No. 8723

Supreme Court of Illinois

F. Lear

vs.

Chouteau, et al

71641 7

No 5 – 4

Nov Term 1859

Lear
vs
Chouteau et al

Appeal to St Clair

Reversed and Bill
Dismissed

8723

Frederick Lear — Plaintiff in error

vs

Chs Lean Harrison & Valle — Error to St Clair

defendant in Error

Came this day the plaintiff in error by Decker & Nelson his attorneys and says that there is manifest error in the record & proceedings and decree aforesaid rendered in the above styled cause by the Circuit Court of St Clair County in this that the said Court rendered a decree in favor of the defendant in error in said Circuit Court of St Clair County whereas by the Law of the land a decree ought to have been rendered in favor of the plaff in error and this the said plaff is ready to verify ~~[illegible]~~ &c

and for assigning errors specially on the record aforesd the said plaff says that the said Circuit erred in rendering said decree in favor of the defendant in the Court below

[8723-1]

First Because the Court of Chancery of St Clair County had no jurisdiction of the Cause

Second. Because the Contract sought to be enforced by Complainants was & is within the Statute of Frauds & the Complts Bill for that reason ought to have been dismissed

Thirdly That the Circuit Court of St Clair County erred in making said Decree and in not declaring to the said Pltff in error by the said Decree any interest whatever in the Contracts and Mining Claim mentioned

Whereupon petitioner and other errors in the record aforesaid Contained the Pltff prays that the said Decree of the said Circuit Court of St Clair Co be reversed

Wm S Hebron & Decker
for Appellants

Joinder in Error
G. Trumbull
for Defts in Error

Page 1.
line 2

Pleas before the Hon. Wm H. Underwood Judge of the Second Judicial Circuit where=of St Clair County forms part in the St Clair Circuit Court on the Chancery side in a certain cause wherein Pierre Chouteau Jr. James Harrison and Felix Valle were complainants and Frederick Lear was defend=ant, at the March Term of said court in the year of our Lord one thousand eight hundred and fifty six at the Court House in Belleville in said County.

Be it remembered that on the 9th day of January A.D. 1854 Pierre Chouteau Jr. James Harrison and Felix Valle filed in the office of the Clerk of said Court their Bill in Chancery, as complainants against Frederick Lear defendant as follows: to wit:

[8733-2]

Page 2. To the Honorable Judge of the Circuit Court of the County of St Clair and State of Illinois in Chancery sitting

Humbly complaining sheweth unto your Honor, your
30 Orators Pierre Chouteau Jr, James Harrison and Felix Valle, that they are partners doing business in the City of Saint Louis and State of Missouri, in the name and style of Chouteau, Harrison & Valle; that as such partners, they on or about the first day of October last employed Frederick Lear to purchase for them from the owners of coal lands in the County of St Clair and State
40 of Illinois, the stone coal or mineral coal contained in said lands and the right of way over the same and every facility for digging said coal and transporting the same to market, and furnished said Lear of their own

money, the means to make such pur-
chases and to pay his expenses while
engaged in such business, upon the un-
derstanding and agreement that said
50 Lear was to obtain contracts or con-
51 veyances in his own name for said
coal and privileges and hold the
same temporarily for the use of your
Orators, subject to this further under-
standing and agreement to wit: -
that said Lear was to transfer absolute-
ly to your Orators all the interest by
him acquired in such purchases, by
deed, and that in consideration of the
60 services of said Lear in and about
such purchases as agent for your
Orators and such other service as he
might thereafter render in and about
the mining and disposing of said coal
in addition to what your Orators had
already advanced or might advance to
him during the time he might be en-
gaged in such purchases, your Orators
were to employ him in superintending
70 the opening and working of such coal
lands upon the terms and conditions con-
tained in a certain writing marked
Exhibit A. and herewith filed as a part

herewith filed as a part hereof. The terms of which were mutually agreed upon by said Lear and your Orators before he proceeded to make any such purchases. — Your Orators further show that said Lear as the Agent of your Orators under such arrangement and with the money and means of your Orators, but in his own name, entered into the following contracts with owners of coal lands in said County of St Clair, namely, — a contract with Heinrich Ebel, a copy whereof is herewith filed, marked Exhibit B. and made a part hereof, — a Contract with Andreas Deuff, a copy whereof is herewith filed, marked Exhibit C. and made a part hereof, — a Contract with Andrew Schroder, a copy whereof is herewith filed, marked Exhibit D. and made a part hereof, — a contract with Jacob Hofstiller, a copy whereof, marked Exhibit E. is herewith filed and made a part hereof, — a contract with Jacob Lunceford, a copy whereof, marked Exhibit F. is herewith filed and made a part hereof, — a contract with Christian Hofstiller, a copy whereof is herewith filed, marked

Exhibit G. and made a part hereof, — a contract with Frederick Ludman, a copy thereof is herewith filed, marked Exhibit H. and made a part hereof, — a contract with John Hoon, a copy thereof is herewith filed, marked Exhibit J. and made a part hereof, — a Contract with John Leper, a copy thereof is herewith
110 filed, marked Exhibit K. and made a part hereof, — a Contract with Mayant Hofstetter, a copy thereof, marked Exhibit L. is herewith filed and made a part hereof, — a Contract with Frederick Sherber, a copy thereof, marked Exhibit M. is herewith filed and made a part hereof, — a contract with William Kniger, a copy thereof, marked Exhibit N. is herewith filed and made a part hereof, — a Contract
120 with John Sharp, a copy thereof, marked Exhibit O. is herewith filed and made a part hereof, — a Contract with George Schellenhape, a copy thereof is herewith filed, marked Exhibit P. and made a part hereof, — a contract with Jacob La Levix, a copy thereof is herewith filed marked Exhibit R. and made a part hereof, — a Contract with George Schellenberger, a copy thereof, marked

C. line 130 Exhibit S. is herewith filed and made a part hereof, and a contract with Jonathan Moore, a copy whereof is herewith filed, marked Exhibit T. and made a part hereof, — all of which contracts were obtained and executed during the month of October and November last and all of which have been recorded in the Record Office of said St Clair County, and State of Illinois, and your
140 Orators aver and charge that all of said Contracts were obtained by said Lear with the money and means of your Orators, and while said Lear was so employed by the agent of your Orators for that purpose and was receiving pay from them, and your Orators state that they furnished said Lear for the purposes aforesaid, the sum of Three hundred and eighty one dollars,
150 which he used in & about said business.

