at the time you became ac-
quainted with them, how long and your then residence and
what was your then occupation?

Ans. Keokuk Iowa until late in
the fall of A.D. 1856 - In A.D. 1854. Isaac trading
in a store - I was in a store about twelve months
then in the lumber business until the fall of A.D.
1856

98
Quesd 4th

Know you or not, acquainted with Chester Patten in his lifetime late of DeKalb County Illinois now deceased & if so when & where & how long were you acquainted with him where did said Chester reside during your acquaintance with him and what was his business or occupation?

answery I was acquainted with said Chester Patten in his lifetime from the time he moved from his farm into town until his death which I think was in December A.D. 1855. He resided in his own house here at Pomonauck Station. He commenced grain dealing in August A.D. 1855.

Quesd 5th Do you or not know of said Chester Patten having a partner in buying and selling grain? and ~~what~~ ^{who} was that partner at about what time did said copartnership commence and how long did it continue? (Objected to by self)

ans. I do know that he had a partner in his grain business but John Montague the defendant here was that partner. said copartnership commenced about the middle of August A.D. 1855 and continued for a year I know up to the time of said Chester Patten's death.

Quesd 6th Do you know from your own knowledge or from the admission of said John Montague how much money or property ~~both~~ ^{both} the said Chester Patten had in-

49 to the business of said copartnership & if so state fully
(Objected to by Left because leading & suggestive)
Answer Name and question wanted. -

Ind 7th State if you know how much money if any or other
property or either the said Chester Patton put into the
business of said copartnership.

(Objected to by Left)

Answer. About Seventeen Hundred Dollars in the whole as
far as my knowledge goes.

Ind 8th What is the present name of the Rail Road Com-
pany whose road now passes through "Lomanauk
Station," was or was not the Company always known by its
present name? & if not what was its former name

(Objected to by Left for the reason that it should be proved
by Record and its charter)

Ans Chicago Burlington & Quincy Rail Road - that
part of it which runs through Lomanauk Station
was not known by that name at first its ^{former} name
was Chicago and Aurora Extension Rail Road com-
pany.

Ind 9th Were you or were you not present to day when John
H Johnson presented here in evidence what per-
haps to be the Book of Rights secured by said
Company at Lomanauk Station in the summer and
fall of A.D. 1880 and did you see and examine
said Book. (Objected to by Left)

ans. The Book was in bond when I came into the room and I have remained to same
 Ind. 10th Where is that Book now?

Ans I hold it in my hand.

Ind. 11th Please look at and read said Book and state whose it was in Feb. 1855 if you know where it was kept, for what purpose and how you know these facts state fully
 (Objected to by self)

Ans. It belonged to the Company of the Chicago and Alton & Extension Rail Road, was kept in this Office in the Freight House, at Terminal Station at that time for receiving all Freight received I was in company with Alvarez ^{in the lumber business} ~~Sage~~ at the time, and signed the Book when the lumber was delivered frequently
 (Objected to by self)

Ind. 12th are you or are you not acquainted with the handwriting of Col. John Montgomery Alford and in the handwriting
 (Objected to by self)

ans I think I should know his signature if I should see it

Ind 13th were you or were you not present to day when John R Johnson in giving his deposition gave as a part of said deposition in words and figures a certain Entry from the Book above mentioned by

you and if so please read to said Entry and shall if you know whether or not the signature of John Montague is affixed to the receipt therein is the genuine signature of the defendant in this suit. (Objected to by Resp. because the question assumes the testimony of another witness than the defendant testifying and certain facts not proved by this defendant herein testifying)

Answer. I was, (The Witness here examines the entry) the entry is before me - To the best of my belief the signature ~~therein~~ ~~herein~~ affixed is in Col. John Montague's the defendant's own handwriting. (Answer objected to by said Resp.)

Ind. 14th State if you know how many Bags there are in a Bale. (Objected to by Resp.)

Ans. Some Bales have a hundred and some a hundred and fifty usually one hundred - according to their manufacture

Ind. 15th State if you know how many bags it would take to weigh four hundred pounds (Objected to by Resp.)

Answer. Bags weigh from ninety to a hundred pounds to the Bale of one hundred Bags

10² Course Examined by Magistrate

Question^{rs} Did you see any money or other property
either paid into the said Partnership of the said
Charles Patton and the said Col John Montague
and if so state fully when and where you saw
it paid and how much money and how much
and what kind of ^{other} property was paid if any

Answer I saw no money paid in I saw no property paid in

Second Examination assumed by the Complainant

Int^r Now do you know that the said Charles Patton
paid into said Partnership the sum of Seventeen
hundred dollars as testified by you in your
answer to the Seventh Interrogatory above propo-
sed to you in your direct Examination
(Objected to by Def^d)

Answer Previous to Mr Patton going East in the fall of
A.D. 1855. The Mr ~~Charles~~ Chester Patton called
on me and requested me to go to the house of
Mr Chester Patton and look over the accounts of
the firm known as Patton & Montague I went to
his house and there met Chester Patton and Col
John Montague and assisted them the said
firm of Patton and Montague in looking over the business
affairs - It was then represented to me by the

103

concord of both parties, that Chester Patton did have at the time said copartnership of Patton and Montoye was formed in the hands of Leif Hale and Company of Chicago upwards of Twelve hundred dollars to his credit which was paid to the credit of said Chester Patton in looking over the affairs of the said Patton & Montoye also that the said Chester Patton did put from time to time into the firm sums of money or property amounting to about five hundred dollars (Objected to by H. H. D.)

Cross Examination again resumed.

1st Ques.

For what purpose were you called to look over the affairs of the firm of Patton & Montoye

Ans.

I understood the purpose to be this, namely to see how much money and property they had in the firm and to see how much grain had been bought and sold and what was the profit and loss in their grain transactions.

2nd Ques.

In your figuring how much did you find the loss or profits of said firm of Patton and Montoye in their grain transactions to amount to what if any and how much? (Objected to)

Answer.

To the best of my recollection the loss figured up to neighborhood of the hundred dollars

3rd Aug.

do you or not mean that the loss of this tunnel was the total loss in the whole grain transaction of the partnership of the said Patton and Montague which you found when you looked over their affairs as testified to by your previously existing report.