Your Orators further shew, that on the seventh day of December last, they caused a deed to be drawn up for said Lear to execute for the purpose of transferring and conveying from said Lear to your Orators said Lear's title and interest in said Contracts

[8723-5]

and the coal mines and privileges
in said Contracts provided for and enu-
160 merated, which deed unexecuted is here-
with filed, marked Exhibit U. and
made a part hereof.

Your Orators further shew, that
on or about the fourth day of January
1854 they caused said writing marked
Exhibit A. and filed herewith, to be
prepared for the purpose of being executed
as well by your Orators as by said Lear:
And your Orators show and charge that
170 said two writings marked respectively
as Exhibits U. and A. contain in sub-
stance and effect the agreement of the
parties in relation to the premises afore-
said, and that both of said writings
were drawn up for the purpose of being
executed, the former by said Lear, and
the latter by said Lear and your Orators,
and were well understood by said Lear
as well as your Orators to embody in
180 substance and effect, the terms formely
agreed upon between said parties, and
the only terms upon which said Lear
was furnished with means and employed
to make such contracts.

Your Orators further shew that at the

time of their so employing said Lear as their said agent it was well understood and agreed that said Lear was to convey and transfer to your Orators
190 whatever title or interest he might acquire in said coal lands at any time upon request of your Orators.

Your Orators further show that they have offered to execute said agreement marked A. if said Lear would execute said writing marked U. and that said Lear has refused to execute said writing marked U. unless your Orators will execute a writing furnished them by said
200 Lear which is herewith filed, marked Exhibit V. and made part hereof, said Lear pretending that said last named writing embodies the terms and conditions of the agreement between the parties, whereas your Orators charge that said writing contains stipulations materially different from those agreed upon, and that said writing marked A. contains in full the true agreement:

210 and your Orators charge that the setting up by said Lear of the conditions of said writing marked V. is a mere pretence, in fraud of the rights of your Orators

for the purpose of forcing them into an agreement never made or contemplated by them, or in case of their refusal to execute said agreement, to make it an excuse and pretence for said Lear's refusal to execute said writing marked
220 U. and your Orators aver that they have always been willing, and are still willing and hereby offer to execute said writing marked A. whenever said Lear will execute the writing marked U. or one of like effect.—
Your Orators further shew that all the aforesaid agreements as made between your Orators and said Lear, rest in parol, no written memorandums thereof having
230 been signed by either party.

In consideration of the premises and forasmuch as your Orators cannot have full relief against the wrongful acts of said Lear without the aid of a Court of Equity, your Orators pray that the said Lear may be made defendant to this bill and summoned to answer the same, hereby waiving his oath to said answer, and that he be required
240 to make full, true and perfect answer herein to every allegation and charge

the same as if thereto again specially interrogated, and that upon a hearing of this cause, your Honor would decree that said Lear be directed to convey his right and interest in said coal lands and privileges to your Orators by proper deed by some short day in said decree to be named and that in
250 default thereof, the Master in Chancery of this Court be directed to execute such conveyance for him and that your Honor would grant unto your Orators such other and further relief both general and special as to equity seemeth meet, and as in duty bound your Orators will ever pray, &c.,

Pierre Chouteau Jr
James Harrison &
Felix Valle.

By Wm. N. Grover
Sol for Complts.
260

Be it also remembered that on the day of filing the said Bill of Complaint the said Complainants also filed therewith the following Praecipe to wit:

10½

Chouteau, Harrison & Valle
vs
Frederick Lear

In the Circuit Court
of St Clair County
In Chancery.

Stipulation to withdraw exhibits

By consent of counsel for both parties in this suit it is ordered that Complainants have leave after answer and replication shall have been filed, to withdraw such Exhibits as they may think proper by leaving certified copies of the same with the clerk.

260

J. Barker
for Complainants

J. Niles
for defendant.

[8703-8]

11.
Precipe
for
Summons
&
Publication

Pierre Chouteau jr
James H Carrison &
Felix Valle
vs
Frederick Lear

In the Circuit Court
of the County of
Saint Clair and
State of Illinois.
In Chancery.

270 The Clerk will please issue a summons
1 in the above entitled cause, to the
2 Sheriff of said County, returnable to
3 next term of said Court, and also a
274 notice of publication to such paper
275 in Belleville as he may think proper.

Wm A. Grover
Sol for Compl'ts.

And also be it remembered that on the same day of filing said Bill and Precipe the said Complainants also filed a bond for costs and an affidavit for advertise
280 = ment, which are as follows

[8723-9]

12

Pierre Chouteau Jr James Harrison & Felix Valle vs Frederick Lear	In the Circuit Court of the County of Saint Clair & State of Illinois. In Chancery.

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

Dated this 9th day of January A.D. 1854.

J. Baker.

approved by me
at my Office
this 9th day of
January A.D. 1854.

13. 300 Pierre Chouteau Jr
James H Carrison &
Felix Valle
vs
Frederick Lear.

In the Circuit Court
of the County of St Clair
and State of Illinois.

In Chancery.

being duly sworn, says
that Frederick Lear the above named
defendant is not a resident of the State
of Illinois.

David J. Dickey.

310 Subscribed and sworn
to before me, this 9th
day of January A.D.
1854.

Wm. S. Thomas
Clerk.

And afterwards to wit on the ~~2nd~~ first Tues day of the March Term of said court ~~October~~ A.D. 1854 the said Complainants in the said court come and make proof of a notice by advertisement to said defend=
320=ant, by presenting a printed notice with the certificate of printers as follows; which notice and certificate being read is ordered by the court to be filed

[8723-11]

State of Illinois
St Clair County } In the St Clair County Circuit Court. March Term 1854.
In Chancery.

Pierre Chouteau Jr
330 James Harrison
Felix Valle,
composing the firm of
Chouteau, Harrison & Valle,
vs
Frederick Lear. } Bill in Chancery.

Notice is hereby given to the above named defendant, that the above named complainants have filed in the Office of the Clerk of the Circuit Court within and
340 for the County of St Clair and State of Illinois their bill of complaint against him, and also an affidavit that the said Frederick Lear is a non-resident of the State of Illinois, and that upon the filing thereof, a writ of subpoena issued against him, returnable on the first day of the next Term of said Court to be holden in the City of Belleville, on the second Monday of March next, and that if he fail to

15- 350 appear in said Court on the return day of said writ of subpoena, the said bill will be taken as confessed against him and a decree made by said Court in accordance with the prayer of said bill.

Witness William S. Thomas, Clerk of said Court, and the seal thereof hereto affixed, this 11th day of January A.D. 1854.-

{L.S.}

William S. Thomas.

360 Hill, Green & Hill
Sols

January 11th 1854

~~4 W 14~~

State of Illinois }
St Clair County } set

We the undersigned, publishers of the Belleville Advocate, a newspaper published weekly in the City of Bellville in said County and State do hereby certify that the annexed printed notice was
370 published four times in four successive weeks in said newspaper, the first publi-

cation thereof, being on the 11th day of January A.D. 1854, and the last publication on the 1st day of February A.D. 1854. As witness our hands this 14th day of March A.D. 1854

Flemming & Giles

Printer's Bill $5.25
Certificate 50
$5.75

380c And afterwards to wit on the 2nd day of October A.D. 1854 the said defendant Frederick Lear filed his answer to said bill as follows to wit:

17

The answer of Frederick Lear, defendant to the bill of complaint of Pierre Chouteau Jr. James Harrison and Felix Valle, Complainants.

This defendent, saving to himself now and at all times hereafter, all
390 and all manner of benefit and advantage of exception, which can or may be had or taken to the said bill of complaint, for answer thereto says, that true it is as stated in the said bill of complaint, and this defendant admits that he purchased the coal in certain lands in St Clair County, Illinois, and the right of way over the same, and every facility
400 for digging said coal and transporting the same to market from said lands shown by Exhibits marked respectively B. C. D. E. F. G. H. ~~I~~. J. K L. M. N. O. P. R. S. T. and filed

with the said bill; that such pur-
chases of coal were made by defendant
from the persons named in said bill
and Exhibits: but this defendant
expressly denies that they were made
410 by him for the benefit of, or as agent
and trustee for the complainants as
alleged in said bill; nor was he;
employed by said Complainants to
purchase said coal for them and
their benefit; nor did he ever
agree to obtain the contracts or con-
veyances for said coal "in his own
name, and hold the same tempora-
rily for the use of said complainants,
420 subject to the understanding or agree-
ment that he was to transfer abso-
lutely to said complainants all his
interest in such purchases by deed".

No such agreement was made.
And this defendant denies that any
understanding or agreement similar,
to that set out in said bill and
Exhibit A. was ever made by and
between the parties; and that he is
430 or was ever bound in any way to
make an absolute and unconditional
conveyance of all his right as purchaser

of the coal and priviliges under the contracts shown in the said bill and Exhibits; said purchases having been made for the joint use and benefit of both defendant and complainants, not for the exclusive benefit of complainants. — In the latter part
440 of the month of June A.D. 1853, this defendant, who is a collier by profession, made an examination of St Clair County near the Mississippi river for the purpose of finding coal lands, and found many valuable tracts. — Sometime afterwards he informed the complainants, Chouteau, Harrison & Valle, of his discoveries of coal lands, telling them their situation,
450 — distance from Carondelet, and character generally, and expressed the opinion that such a supply of cheap coal could be procured that the manufacturers would find it to their interest to bring the minerals of the Iron Mountain over the railroad to the vicinity of these lands, to be worked where cheap coal could be procured. —

This defendant then suggested that
460 the privilege of digging coal could

be procured cheaply, but that land bore a high price, and that if coal could be bought here, as in the old country, separate from the land, he thought that plenty of it could be procured.

The complainants approved of the suggestion, and Mr Chouteau, their Agent, at once proposed to this defendant to fix upon the
470 terms upon which he would go into the business, and to settle upon some agreement between the parties for their common interest and joint action in respect to the coal lands thus brought to the notice of the complainants.

This defendant then said to complainants that his object would be to work the mines, in so
480 extensive and regular a manner as to supply a very large quantity of cheap coal, and to have it always on hand, and that if complainants would go into the business and supply all the means necessary for the thorough working of the mines, he, defendant would make

a charge of only one fifth of one
cent per bushel on all the coal taken
490 out of the mines, and that while
engaged in opening the mines, and
before they yielded any coal deliv-
ered outside, he would charge the
sum of ninety dollars per month.
This sum was reduced to Seventy
dollars which complainants agreed
to pay this defendant per month
for opening said mines.
This conversation and
500 verbal agreement took place at
the Counting house of said complain-
ants in St Louis. — This defendant
then proceeded to Illinois and procur-
ed the right of taking coal from
some six hundred or seven hundred
acres of land to himself and so
reported to Complainants.
They expressed the opinion that
this was not sufficient, and defend-
510 ant returned several times to Illinois,
and procured the rights set out in
the bill of complaint and Exhibits.
The terms of these contracts were
for the payment of fifteen dollars
per acre of coal, payable in gold

and silver when the coal should be extracted from the land in which it lies, the right of way and other necessary facilities for mining it being also conveyed with said coal
520 and for a nominal sum in some cases paid down to the vendors in said bill and Exhibits named, none of whom knew any party in the said agreement as a purchaser other than this defendant.

He also admits that the complainants caused the writings marked respectively Exhibits A. and U. to be executed for this defendant to
530 sign, and that they were willing to sign that marked U. provided he would sign that marked A. which he refused to do, but denies most positively that said writings embody or express the true agreement and understanding between the parties in regard to the purchase of the said coal and privileges, and avers that the true agreement and understand
540 ing between them is more correctly shown in the writing marked Exhibit V. which this defendant offered to

said complainants for them to execute, which they refused to do, on the execution of which by them this defendant was then and is now willing to execute the writing presented by them and marked Exhibit U.

This defendant avers that the
550 agreement contained in Exhibit V. saves and secures to him his just rights under said purchases and to said complainants all that they can rightfully and justly claim. —

This defendant admits and avers, that the complainants were to bear and did bear his current expenses, while engaged in making the purchases of coal above mentioned, and
560 that they advanced to him for that purpose various sums of money; — that he received from them in all for this and other purposes the sum of three hundred and seventy dollars ($370.) of which one hundred was invested in the purchase of forty acres of land near the Ohio and Mississippi railroad for which land this defendant has executed a
570 deed and tendered it to said com-

plainants, and is now ready to convey said land to said complainants, he having no claim and never setting up any claim thereto.