(Objected to)

answ.

The items of all the grain bought as per item to me by Patton & Montague at the time of the looking over before mentioned was set down in a column under the head of Nelson and all the sales given to me by the above named parties were set down in a column under the head of Orcutt and in striking the balance between the columns it showed the cost of purchases exceeded the amount of sales in the neighborhood of this hundred dollars.

4th Aug.

at what time did this said looking over affairs of said Patton and Montague take place?

ans.

To the best of my recollection it took place about the middle of September A.D. 1855.

5th Aug.

at what time did said Patton and Montague enter into said partnership at Commodore Station in the grain business

ans

About the middle of August A.D. 1855

6 Aug.

How many Aats is any and the said Chester Patton when you were looking over the affairs of the firm of said Patton & Montague as aforesaid agree to account for and credit to the firm of Patton & Montague & state fully if you know the number of Bushells and what they were then worth &c. (Objected to)

answering Mr Chester Patton did agree to account to the firm for some Two Hundred and Fifty fair Bushells of Aats which he had ^{and used} sold ~~on his~~ own private account at Twenty five cents per Bushell

7 Aug.

When you were looking over the affairs of the partnership of Patton & Montague at the time you have above testified to did the said Patton & Montague in any way admit or settle their partnership accounts in the grain business agreeable to your looking over and figuring?

Ans.

We commenced looking over about noon and worked till about nine in the evening to ascertain how their affairs stood and when I left them I don't know whether they settled or not. I know that they had no final settle ment for the partnership account

8 Aug. Did said Patton & Montague accept or adopt

your looking over & figuring up of their co-partnership accounts in the grain business

Ans. Hence the Witness commenced giving an answer as follows: "all these things they did themselves, and I only acted as their clerk" - And therefore the defense said waived the entire question and the Witness answered on grounds) (Whole objected to by Deft.)

Qth Jus. And said Patten & Montague ever have a settlement of their co-partnership accounts in the grain business at Lamanau N.D.

Ans. (Deft. Waives the question)

Direct's Examination again resumed

1st Ind. At the time of the looking over as you call it at the house of said Chester Patten did or did not he said John Montague admit that he received ^{which the said Patten} hundred dollars, had had in the hands of said W.P. Hale & Co. in Chicago went into the co-partnership business of said Patten and Montague
(Objected to by Deft.)

Ans. After Examining the return of said W.P. Hale & Co. Chicago in Chester Patten's individual name he put in Chester Patten & John Montague ordered me to place the Three Hundred Dollars to Chester Patten's credit
Cross Examination again resumed

1st Jus. And John Montague, in your looking over as you

107

call it at the house of said Chester Patten
admits any sums of money or other Property to be
due and owing the said Chester Patten from said
John Montague? (Witnesses & By Counsel)

Answer

All sums of money that were placed to the credit of
Chester Patten were mutually agreed upon by me
my hearing between the said Chester Patten and
John Montague and I was ordered by them to place
the sums heretofore named to Chester Patten's credit.

Q^d Question In your looking as you call it at the house of
Chester Patten did you examine all the partnership
accounts of said Patten and Montague made while
in the Grain Business at Lemonaup Station?

Ans.

I Examined no accounts except the grain returns of
W. H. Dales & Co of Chicago

Q^d Question

Was there or not at the time of your looking over as
you call it at the house of said Chester Patten
any unfriendly feelings between said Chester
Patten and John Montague about the account you
were then looking over?

Answer Not as I remember.

Q^d Question

Hears you ever said to any one substantially this
namely that the accounts of said Patten & Montague
which you examined in your looking over at the ^{house of}

these Patten were in such shapes that you could not tell what they meant or much of anything about them.

Ans.

I mentioned to the People of the House when I came home that their grain accounts were in such shapes that it was almost impossible to tell how much they had made or lost.

Revised Examination Gain Revised

Ind 1st

What sums have you reference to in your answers to the first question propounded to you in your last Cross Examination as being credited to said Patten at the time of the aforesaid looking over?

(Objected to)

Ans

The sums of Twelve hundred & Six hundred dollars

2^d Ind.

None or were not these sums credited to them taken into the account or added up in your attempt to ascertain the amount of the profits and losses of said Company of ~~said Company~~ of Patten & Montague as testified to by you above in this deposition?

(Objected to)

Ans.

No.

(Further Examination of Witnesses postponed until tomorrow morning July 8th at 8 o'clock A.M.)

109

(July 8th 1868. second and Examination of Wills
 need. Charles Wells Parow resumed. Parow's friends
 in person & by their solicitors)
 Cross Examination, & answer (resumed)

1st Question You were speaking in your last direct Examination
 of Twelve Hundred Dollars as
 being credited to said Chester Potter at the time of
 your looking over as aforesaid at the house
 of said Chester Potter will you please state if
 you can of what that Twelve Hundred dollars
~~represented~~
 consisted of cash or other property.

Ans.

Answering to your Chester Potter going into partnership with Col. John Montgomery he was doing a grain
 business on his own account and had to his credit
 in the hands of said C.D. Wells and Company of Chi-
 cago, about Twelve Hundred Dollars, at the time of
 the formation of the partnership of Potter & Montgomery and
 he said Twelve Hundred dollars were ^{placed} ~~put~~ to the credit
 of the said Chester Potter in my looking over.

2nd Question

Do you know of your own knowledge anything more
 of the said Twelve Hundred dollars placed to the
 credit of said Chester Potter by you in your said
 looking over at the house of Chester Potter being partners
 the firm of Potter & Montgomery than the fact that you
 placed it to the credit of said Potter in your said
 looking over & figuring up?

Answer.

all I know about the Twelve hundred dollars is that placed it is to the credit of the said Chester Potten in my said figuring up. by their consent

3rd Ques.

Did you see any money pass between the said Chester Potten & John Montague during the time you were looking over their joint accounts at the house of the said Chester Potten.

Answer.

I saw no money pass.

4th Ques.

Did you hear either said Potten or said John Montague say at the time you were then & there looking over their joint account say or admit that any money had then and there passed between them

Ans

There was no money then and there and nothing said about passing money then and there

5th Ques.