This defendant avers that he received no compensation for his time and labor, expended in making the said purchases and discovering the coal, the existence of which he first gave the information to the
580 complainants as aforesaid.

This defendant admits that all of the said purchases were made in the months of October and November A.D. 1853 as alleged by complainants, but he avers that he expended only about the sum of one hundred and Seventy dollars in making the same, and that on or about Christmas of the same year, he bor-
590 rowed, or received from said complainants by way of advance on their contract for opening said coal mines, the sum of one hundred dollars which he expected to pay again by labor under their contract for opening the said mines.

This defendant avers the fact to be

that by the true intent and meaning of his contract and understanding
600 with complainants, he was to receive two mills (one fifth of one cent) per bushel for all the coal purchased by him and mined or taken out of the ground, and seventy dollars per month for superintending the opening of the mines and that the said complainants were to furnish all the means and necessary expenses attending the opening of the
610 mines and working, and that he is now and always has been ready to comply with his part of said contract, but that said complainants are not ready or willing to comply with theirs: that they are endeavoring to obtain the whole and exclusive benefit of the said purchases, and possession and enjoyment of the said coal and privileges with-
620 out conforming to the true intent and understanding of said agreement, thereby defrauding this defendant.

This defendant avers that he is the true and real owner

of the said coal and priviliges pur-
chased by him, until and unless
the complainants shall fulfill their
contract with him according to its
630 true intent and meaning as above
set forth, which they have hitherto
wholly failed to do.

And this defendant having
answered the bill of complainants,
prays to be hence dismissed, with
his reasonable costs and charges.

Frederick Lear.

Koerner & Niles
for Def't.

640 Which said Exhibits referred to in the said
Bill of Complaint and answer are
in the words and figures following to
wit;

Exhibit A. Page 27-

Whereas, Pierre Chouteau Jr, James Harrison and Felix Valle are the owners by purchase and assignment of all the stone coal and mineral coal in various lands, to wit: the same lands set forth and described in a certain Indenture, made the 7th day
650 of December 1853, between Frederick Lear of the one part, and said Chouteau, Harrison & Valle of the other part, whereby said Lear assigned all his interest in the said coal lands in St Clair County to said Chouteau, Harrison & Valle: And whereas said Chouteau, Harrison & Valle desire to procure the services of said Lear in opening the coal mines on said lands, aid in superintending
660 the taking of coal therefrom and its transportation to the depot or mill of said Chouteau, Harrison & Valle at St Louis: Now this agreement witnesseth, that said Chouteau, Harrison & Valle, in consideration of the premises, and of the services to be performed by said Lear, do agree to pay said Lear Seventy dollars per month for his services
670 in laboring at and opening the coal mine in said lands during such time as the said Lear may be employed

therein: and the said Lear agrees faithfully and diligently to prosecute the work of opening said mine until the same is opened and ready for being worked and when the main entry is cut open, and the mine is ready to be worked, then the monthly pay of said Lear shall cease, and for his services in superintending the digging of the coal and the transportation thereof from the mine to St Louis, the said Chouteau, Harrison & Valle are to pay to said Lear the sum of one fifth of one cent (two mills,) for each and every bushel of coal furnished to Chouteau, Harrison & Valle, or sold for their account.

The said Lear is to devote his whole time and attention, to superintending, and getting out of the mine, the coal, and to working the mine, and to keeping the mine in order for being worked to the best advantage: Chouteau, Harrison and Valle are to furnish the workmen for the mine and all materials for the proper working thereof; and the said Lear shall keep faithful and just accounts, and certify the amount due to each man weekly, and attend to the payment

of their wages and the taking of receipts therefor, if said Chouteau, Harrison & Valle shall so elect, and the said one fifth of one cent for each bushel of coal taken from said mine as aforesaid, shall be in full satisfaction for all the services of said Lear as ~~xx~~ Superintendent as aforesaid, after the mine is opened. —

710 This agreement is not to take effect, until after one month's notice given to said Lear by Chouteau, Harrison & Valle to that effect, unless the parties hereto shall mutually consent to a shorter time for the beginning of operations.

In Witness whereof, the parties have hereunto set their hands this

719 day of January A. D. 1854.

(Exhibit B.)

30. Frederick Lear of St Louis, State of Missouri, and Henry Ebel of St Clair County, State of Illinois: Have this 20th day of October one thousand eight hundred and fifty three entered into agreement by which Frederick Lear, by himself or his assigns agrees to pay to Henry Ebel or his assigns, the sum of fifteen dollars for every acre of coal that may be contained in the land owned by the said Henry Ebel,
730 and situated in the Northeast quarter of Southeast quarter of Section Thirty five, Township One North, Range Ten West. And the said Henry Ebel, for himself and his assigns, does hereby agree to afford the said Frederick Lear or his assigns, right of way and facility necessary for digging said coal, which shall be paid for as extracted, in weekly, monthly, or such payments as may
740 suit the parties concerned. —

Witness
T. T. Pulse
James Nunns

Frederick Lear.
Henry Eble.

6.

Exhibit 6

31-

Frederick Lear of St Louis State of Missouri, and Andrew Deroff of Saint Clair County, State of Illinois, have, this 25th day of October, one thousand eight hundred and fifty three entered into agreement by which Frederick Lear by himself or his assigns agrees to pay to Andrew Deroff or his assigns the sum of fifteen dollars for every acre of coal that may be contained in the land owned by the said Andrew Deroff and situated in the North West quarter of the South West quarter of Section Twenty six, Township One North, Range Ten West of the Third Principal Meridian.

And the said Andrew Deroff by himself or his assigns, right of way and every necessary facility for digging said coal, which shall be paid for as extracted, in weekly, monthly, or such payments as may suit the parties concerned.

Andrew Deroff. (Seal)

Sarah Gear
James Thunn.

Exhibit D. 770 Page 32

Frederick Lear of St Louis State of Missouri, and Andrew Schroeder of St Clair County, State of Illinois, have, this 25th day of October, one thousand eight hundred and fifty three, entered into agreement, by which Frederick Lear by himself or assigns agrees to pay to Andrew Schroeder or his assigns, the sum of fifteen dollars for
780 every acre of coal that may be extracted, in the land owned by the said Andrew Schroeder, and situated in the Southeast quarter of the Northeast quarter of Section thirty five, Township one North of Range Ten West, and the East half of the North West quarter of the North East quarter of Section thirty five, Township One North of Range Ten West of the principal meridian.

790 And the said Andrew Schroeder for himself and his assigns does hereby agree to afford the said Frederick Lear or his assigns, right of way and every facility necessary for digging said coal, which shall be paid for as extracted, in weekly, monthly, or such payments as may suit the parties concerned. — Frederick Lear.

Witness
J. T. Pulse. — James Murry. } Andrew Schroeder.

(8723-23)

Exhibit E. 800 33.

Articles of contract, made and entered into this fourteenth day of November, eighteen hundred and fifty three, by and between Jacob Hoefstetter of the County of St Clair, State of Illinois, of the first part, and Frederick Lear of the City and County of St Louis, State of Missouri, of the second part — Witnesseth — that the party of the first part have contracted, bargained and sold to the party of the second part, all the stone coal or mineral coal contained on or in, the East half of the South West quarter of Section Thirty six, Township One, North, Range Ten West, containing eighty acres, — as it now lies, for the price of fifteen dollars per acre, and the further sum of five dollars cash in hand paid, the receipt of which is hereby acknowledged by the party of the first part, without reference to the soil or anything thereon but the coal, to be paid for monthly, in gold or silver, as fast only as the coal is extracted or taken out of the mines. —

and the party of the first part further agrees and contracts to afford and give to said party of the second part or his assigns, the right of way for all the plank roads or other roads deemed necessary to and from the
830 openings of working, or air shafts, and drifts for the proper working of said coal lands.

The said Frederick Lear or his assigns on his part agrees and binds himself that when said mines are opened that he will work them with due and proper regard to their preservation, and that he or his assigns
840 shall pay as aforesaid at the price and rate of fifteen dollars per acre for all the coal extracted, at the end of each month, in gold or silver coin. In testimony whereof, the parties have hereunto set their hands and seals the day and year first above written.

Witness
Henrich Ebel.
850 Jas Murray.

Jacob Hofstetter {Seal}
Fred Lear {Seal}

L.

Exhibit
K
35.

Articles of Contract made and entered into this tenth day of November eighteen hundred and fifty three, by and between Jacob Lunceford of the County of St Clair and State of Illinois of the first part, and Frederick Lear of the City and County of St Louis State of Missouri, of the second part — Witnesseth,

That the party of the first part
860 have contracted and bargained and sold to the party of the second part all the stone coal or mineral coal contained on or in the North part of claim Four hundred twenty nine, and survey Eighteen hundred, containing One hundred and Seventy acres, and the South part of claim Four hundred and thirty, survey Three hundred thirty nine, containing two hundred acres,
870 in Township One North of Range Ten West of Third Principal Meridian, as it now lies, for the price of fifteen dollars per acre and the further sum of five dollars cash in hand paid, the receipt of which is hereby

acknowledged by the party of the
first part (without reference to the soil
or anything thereon but the coal) to
be paid for monthly in gold or silver,
880 as fast only as the coal is extracted
or taken out of the mines, and the party
of the first part further agrees and con-
tracts to afford and give to the said party
of the second part or his assigns the
free right of way for all the plank
roads or other roads deemed necessary
to and from the openings of working
air shafts or drifts for the proper work
ing of said coal lands, and also a reason-
890 able amount of ground or room for
platform and coal yards and for
wagons and carts to have room to turn
about round said yards for loading
and conveying to and from said land.

The said Frederick Lear or his assigns
on his part agrees and binds himself
that when said mines are opened that
he will work them with due regard
to their preservation, and that he or
900 his assigns shall pay as aforesaid
at the price and rate fifteen dollars
per acre for all the coal extracted
at the end of every month in gold

or silver coin.

In testimony whereof, the parties have hereunto set their hands and seals the day and the year first above written

Witness

James M. Lunsford. } Jacob Lunsford. (Seal)
H. S. Phelps } Fred Lear. (Seal)
Jas Murray. }

910

G.

Exhibit G.

Articles of contract made and entered into this thirteenth day of November eighteen hundred and fifty three, by and between Christine Hofstetter of the County of Saint Clair & State of Illinois of the first part, and Frederick Lear of the City and City and County of St Louis & State of Missouri of the second part, — Witnesseth that the party of the first part hereby contract

920 bargains and sell to the party of the second part all the stone coal or mineral coal contained on or in the North half of the South West quarter of Section Thirty five, Township One North Range Ten of the Third Principal Meridian, as it now lies for the price of fifteen dollars per acre,

and the further sum of five dollars cash in hand paid, the receipt of which is hereby acknowledged by the party of the first part (without reference to the soil or anything thereon but the
940 coal,) to be paid for monthly in gold or silver as fast only as the coal is extracted or taken out of the mines, and the party of the first part further agree and contracts to afford and give to said party of the second part or his assigns, the free right or way for all the plank roads or other roads deemed necessary to and from the openings or working in air shafts and drifts for the proper workings of said coal lands, and also a reasonable amount of ground or room for
950 platform and coal yard, for wagons and carts to hire about said coal yard for loading to and from said lands. — The said Frederick Lear or his assigns on his part agree and binds himself that when said mines are opened that he will work them out with due and proper regard to their preservation, and that he or his assigns shall pay as aforesaid at the price of fifteen dollars per acre for all the coal extracted at the end of each month in gold or silver coin.
960 In testimony whereof, the parties have hereunto set their hands and seals, the day and year first above written.

Christine Hofsteller (Seal)
her X mark

Witness
Heinrich Ebel
Jas Murray.

Fred Lear.