Do you know of your own knowledge whether the said Potten & Montague drew on said G. B. Hale & co. of Chicago for the said Twelve hundred dollars credited to said Chester Potten and in the hands of G. B. Hale & co. or whether said Chester Potten alone and for his own benefit drew the said Twelve hundred dollars

Ans

I do not know who drew the money.

6th Ques.

Do you of your own knowledge know that the said

111

Three hundred dollars in the hands of Mr. H. & Co of Chicago and to the said Charles Potter was ever drawn at all from said R. & H. & Co and if so please state when & by whom ^{drawn}

Ans. I have no knowledge how it was drawn or by whom it was drawn or that it was ever drawn at all since examination again resumed

Q. Now, State if you recollect, whether or not in your looking over at the house of said Charles Potter as you have once testified to in examining to ascertain the balance of profits and losses of the said Company of Potter & Montoye you took into the account the above mentioned sum of Three hundred and Three hundred dollars?

Ans. The profits and loss was made up from amounts of grain bought and sold and from my capital paid into the fund by said Charles Potter & John Montoye.

O. W. LeBaron

Gave and subscribed to inform me the 8th day of July A. D. 1858.

John H. Lewis att

By J. H. Lewis & J. H. Lewis

On which is endorsed: Filed July 8, 1858
And afterwards to wit: on the 30th day of June A. D. 1859, the same being one

112 day of October A. D. 1859, the same being

112

~~of Jones & D. 858, the same being one~~
And afterwards to wit: on the 10th
day of October 1859, the same being
one of the days after the October Term of
said Court for said year, the following
among other proceedings were had and en-
tered of Record in said Court to wit: -

Isaac Hatch ^{vs} William
M Patter Adm^r or
Chester Patter dec^r -

John Montague

Bill of Injⁿ
& Relief

On motion of
Mayo ^{vs} James Tate for Complainants, it
is ordered by the Court that the proofs
on the part of the Complainants be closed
by the 1st of January next, and by the
1st day of Feb^y next on the part of the
Defendants

2073
18

And afterwards on the 5th day of June 1862 - the same being
after the days of the June Special Term of
the De Kalb County Circuit Court for
said year, the following among other
proceedings were had and entered of record
in said Court that is to say: -

27 ²⁰⁸³
Isaac Hatch &
William M. Potter
Adms of Chester Potter
dec^d

} Bill for Infⁿ &
Relief

} John Montanye

This day came
Charles Kellum and A. B. Caon, and
withdraw by leave of the Court their ap=
pearance for the Defendant.

And also on the said 5th day of June
1862, the same being one of the days of
the said June Special Term for said year
the following decree was made and en=
tered of record in the above entitled cause
that is to say: -

State of Illinois vs DeKalb County
 DeKalb County Circuit Court
 June Special Term
 A.D. 1862

Oras Hatch &
 William M. Potter
 administrators of the
 Estate of Chester Potter
 deceased vs
 John Montague

In Chancery

June 3^d - This
 day being one of
 the days of said

Term came the said Complainants by
 Mayo & James their Solicitors, and the
 said Defendant by Hellum & Coon his
 Solicitors, and the said Hellum & Coon
 withdrew their appearance in this cause
 And this cause having been brought on
 to be heard upon the Bill and Answer
 and Pleadings and Proofs therein
 And it appearing to the Court from the
 allegations and proofs of the respective
 parties that on or about the 15th day of August
 A.D. 1858 the said Chester Potter deceased
 and said Defendant John Montague entered
 into partnership for the term of one year
 under the name and style of Potter &
 Montague in the business of buying
 at Pomonok in said DeKalb County

sending to Chicago, & Selling Grain; that by the terms of said partnership, each partner was to furnish an equal amount of capital and to share equally in the profits and losses of said Co-partnership business - That on or about the 21st day of December A.D. 1855, and during the existence of said Co-partnership the said Chester Patten died intestate in said DeKalb County - That at a term of the County Court in and for said DeKalb County, held at Sycamore in said County on the 7th day of January A.D. 1856 - that being one of the days of the January Term of said Court, said Complainants were by said Court duly appointed administrators of the Estate of said Chester Patten deceased, and that they entered into Bonds according to Law, and entered upon the discharge of said trust; and it also further appearing to the Court, from the proofs submitted that there is now in the hands of the said Defendant John Montanye as surviving partner of said firm of Patten & Montanye, the sum of Fauteen Hundred and Forty five \$1445.00 Dollars which justly belongs to the Estate of the said Chester Patten deceased; and which said John Montanye holds over and above his just share of Partnership effects

115

ceased: And on motion of Mayo & James
 Solicitors for said Complainants, it is
 ordered adjudged and decreed, and this
 Court by virtue of the power and author-
 ity therein vested, doth order adjudge
 and decree, that the said Complainants
 as such Administrators have and
 Recover of the said Defendant John
 Montague, the sum of Five hundred and
 Fifty five Dollars with in-
 terest from June 3rd 1862, and that said
 Complainants have Execution
 therefor.

And afterwards to-wit: on the 12th day
 of March A.D. 1863, there was filed in
 the office of the Clerk of the Circuit
 Court of said County the following affi-
 davit to-wit: -

State of Illinois 1863
 Al Rich County

Isaac Hatch and
 William W. Batten
 administrators of the estate of
 Charles Patton dec'd
 by
 John Montague

In the Circuit
 Court of Al Rich
 County
 In Chancery

John Montomye first being duly sworn
 doth depose and say that he is the
 defendant in the above entitled cause.
 That at the June Special Term aforesaid
 Court H.S. 862, a decree was made and en-
 tered in said cause in favor of the Com-
 plainants and against him for the sum
 of \$1445.00. on which Execution has been
 issued and placed in the hands of the
 Sheriff of LaSalle County, Pennel. and
 that said Sheriff has by virtue of said
 Execution levied upon certain Lands and Real
 Estate belonging to this defendant affiant
 in said County of LaSalle, and has ad-
 vertised the same to be sold at Ottawa in
 said County on Friday the 18th day of
 March instant; and affiant fears and
 apprehends that said Sheriff will sell said
 Lands by virtue of said Execution, and for
 the satisfaction thereof at the time and
 place above mentioned unless the same
 be stayed. Affiant further states that
 he is a resident of said LaSalle County
 and that within a week or ten days at
 the most, after he heard that said decree
 had been entered in said Court, and
 Execution issued thereon as aforesaid
 and during the last week before