[8723-25]

Exhibit H. p. 39

Articles of contract made and entered into this fifth day of November eighteen hundred and fifty three by and between Frederick Ludman of the County of St Clair and State of Illinois
970 of the first part, and Frederick Lear of the City and County of Saint Louis and State of Missouri, of the second part — Witnesseth — The party of the first part have contracted, bargained and sold to the party of the second part all the Stone coal or mineral coal contained on or in the Southeast quarter of the Southwest quarter of Section Thirty five, Township One, Range Ten West of the Third Principal Meridian, and the Southeast quarter of the Northwest
980 quarter of Section Thirty five, Township One Range Ten West of Third Principal Meridian, containing Eighty acres, as it now lies for the price of fifteen dollars per acre, and the further sum of five dollars cash in hand paid, the receipt of which is hereby acknowledged by the party of the first part (without reference to the soil or anything thereon but the coal) to be paid for monthly in gold or silver, as fast only as the

p. 40. coal is extracted or taken out of the mines, and
990 the party of the first part further agrees and contracts
to afford and give to said party of the second part
or his assigns the free right of way for all the
plank roads or other roads deemed necessary
to and from the openings of working or air shafts
and drifts for the proper working of said coal
land and also a reasonable amount of ground
or room for platform or coal yards and for wag-
ons and carts to have room to turn round about
said coal yard for loading and conveying to and
400 from said coal lands. — The said Frederick Lear
or his assigns on his part agrees and binds him-
self, that when said mines are opened that he
will work them with due and proper regard to
their preservation, and that he or his assigns
shall pay as aforesaid at the price and rate of
fifteen dollars per acre for all the coal extracted
at the end of every month, in gold or silver coin.

In testimony whereof, the parties have
hereunto set their hands and seals the day and
410 year first above written.

Witness Signed Frederick Ludwum (Seal)
Adam Hoffman " Fred. Lear (Seal)
James Marm

[8725-27]

Exhibit J.
p. 40

Articles of contract made and entered into this Seventh day of November, eighteen hundred and fifty three, by and between John Hook of the County of St Clair, State of Illinois of the first part and Frederick Lear of the City and County of St Louis and State of Missouri of the second part — Witnesseth —

420 That the party of the first part have contracted bargained and sold all the stone coal or mineral coal contained on or in the Southeast quarter of the Southeast quarter of Section Thirty five, Township One South, Range Ten West, and the Northeast quarter of the Northeast quarter of Section Two, Township One South, Range Ten West of the Third Principal Meridian, containing Eighty acres as it now lies for the price of fifteen dollars per acre and the further sum

430 of five dollars cash in hand paid the receipt of which is hereby acknowledged by the party of the first part (without reference to the soil or anything thereon but the coal) to be paid for monthly, in gold or silver, as fast only as the coal is extracted or taken out of the mines, — and the party of the first part further agrees and contracts to afford and give the said Frederick Lear party of the second part or his assigns the

p. 42
line 440

free right of way for all the plank road or other roads deemed necessary to and from the openings of working or air shafts and drifts for the proper working of said coal lands and also a reasonable amount of ground or room for platform and coal yards and for wagons and carts to have room to turn about said coal yards for loading and conveying to and from said lands.

The said Frederick Lear or his assigns on his part agrees and binds himself that when
450 said coalmines are opened that he will work them with due regard to their preservation and that he or his assigns shall pay as aforesaid at the price and rate of fifteen dollars per acre, for all the coal extracted, at the end of each month in gold or silver coin.

In testimony whereof, the parties hereunto set their hands and seals the day and year above written.

Witness
460 Henry Ebel
James Waum

John Hook (Seal)
Fred Lear (Seal)

K.

("Exhibit" "K.") p. 43.

Articles of contract made and entered into this twenty sixth day of October, eighteen hundred fifty three, by and between John P. Leper of the County of St Clair, State of Illinois, of the first part, and Frederick Lear of the City and County of St Louis, State of Missouri, of the second part. — Witnesseth — That the first part have contracted, bargained and sold
470 to the party of the second part all the Stone coal or Mineral coal contained on or in the Northwest quarter the Northeast quarter and the South West quarter of the North West quarter of Section One, Township One South and Range Ten West, as it now lies, for the price of fifteen dollars per acre and the further sum of five dollars cash in hand paid, the receipt of which is hereby acknowledged by the party of the first part (without reference to the soil or anything thereon but
480 the Coal,) to be paid for monthly in gold or silver as fast only as the coal is extracted or taken out of the mines. — And the party of the first part further agrees and contracts to afford and give to the said party of the second part or his assigns the free right of way for all the

plank roads or other roads deemed necessary to and from the openings of working or air shafts and drifts for the proper working of said coal lands and also a reasonable amount of ground
490 or room for platform and coal yards and for wagons and carts to have room to turn about said coal yards for loading and conveying to and from said lands. — The said Frederick Lear or his assigns on his part agrees and binds himself that when said mines are opened he will work them with due and proper regard to their preservation and that he or his assigns shall pay as aforesaid at the price and rate of fifteen dollars per acre for all the coal extracted
500 at the end of each month in gold or silver coin. In testimony whereof, the parties have hereunto set their hands and seals the day and year first above written.

Witness
Henry Ebel
James Mann

John Leper (Seal)
Fred Lear (Seal)

p. 45

L.

Exhibit L.

Articles of contract made and entered into this thirteenth day of November eighteen hundred and fifty three, by and between Margaret Hofstetter of the County of St Clair and State of Illinois of the first part, and Frederick Lear of the City and County of St Louis and State of Missouri, of the second part — Witnesseth — That the party of the first part hereby contracts, bargains and sells to the party of the second part, all the Stone coal or Mineral coal contained on or in the Southwest quarter of the Northwest quarter of Section Thirty five, Township One North, Range Ten West of principal Meridian, containing Forty acres, as it now lies, for the price of fifteen dollars per acre, and the further sum of five dollars cash in hand paid, the receipt of which is hereby acknowledged by the party of the first part (without reference to the soil or anything thereon but the Coal,) to be paid for Monthly, in gold or silver as fast only as the Coal is extracted or taken out of the mines, and the party of the first part further agrees and contracts to afford

p. 46.

and give to said party of the second part or his assigns, the free right or way for all the coal plank roads or other roads deemed necessary, by and from the opening of working or air shafts and drifts for the proper working of said coal lands and also a reasonable amount of ground or room for platform or coal yard, and for wagons and carts to have room to turn about said coal yards for loading and conveying to and from said lands. — The said Frederick Lear or his assigns on his part agrees and binds himself that when said mines are opened that he will work them with due and proper regard to their preservation, and that he or his assigns shall pay as aforesaid the price and rate of fifteen dollars per acre, for all the coal extracted at the end of each month in gold or silver coin.

In testimony whereof the parties have hereunto set their hands and seals, the day and year first above written.

Witness
Lyuennf Shal
Jrbazy Nasker
James Munn.

Margaret Hoffstetter (Seal)
Fred Lear. (Seal)

[8723-30]

M.

Exhibit M. p. 47

Articles of contract made and entered into this Tenth day of November, eighteen hundred and fifty three, by and between Frederick Sperber, of the County of St Clair and State of Illinois, of the first part, and Frederick Lear of the City and County of St Louis of Missouri, of the second part. — Witnesseth — That the party of the first part have contracted, bargained and sold to the party of the second part, all the stone or mineral coal contained on or in the Northeast quarter of the Northeast quarter of Section Thirty five, Township One North, Range Ten West of the Third principal meridian, containing forty acres as it now lies, for the price of fifteen dollars per acre and the further sum of five dollars in hand paid, the receipt of which is hereby acknowledged by the party of the first part (Without reference to the soil or anything thereon but the coal,) to be paid for monthly in gold or silver, as fast only as the coal is extracted or taken out of the mines — and the party of the first part further agrees and contracts to afford and

give to said party of the second part or his assigns, the free right of way for all the plank roads or other roads deemed necessary to and
580 from the openings of working or air shafts and drifts for the proper working of said coal lands and also a reasonable amount of ground or room for platform and coal yards and for wagons and carts to have room to turn about said coal yards for loading and conveying to and from said lands. —

The said Frederick Lear or his assigns on his part agrees and binds himself that when said coal mines are opened that he will
590 work them with due and proper regard to their preservation, and that he or his assigns shall pay as aforesaid at the price and rate of fifteen dollars per acre for all the coal extracted at the end of each month in gold or silver coin.

In testimony whereof, the parties have hereunto set their hands and seals the day and year first above written.

Witness
600 Gustav Sperber
James Munn

Frederick Sperber (Seal)
Fred Lear. (Seal)

N.

p. 49.

Exhibit N.

Articles of contract made and entered into this tenth day of November, eighteen hundred and fifty three, by and between William Krieger of the County of Saint Clair and State of Illinois of the first part, and Frederick Lear of the City and County of Saint Louis of the second part — Witnesseth — That the party of the first part have contracted, bargained and sold
610 to the party of the second part, all the Stone coal or mineral coal contained ~~on~~ or in the South half of the North West quarter of Section Thirty six, Town One North, Range Ten West of the third principal meridian, and the Southeast quarter of the Northeast quarter of Section Thirty five Town One N. Range Ten West of the third Principal Meridian as it his for the price of fifteen dollars per acre, and the further sum of five dollars cash
620 in hand paid, the receipt of which is hereby acknowledged by the party of the first part (without reference to the soil or anything thereon but the coal) to be paid monthly in gold or silver, as fast only as the coal is extracted or taken out of the mines, and the

p. 50

party of the first part further agrees and contracts to afford and give to the said party of the second part or his assigns the free right of way for all the plank roads
640 or other roads deemed necessary to and from the openings of working shafts, air shafts and drifts for the proper working of said coal lands, and also a reasonable amount of ground or room for platform & coal yards and for wagons and carts to have room to turn about said coal yards for loading and conveying to and from said lands. The said Frederick Lear or his assigns on his part agrees and binds himself that
650 when said coal mines are opened that he will work them with due and proper regard to their preservation, and that he or his assigns shall pay as aforesaid at the price and rate of fifteen dollars per acre, for all the coal extracted at the end of each month in gold or silver coin. — In testimony whereof, the parties have hereunto set their hands and seals, the day and year first above written. —

William Krieger. (Seal)

660 Witness Fred Lear. (Seal)

Henry Ebal
James Murray.

p. 51

Exhibit O

Articles of contract made and entered into this eleventh day of November, eighteen hundred and fifty three, by and between John Sharp of St Clair County & State of Illinois of the first part, and Frederick Lear of the City and County of St Louis of the second part — Witnesseth — That the party of the
670 first part have contracted, bargained and sold to the party of the second part all the stone coal or mineral coal contained on or in the North West quarter of the North West quarter of Section Thirty five, Town One North, Range Ten West of Third Principal Meridian — The Southeast quarter of the South East quarter of Section Twenty six, Town One North, Range Ten West of Third Principal Meridian, and the Southwest quarter of the
680 Southwest quarter of Section Twenty six, Town One North, Range Ten West of Third Principal Meridian, as it lies, for the price of fifteen dollars per acre and the further sum of five dollars cash in hand paid, the receipt of which is hereby acknowledged by the party of the first part (Without reference

to the soil or anything thereon but the coal,) to be paid for monthly in gold or silver as fast only as the coal is extracted or taken out of the mines, and the party of the first part further agrees and contracts to afford and give to said party of the second part or his assigns the free right of way for all plank roads or other roads deemed necessary to and from the openings of working shafts, air shafts and drifts for the proper working of said coal land, and also a reasonable amount of ground or room for platform or coal yard and for wagons and carts to have room to turn about said coal yard for loading and conveying to and from said yard.

The said Frederick Lear or his assigns on his part agrees and binds himself that when said coal mines are opened that he will work them with due and proper regard to their preservation, and that he or his assigns shall pay as foresaid, at the price and rate of fifteen dollars per acre for all the coal extracted at the end of each month in gold or silver coin.

In testimony whereof, the parties have hereunto set their hands and seals, the day and year first above written. John Sharp. (Seal)

Witness
Hiram C. Pulse
James Munn.

Fred Lear. (Seal)

Exhibit P.

Articles of contract made and entered into this fifth day of November eighteen hundred and fifty three, by and between George
720 Schellenberger of the County of St Clair State of Illinois of the first part, and Frederick Lear of the City and County of St Louis & State of Missouri, of the second part — Witnesseth — That the party of the first part have contracted, bargained and sold to the party of the second part, all the Stone coal or mineral coal contained on or in the West half of the Southeast quarter of Section Thirty five Town-
729 ship One, Range Ten West of the Third Principal
730 Meridian, as it now lies for the price of
731 fifteen dollars per acre and the further sum of five dollars cash in hand paid, the receipt of which is hereby acknowledged by the party of the first part (without reference to the soil or anything thereon but the coal,) to be paid for monthly in gold or silver, as fast only as the coal is extracted or taken out of the mines, and the party
739 of the first part further agrees and contracts
740 to afford and give to said party of the second
741 part or his assigns the free right of way for all the plank roads or other roads deemed

p. 54 necessary to and from, the openings of working or air shafts and drifts for the purpose of working of said coal lands and also a reasonable amount of ground or room for platforms and coal yards and for wagons and carts to have room to turn about said coal yards for loading and conveying to and from said lands.