117
the time fixed by Law for the sitting of
the February Term of the ~~2nd~~ ^{1st} De Kalb
County Circuit Court, he went to Syca-
more and employed Counsel, and caused
a Petition to be made preparatory to in-
tering a motion in said Court at
said February Term to vacate said
Decree and quash said Writ of Execution
and fixed upon the fourth day of March
which would be one of the days of said
Term of said Court, to make said motion
in said ~~cause~~ Court, and caused written
Notice to be served upon said Complai-
nants that he would enter said motion
in said Court on that day, and further
says that he then went home with an un-
derstanding with his counsel that he would
be in attendance at said Court on said
Fourth day of March to attend to the mak-
ing of said Motion. That he did
not learn that said Term of said
Court would not be held until the
Third day of March instant - all the
time supposing that on the 4th his
motion to vacate said Decree
would be heard and there would
be no cause for obtaining from the
Judge of said County an order to

stay further proceedings under said Execution. That on said 4th day of March he again went to Eycamore, and made arrangements with his counsel to obtain an order for the stay of said Execution. He further says that he intends to apply to said Circuit Court at the first Term thereof, held in said County for an order vacating the decree in the above entitled cause, and for leave to make defense to said Suit.

Subscribed ^{and sworn to} John Montanye
before me this 5th day
of March A.D. 1863

J. C. Allen
Notary Public

Endorsed: - Filed March 12, 1863. W. B. [unclear]

And afterwards to-wit: - on the 1st day of June A.D. 1863, there was received and filed in the office of the Clerk of the Circuit Court of said De Kalb County the following order of Stay in the above entitled Cause, to-wit: -

State of Illinois }

Isaac Hatch ^{and} }
William W. Batten }

119

Administrators of the Estate of } At Chambers. In Vacation
 Chetiv Patterson dec'd }
 John Montanye. } March 10. 1863.

In the matter of Decree in Chambers in the Circuit Court of DeKalb County: - On this day the said John Montanye produced to me an affidavit showing probable cause for staying the Execution issued in the above entitled cause. I do order the Execution which has issued upon the Decree in the above entitled proceedings be stayed until the further order of this Court
 Given under my hand J. D. Murphy
 Judge of said Court

On the back of which there appears the following affidavit:

State of Illinois } Julius Avery on oath says that
 DeKalb County } he read the within order to
 William R. Milligan Sheriff
 of said County on the 13th day of March 1863, and
 delivered to him a true copy thereof on the same
 day and at the same time
 Subscribed and Sworn to (signed) Julius Avery
 before me this 13th day
 of March 1863.

A. J. Moore Clerk
 C. H. Starks Deputy

On which is endorsed as follows: -

Filed June 1, 1863. C. M. Brown Clerk

And afterwards, on the 15th day of September A.D. 1863, there was filed in the office of the Clerk of said Court, the following motion, to-wit:

State of Illinois } In the Circuit Court
DeKalb County } - Chancery side thereof.

Isaac Hatch ^{and}
William Potter ad
administrators of Chester
Potter dec^d

September Term A.D. 1863

^{vs}
John Montanyo

And now comes the said John Montanyo, and says that the said Complainants did on the second day of June A.D. 1860, and at a Special Term of said Court, then held for the purpose of transacting Chancery business alone obtain a decree against him the said Defendant, for the payment of the sum of \$1445.⁰⁰ Dollars, together with costs of Court. Wherefore the said John Montanyo now moves the said Court to vacate the said Decree, and reinstate said cause, and allow the said Defendant to make as full and complete defense to the same as if the said default had not been taken, and

also that no execution return issued to Lafalle
also that an execution thereon issued
County may be quashed

Allen ^{Aug} Shimmis
Supt Solicitor

Endorsed :- Filed Sept 15, 1863
W. Braun
ALB

And afterwards to-wit: ~~then~~ ^{also} on the 5th day of September A.D. 1883. there was filed in the office of the Clerk of the aforesaid Court, the Petition of John Montanye Defendant in the above-entitled cause, which said Petition is in the words and figures following, that is to say:—

State of Illinois }
De Kalb County }
De Kalb County } De Kalb County Circuit Court,
February Term, A.D. 1883.

Isaac Hatch & }
Wm W. Patter }
vs }
John Montanye }
To the Hon J. D. Murphy
Judge of the 3rd Judicial
Circuit in the State of
Illinois, and of the De-
Kalb County Circuit Court
in Chancery sitting

The Petition of John Montanye, now a resident of the County of LaSalle in the State of Illinois, defendant in the above-entitled suit respectfully sheweth unto your Honor.

That at the August Term A.D. 1882 of the County Court of De Kalb County, your Petitioner recovered a judgment in said Court against the Estate of Chester Patter for the sum of One Thousand and sixty eight Dollars, and eighty four cents and parts of cents, from which the administrators of said Estate, namely Isaac Hatch and William

M Pattu prosecuted an appeal to the Circuit Court
 of said County, and at the October Term of said
 Court, dismissed their said appeal. That on the
 10th day of June 1857, the said Administrators
 filed in the Circuit Court of said De Kalb County,
 on the Chancery side thereof their certain Bill of
 Complaint, among other things alleging that on
 the 15th day of August, 1853 your Petitioner and
 the said Chester Pattu declared entered into co-
 partnership in the business of buying and mar-
 keting Grain, each partner to furnish and
 put into said business, one half of the capital
 to be used therein, and to share equally between
 them ^{the profit, and pay equally between them} all losses which might happen in
 their said business. That said Pattu had put
 into said Business a much larger sum of money
 than your Petitioner, and that your Petitioner had re-
 ceived a much larger share of the assets of said part-
 nership than equitably belonged to him, and refused to
 account for the same to said Administrators, and
 prayed that an account might be taken of said Part-
 nership dealings and transactions and of the moneys
 received and paid by said Pattu and your Petitioner
 and that a re-adjudication of the claim prosecuted
 to Judgment in the County Court, as aforesaid
 might be had before said Circuit Court, and said
 Judgment be set aside, and your Petitioner de-
 creed to pay to said Estate whatever might be

found due upon such an accounting: or that said
 Judgment might be set off against any such de-
 cree, and that an Injunction might be issued to
 restrain your Petitioners from collecting said
 Judgment, or using or disposing of any of said
 Partnership Funds: to which said Bill of
 Complaint your Petitioners on the 20th day of
 January 1855 filed his answer, denying all the
 material allegations contained in said Bill of
 Complaint. Your Petitioners states that soon
 after said Bill was filed he employed Charles
 Kellum one of the attorneys of this Court to
 appear for him in said Suit, and conduct the
 defense thereof for him, and afterwards, upon
 the advice of Chas Kellum, he employed Messrs
 Coon & Rogers to assist in the defense of said
 Suit. That on the 7th day of April 1855, a
 motion was made by your Petitioners' Counsel to
 dissolve the Injunction issued in this cause
 and that on the 17th day of April 1855 an
 order was made in said Suit by the Court upon
 the motion of your Petitioners' Solicitors sup-
 pressing the Deposition of one Charles Mc-
 Parson, heretofore taken in this Suit, by and on
 behalf of the Complainants: and at the same
 time the injunction was dissolved by an order
 of the Court upon the condition that your
 Petitioners would give bonds in the sum of

123

Three Thousand Dollars with James L Knowlton as surety. conditioned for the payment of whatever decree might be obtained against your Petitioner which said Bond your Petitioner on the 17th day of April A.D. 1855 filed in the office of the Clerk of said Court.

Your Petitioner further states that afterwards and on the 8th day of July 1855 the Complainants caused a new set of depositions to be filed in said Court, which your Petitioner is informed by Counsel ^{and believes} were and are without the due form of Law; and would upon motion have been at once suppressed; and that so far as your Petitioner can learn, no other evidence has ever been taken or used in or concerning said suit and such as were filed on the 8th day of April 1855 not suppressed. And your Petitioner ^{further} states that he has recently learned that on the 10th day of October 1859 a rule was entered in said ~~Court~~ ^{Suit} on the motion of the Complainants that the proof be closed by and in behalf of the Complainants on the 1st day of January A.D. 1860 and by and in behalf of the Defendants on the first day of February A.D. 1860. And he further says that he has learned but recently that on the 2^d day of June 1862 being one of the days of a Special Term of the said Circuit Court held for the transaction of Cham-

any business alone, said Kellum and Croon having previously without the knowledge or consent of your Petitioner withdrawn their appearance, a Decree was entered in said Court in favor of said Complainants, and against your Petitioner as Defendant for the sum of fourteen hundred and forty five Dollars; and that afterwards and on the day of 1862, an Execution was issued upon and by virtue of said Decree ^{was} placed in the hands of the Sheriff of LaSalle County to execute by virtue of which said Sheriff has levied upon certain Lands and Tenements the property of your Petitioner, and advertised the same for sale at Public Auction for the satisfaction thereof on the 18th day of March 1863. Your Petitioner further states that at the time of the commencement of this Suit ~~he~~ was a resident of DeKalb County, but soon afterwards removed to LaSalle County, and ever since then has been and now is a resident of said LaSalle County. That said Charles Kellum was a member of the Bar of DeKalb County, and a constant attendant of the Courts in said County, and as your Petitioner supposed would be advised of every step taken in the progress of said Suit, and (knowing the Past office address of your Petitioner) would promptly and in due time notify your Petitioner of

what had been done, and what was necessary for
[23] him your Petitioner to do. He further says
that when the notice to take the Depositions
which were filed in the Clerk's Office on
the 8th of April as aforesaid, was served
upon this affiant, he applied to said Kellum
to go to Sammonauk where said Depositions were
to be taken, and attend to the taking of the
same for him. That said Kellum advised
your Petitioner to procure the services of some
other attorney at law residing near the place
of taking them than Mr Kellum. Your Pe-
titioner did so, and at the taking of the Depo-
sitions filed on the 8th of July aforesaid
he secured the services of one Mr Brown,
who at the conclusion of the taking of said
Depositions advised your Petitioner that nothing
more could be done by Complainants in the
prosecution of said Suit without further
Notice to your Petitioner; and that your
Petitioner would not be obliged to take his Depo-
sitions without first being notified that the
Complainants had completed the taking of
their Depositions; and upon that your Petitioner
rested with the full assurance that no final
trial of said cause could be had without
notice to him, ^{and from given him} to procure his testimony, not be-
lieving it to be his duty to see that said suit

was diligently prosecuted.

Your Petitioner further states that he never learned from Mr Kellum, or any other person until the 20th day of February AD 1863, that any rule whatever, had ever been entered in said suit, requiring the parties to close their depositions, and had no suspicion that any such order was ever made. That he supposed it to be the duty of his Counsel to notify him of every order made in said cause affecting his rights or duties, and that if he had known of the entering of said Rule he would have promptly attended to the taking of his depositions, and been prepared on his part to try said suit upon the merits.

Your Petitioner further states he never had any notice whatever from any person or in any way that a Special Term of said Circuit Court would be held in said County in June 1862, or at any other time for the transaction of Chancery business, and never heard from any person, or in any way that any such Term ever had been held until Feb'y 20th 1863, and he further says that he never heard that said Suit had been tried, or any Judgment ~~was~~ rendered therein until some of the first days of February 1863. That about the first days of February 1863, Your Petitioner

127

first heard it whispered about the neighborhood that Complainants had obtained a Judgment in said suit - but could not believe it, and did not believe it until he applied to Wm W Potter, one of the ~~Def~~ Complainants, who said it was true, and that he had sent an Execution to the Sheriff of LaSalle County to be levied upon the property of your Petitioner. Surprised and astounded at such intelligence, and not satisfied of the truth thereof your Petitioner immediately went to Ottawa to see the Sheriff, and then learned that such was the fact. He further says that he did not authorize said Bellum or said Coon to withdraw their appearance, and allow Judgment to go by Default against him, and had no notice of their intention so to do; and that if your Petitioner had been advised of the intention of said Bellum and Coon to withdraw their appearance, he would have employed other counsel to defend said Suit; but that he was surprised by the action of said Bellum and Coon, and prevented from making his defense to said Suit as he otherwise would have done. He further says that he is advised by Counsel, and verily believes that he has a good defense to said Suit upon the merits, and that

he will be able to disprove every material allegation in the Complainants Bill of Complaint if allowed to do so; but he declines to give here the names of ~~the~~ witnesses, by whom he expects to be able to make such proof. because he does not wish to advise his adversaries of the names within his power to make his defense - He further says that he always intended to produce testimony upon the trial of said cause, and make strong defense thereto and so advised his counsel, but being advised by said Brown that said Suit could not ^{any} would not be tried without further notice to him, he rested easy, and hearing nothing further about the matter, had concluded and declared to his neighbors that the Complainants had dismissed their Suit, as they had on a former occasion dismissed their said Appeal.

Your Petitioner further says that after reading the Depositions taken in this cause, by the Complainants he is wholly unable to perceive how a Deceit could have been against him for so much as \$1445. and that it is his belief that there is no legal testimony taken in said cause to sustain said Deceit - He further states that he is about eighty two years old; and that the payment of said Deceit will take all the property he

leave the world, and leave him in
 old age without any means of support
 He further says that the withdrawal of
 the appearance of said Kellum and Coon
 operates as a senfence on him, and that
 in consequence thereof he has been deprived
 of the privilege of making his defense
 to said suit - He further says that
 said Decree is, unjust, and inequitable ^{and}
^{just foundation in fact, and that}
 without, he can prove the same to be so,
 if allowed to do so. He further says that ~~with~~
 this application is not made to delay the pay-
 ment of any Just Debt, or for the purpose of
 harassing or vexing said Complainants or unjustly
 subjecting them to loss or trouble on account of
 this Suit, but only for the purpose of ~~enabling~~
~~said~~ enabling the Petitioner to make his defense to
 said Suit - to the end that Justice may be done
 between the parties - Your Petitioner therefore prays
 your Honor to make an order to re-instate said suit,
 and that said Decree may be vacated and set
 aside, and that he may be allowed to make
 defense to said Suit ~~and~~ in the same manner
 as though no such Decree had ever been made
 and that said rule upon the parties to close their
 proofs may also be vacated and set aside
 and discharged, and your Petitioner allowed to
 take the testimony of his witnesses and to use the

same, upon the trial of this Suit - the same as if no such Rule had been made, and that said Execution be ordered returned, and quashed or set aside
(signed) John Montany

State of Illinois } John Montany being first duly sworn on
De Kalb County } Oath says that he subscribed the foregoing
Petition, has heard the same read - and
knows the Contents thereof, and the same is true of his own Knowledge, except as to those matters therein stated to be upon his information and belief, and as to those matters, he believes them to be true,
Subscribed and Sworn to before (signed) John Montany
me this 2nd day of February
1883 H. Allen
(S.S.) Notary Public

And afterwards, to-wit: on the 2nd day of October 1883 the same being one of the days of the September Term of said Court for said year the following among other proceedings were had and entered of Record in said Court that is to say, -

2023
128
Isaac Hatch and William M
Patter adms Chester Patter dec - } Call for Infr. Relief
John Montany } This day came
the Complainants by their Solicitors and the
Defendant by his Solicitor also comes, and
the Complainants move the Court to set aside

131 the order of Stay of Execution herein heretofore granted.

And afterwards, on the 3^d day of October 1863, the same being as yet, one of the days after the September Term of said Court for said year the following among other proceedings were had and entered of Record in said Court, that is to say:

no 13 Isaac Hatch and
William W Potter

Adm^r Chester Butterd^r

vs
John Montague

} Bill for Injⁿ and
Relief

And now on this day came again the said parties by their respective Solicitors, and by agreement of parties the determining of the motion heretofore made in this cause to set aside the Stay of Execution herein is taken under advisement by the Judge of this Court, the finding to be entered in Vacation as of this Term with the right of either party to except. And afterwards the Court being fully advised, orders that said Motion be sustained - and that said Stay of Execution be, and the same hereby is set aside.

State of Illinois
De Kalb County

I Caleb W Brown
Clerk of the Circuit
Court in and for said De Kalb County do
hereby certify that the foregoing contains a
full, true, and complete record of all the pro-
ceedings in the said cause of Isaac Hatch
and William M. Potter, administrators of the estate
of Chester Potter dec^d - Complainants, and John
Montague, defendant, as the same appears in
file and of Record now remaining in my said
Office.

Witness my hand and the Seal of
said Court, at Sycamore in said County
this 9th day of February A.D. 1864
Caleb W Brown Clerk
J. R. Whittemore Depy



John Montague P/ff in error

Isaac Hatch and

William M. Potter adm^s of the estate of Chester
Potter deceased

And now comes the said Plaintiff in Error
and says that in the record & proceedings in this
cause there is manifest in Error in this

1st Court Error in its finding for complainant
2^d Court in not making a decree dismissing the bill
3^d Court Error in rendering a decree for complainant
without an account being stated between the
partners, and a final adjustment of the
partnership matters

Wherefore said Plaintiff prays the judgment of
this court upon said Record

John Moulange Pltff in Error

Delant A Blauchoad

vs

Def for Pltff in error

Isaac Hatch & Wm M Pollock

Attys

And now comes said Defendants in
Error, and say that there is no Error
nor manner of Error in said Record
or proceedings, and pray affirmance
thereof & of each & all said proceedings

May they & their heirs
for Defs in Error

103 #3

John Montague

03

Grace Hatch

Wm M. Potter

Record & Runs -

Drafts Brief will be
filed by Monday next -
May 6th 64.

Filed May 19, 1864,
L. Keland
Clerk

Supreme Court of Illinois:

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1864.

JOHN MONTANYE,	} ERROR TO DEKALB.
<i>Plaintiff in Error,</i>	
<i>vs.</i>	
ISAAC HATCH AND WILLIAM M. POTTER, Administrators of the estate of CHESTER POTTER, deceased,	
<i>Defendants in Error.</i>	

ABSTRACT OF RECORD.

- 1 Bill filed by defts in error, June 10th, 1857.
- 2 Bill alleges that Chester Potter, in his lifetime, and John Montanye, (plff in error,) about August, 1855, verbally entered into a co-partnership by name of Potter & Montanye, in business of buying and selling grain, at Somanauk, in said DeKalb county, for one year, each to furnish equal amounts of money and share equally in the profits and losses. Potter put in \$821.52 money, \$697.32 in wheat, 400 bags, worth \$100, \$24.40 in corn, subsequently \$1,283 in money, and divers other sums at different times.
- 4 Montanye put in \$843.72 in money, bags, &c. Bought grain at Somonauk, and shipped to Chicago. Most of money received from sales came into hands of Montanye.

Filed April 2 1864
Leland CM

Potter died intestate, Dec. 21st, 1856.

5 During the partnership, Montanye was in the habit of receiving large sums of money belonging to said Co., and of drawing checks and bills of exchange on said partnership account, but has not entered all such transactions in the partnership books, and kept the said Chester Potter and your orators in ignorance with regard thereto as much as possible. Montanye drew bills and gave acceptances in firm name on private account.

6 Potter, in his lifetime, requested Montanye to account. He refused to render a satisfactory account; and since the death of Potter, has refused to pay over to complainants the partnership funds or to account to them.

Intends to cheat the estate out of the same.

7 At August term of DeKalb County Court, judgment rendered against estate of Potter in favor of Montanye for \$1,068.48. Complainants appealed to Circuit Court, and dismissed appeal at Oct. Term, 1856.

8 The claim so allowed was unjust in whole.

A large amount due estate from Montanye on a correct accounting.

9 Answer upon oath waived.

Prayer for an accounting.

10 That judgment of County Court be vacated.

11 Prayer for general relief.

29 Answer of Montanye filed January 20th, 1858.

30 Admits partnership formed August 15th, 1855, in buying and selling grain. Share equally in the profits and losses.

When partnership formed, Potter had contracted for six or eight hundred bushels of wheat, but had not paid for it. The wheat was to go into the assets and be paid for by the firm

That the firm continued in the business of buying grain and shipping to Chicago for sale until Dec. 21, 1855, when Potter died intestate. During the life of Potter, the firm had paid 31 out for the purchase of produce, \$11,123.63, and the net proceeds received for the sale of produce so bought amounted to \$10,175.04. Potter in his lifetime converted to his own use between two and three hundred bushels oats and about twenty bushels of wheat that belonged to the firm.

About 1000 bushels of wheat of the firm was shipped in the name of Potter.

At commencement of partnership, put in \$100 in money, which was all the money put in at that time by either partner. Potter also put in about \$24 worth of corn, which is all put in by said Potter.

Montanye put in, during existence of partnership, as follows:

August 20, 1855,	Cash for bags,	-	-	-	\$ 78 20
" " " "	" " " "	-	-	-	52 00
" 22, " "	" " " "	-	-	-	172 00
" 24, " "	" " " "	-	-	-	190 12
" " " "	" " " "	-	-	-	19 77
" " " "	" " " "	-	-	-	130 00
32 " " " "	for bags,	-	-	-	50 00
" " " "	" " " "	-	-	-	25 19
" 25 " "	" " " "	-	-	-	55 67
" 27 " "	" " " "	-	-	-	120 84
" " " "	" " " "	-	-	paid Dremo	50 00
Total,					\$943 58

Which was all the individual money of Montanye paid for benefit of firm. Also, paid \$20 to Patrick Morisey for work for firm, and to James Roots two dollars for same, and to Edward Montanye about ten dollars for firm. Potter sold and converted to his own use about \$15 worth of lime of the firm. Admits Potter gave time and attendance to business of firm until Oct. 10, 1855, when he went to New York, and died shortly after his return.

Denies having any money, property or chose in action belonging to said firm.

33 Admits that since the death of Potter he has sold \$200 worth of bags of the firm, and received besides \$20 in money, which is all that has come into his hands since the death of Potter, and has paid over \$400 of firm debts since Potter died.

Has in no way carried on firm business since Potter died, except to settle up the business.

Denies ever refusing to settle with complainants said partnership matters, since August, 1856.

Admits that prior to that time they asked of him a statement of both private and partnership business between him and said Potter, to which he objected; but offered them, and is now ready and willing to have the individual and Co. matters settled up, but insists that each should be separate and distinct. That their private matters have been settled in Probate Court in DeKalb county, as alleged in bill.

Denies that said judgment was obtained fraudulently; that the same was due him at that time.

35 Answer verified by affidavit of Montanye.

71 Replication to answer.

31 EVIDENCE.

Deposition of Alvanus Gage:

40 Montanye and Chester Potter commenced business as partners, at Somonauk, in August, 1855, I know of \$100 of money given into the hands of Montanye, but don't know whether it was Potter's or Potter's & Montanye's. This was the same day or next day after partnership formed. It might have been before.

41 I suppose Montanye received the \$100 for his private use.

Montanye said to Potter, in my presence, that he had taken

\$100 to use for himself that had been put in to buy grain with; that Mr. Potter thought they would want to use; that he did not think they would, but wanted to know if I would lend him \$100 if they should want it, till he returned from Chicago.

43 This conversation was in August, 1855.

42 I think it was after they went into company and after Mr. Potter had requested Mr. LeBaron to write such a letter (informing them that Montanye was his partner) to Chicago, that the \$100 was received by Montanye.

44 *Cross-Examination.*—I was a witness in a suit in the Circuit Court of DeKalb Co., in which Montanye was plaintiff, and the complainants, Hatch and Potter, as Administrators, were defendants. I think I testified there as I have to-day. I think the \$100 claim was allowed.

I understood from the amount of claims proved and the amount presented, that the \$100 was deducted by the Court as an off-set to the claim of Montanye.

I think this suit in the County Court was in the summer of 1856.

46 Deposition of Stephen N. Cornell:
Testifies as to partnership.

48 I think there were three bales of bags when I came here, standing in the stoop of the store, and then Col. Montanye told me they belonged to him and Mr. Potter. I don't know what became of them. I took them into the store occupied by J. Montanye & Son. Part of one bale was sold out of store. As to the balance I am not positive. Those sold were for 30 cents a piece.

49 I understood the proprietors of the store to be J. Montanye & Son. J. Montanye is the defendant in this suit.

At the request of Montanye, I made entries in the books of

Montanye & Potter, of money paid for grain by Montanye & Potter.

52 The bags were sold on account of Montanye & Son, in the fall of 1855.

Witness stated he was a witness in the suit in the County Court.

Deposition of Daniel J. Hunt :

55 Testifies to the partnership between Montanye & Potter.

55 Montanye wanted me to go with him to the Wright House and get some bags that belonged to the partnership. He afterwards told me that he took the bags to Mr. Potter's barn. Afterwards complained that the administrators would not let him have them, but subsequently told me that he had got them with their consent. I helped him sort them out. He afterwards told me he had sold some of them.

56 *Cross-Examination.*—Some of the bags were good and some about worn out. From 20 to 40 of the bags belonged to other parties.

57 Deposition of Harry L. Alfores.

Testifies as to partnership.

58 During said partnership or subsequent, Mr. Dole, the commission merchant in Chicago, paid to Montanye \$2,000. It was the latter part of September or first of October, 1855.

In May, 1856, after the death of Potter, I purchased of Montanye 500 bags, which he said belonged to him and Potter.

57 *Cross-Examination.*—Montanye told me at Chicago, in Dole's office, that he received \$3,000, and that he must go home and pay it out. Saw him receive a package of money. It was last of September or first of October, 1855.

60 Montanye did not state to whom the money belonged.

61 I did not see any money counted out by Dole and handed to Montanye.

Deposition of Edward W. Lewis :

63 Montanye and Chester Potter claimed to be in partnership in fall of 1855.

64 I bought of Montanye, on the 9th of October, 1855, 109.20 bushels of spring wheat, 62.40 bushels winter wheat. Oct. 30, 1855, I bought 137.28 bushels corn. The wheat amounted to \$223.05, and the corn to \$77. Paid the money to John Montanye ; don't know as to ownership of wheat ; it was in the company's warehouse. A portion of the corn was bought by Chester Potter—the balance I know nothing about. The bags the wheat was in were marked P. & M.

65 A portion of the wheat I bought was in Mr. Stevens' bags, put in the warehouse by Stevens. Stevens said it belonged to him.

66 Montanye sometimes said he had the agency of the wheat, and sometimes the care and control of it.

67 Deposition of George Metcalf.

Speaks of the partnership.

68 Sept. 3d and 4th, 1855, I purchased some wheat of Potter & Montanye, and paid Montanye for the wheat—\$60 before Potter died, and \$9.80 after.

69 *Cross-Examination.*—Montanye said the wheat belonged to the firm, and he supposed he had a right to take pay for it.

70 Potter said he was going East and I could pay Montanye for the wheat ; it would be the same thing.

75 Deposition of Le Barron suppressed.

82 Deposition of James McCleary :

84 Heard Montanye say he had \$500 of Potter's money.

89 Montanye said he had got \$500 of Potter and paid up some of our bills, as near as I can recollect.

90 Deposition of J. D. Johnson :

91 Station Agent for C. B. & Q. R. R. at Somonauk, and have custody of their freight books. Produces the book.

92 Reads entries on the book as follows : "Sept. 19, 1855, received for C. Potter, 4 bales bags," Under the head of remarks, I find it receipted for by John Montanye.

93 Was not agent in summer or fall of 1855.

First became agent in May, 1858.

97 Deposition of Charles H. LeBarron :

99 Chester Potter put into the firm about \$1,700, as far as my knowledge goes. The receipt on the freight book is the signature of John Montanye.

101 A bale of bags usually contains one hundred. Bags weigh from 90 to 100 pounds to the bale.

102 *Cross-Examination*.—I saw no money or property paid into the firm by Chester Potter.

Direct Resumed.—I was at the house of Chester Potter, and assisted him and Col. Montanye in looking over their business affairs. It was there represented to me, by the consent of both parties, that Chester Potter did have at the time said co-partnership was formed, in the hands of C. S. Dole, of Chicago, upwards of \$1,200 to his credit, which was passed to the credit of said Chester Potter, in looking over the affairs of the said Potter & Montanye. Also, that the said Chester Potter did put from time to time into the firm, sums of money or property amounting to about \$500.

The object in looking over the accounts was to see how much money and property they had in the firm, and to see how much grain

had been bought and sold, and what was the profit and loss in their grain transactions.

104 To my best recollection, the losses figured up to about \$800. This was about the middle of September, 1855.

105 Potter agreed to account to firm for some 225 bushels of oats which he had sold on private account, at twenty-five cents a bushel. There was not a final settlement of the partnership matters.

106 Potter & Montanye ordered me to place the \$1,200 (which Potter had with Dole when partnership formed), to the credit of Potter.

107 I was ordered by Potter & Montanye to place the sums heretofore named to the credit of Potter. I examined no accounts except the grain receipts of C. S. Dole & Co.

108 I mentioned when I came home, that their grain accounts were in such a condition that it was almost impossible to tell how much they made or lost.

111 The profit and loss was made up from amounts of grain bought and sold, not from any capital paid into the firm by Potter or Montanye.

112 June special term, 1863, Charles Kellum and A. B. Coon withdraw their appearance for the defendant (Montanye.)

113 Cause heard June special term, 1863.

115 And it was *Ordered, adjudged and decreed*, that said complainants, as such administrators, have and recover of the said defendant, John Montanye, \$1,445, with interest from June 3d, 1862, and have execution therefor.

March 12th, 1863, Montanye filed affidavit asking for stay of proceedings.

119 June 1st, 1863, order entered for staying execution.

- 120 September 15th, 1863, motion made by Montanye to vacate the decree.

Petition assigning causes for vacating the judgment.

- 124 His Solicitors withdrew their appearance for him without his knowledge or consent.

- 131 Motion to vacate overruled.

LELAND & BLANCHARD,
Solicitors.

ERRORS ASSIGNED.

- 1st. The Court erred in its finding for complainants.
- 2d. In not making a decree dismissing the bill.
- 3d. In rendering a decree for complainants without an account being stated between the partners and a final adjustment of the partnership matters.