750 The said Frederick Lear or his assigns on his part agrees and binds himself that when said mines are opened that he will work them with due and proper regard to their preservation and that he or his assigns shall pay as aforesaid at the price and rate of fifteen dollars per acre for all the coal extracted at the end of each month in gold and silver coin. —

In testimony whereof, the parties have

760 hereunto set their hands and seals the day and year first above written. —

George Schellenberger {Seal}

Witness Fred Lear. {Seal}

Adam Heffner }
James Munn. }

R.

p. 55.

Exhibit R.

Articles of contract made and entered into this thirteenth day of November, eighteen hundred and fifty three, by and between Jacob Sacrix of the County of Saint Clair
770 and State of Illinois, of the first part and Frederick Lear of the City and County of Saint Louis of the second part - Witnesseth,

That the party of the first part have contracted, bargained and sold to the party of the second part, all the Stone coal or mineral coal contained on or in the South East quarter of the Southeast quarter of Section Thirty four, Town One North, R. Ten West, and the Southwest quarter
780 of the Southwest quarter of Section Thirty five, Town One North R. Ten West of the third Principal Meridian, as it lies for the price of fifteen dollars per acre, and the further sum of five dollars cash in hand paid, the receipt of which is hereby acknowledged by the party of the first part (without reference to the soil or anything thereon but the coal,) to be paid for monthly in gold or silver coin, as fast only as the coal is
790 extracted or taken out of the mines, and the

p. 56.

party of the first part further agrees and contracts to afford and give to the said party of the second part or his assigns, the free right of way for all the plank roads or other roads deemed necessary to and from the openings of working shafts, air shafts and drifts for the proper working of said coal lands and also a reasonable amount of ground or room for platform and coal
800 yards and for wagons and carts to have room to turn about said coal yards for loading and conveying to and from said lands.

The said Frederick Lear or his assigns on his part agrees and binds himself, that when said coal mines are opened that he will work them with due and proper regard to their preservation and that he or his assigns shall pay as aforesaid, at the price and rate of fifteen dollars
810 per acre for all the coal extracted at the end of each month in gold or silver coin.

In testimony whereof, the parties have hereunto set their hands and seals the day and year first above written. —

Witness

Henry Ebal } Lacroix Jacob (Seal)
James Murray. } Frederick Lear (Seal)

57

Exhibit S.

Articles of contract made and entered into this thirteenth day of November, eighteen hundred and fifty three, by and between George Schellenberger of the County of St Clair, State of Illinois of the first part & Frederick Lear of the City and County of St Louis and State of Missouri, of the second part — Witnesseth —

That the party of the first part have contracted, bargained and sold to the party of the second part, all the Stone coal or mineral coal contained on or in the North half of the Northeast quarter and South west quarter of the Northeast quarter of Section number Four, in Township No One South of Range Ten West, containing One hundred and twenty three & 40/100 acres as it lies, for the price of fifteen dollars per acre and the further sum of five dollars in hand paid, the receipt of which is hereby acknowledged by the party of the first part (without reference to the soil or anything thereon but the coal) to be paid for monthly in gold or silver as fast only as the coal is extracted

or taken out of the mines, and the party of the first part further agrees and contracts to afford and give to said party of the second part or his assigns the free right of way for all the plank roads or other roads deemed necessary to and from the openings of working
850 shafts, air shafts and drifts for the purpose of working of said coal lands and also a reasonable amount of ground or room for platforms and coal yard and for wagons and carts to have room to turn about in said coal yards for loading and conveying to and from said land.

The said Frederick Lear or his assigns on his part agrees and binds himself that when said coal mines are opened that he
860 will work them with due and proper regard to their preservation, and that he or his assigns shall pay as aforesaid at the price and rate of fifteen dollars per acre for all the coal extracted, at the end of each month in gold or silver coin. — In testimony whereof, the parties have hereunto set their hands and seals the day and year first above written.

Witness: George Schellenberger (Seal)

Henry Ebal } Fred Lear (Seal)

870 Jas Mann. }

Exhibit J.

Frederick Lear of Saint Louis State of Missouri, and Jonathan Moore of St Clair County State of Illinois, have entered into agreement this eleventh day of October One thousand eight hundred and fifty three by which Frederick Lear agrees by himself or his assigns to pay to said Jonathan Moore or his assigns the sum of fifteen dollars for every acre of coal extracted from the
880 land of said Jonathan Moore situated in the southeast part of survey four hundred and thirty, claim three hundred and thirty nine, the west half of the survey containing Seventy five acres more or less. —

The said Jonathan Moore hereby agrees to afford to said Frederick Lear or assigns every facility in digging said coal — also to allow said Lear a sufficient piece of ground in a healthy situation
890 for to erect buildings to accomodate working hands and necessary officers all which are to be left on the ground by said F. Lear when he has finished

getting out the coal that may be contained in said land.

It is also agreed that should the said Fred Lear prefer buying said land, the said Jonathan Moore promises to transfer the same and make a good and
900 perfect title, to the said Fred Lear or his assigns for the sum of Twenty five dollars per acre, providing the said Frederick Lear shall conclude the purchase within six months from the date of this instrument. —

Fred Lear
Jonathan Moore.

Witness
C. W. Holliday.

Exhibit U p. 61. Cine-910

This indenture, made and entered into this seventh day of December A.D. eighteen hundred and fifty three, by and between Frederick Lear of the city and County of Saint Louis and State of Missouri, party of the first part, and Pierre Chouteau Jr. James Harrison and Felix Valle, parties of the second part, — Witnesseth —

Whereas, said party of the first part has heretofore, to wit — during the months of October & November last past, been engaged by said parties of the second part to purchase for them from the owners
920 of coal lands in St Clair County, State of Illinois, all the stone coal or mineral coal contained in said land, and the right of way over the same, and every facility for digging said coal — and Whereas the said Lear has, during the said period as such agent, obtained in his own name, but in fact for the benefit of said parties of the second part the following conveyances and
930 agreements, as follows — to wit:

A contract or agreement dated twenty fifth day of October, eighteen hundred and fifty three, recorded in the Recorder's Office in St Clair

County, Book H. No 2. page 143, made
by Heinrich Ebel, wherein said Ebel
agrees to afford said Lear and his
assigns the right of way and every
facility for digging all the coal con-
- 940 tained in or on the Northeast quarter
of Southeast quarter of Section Thirty
five, Township One North Range Ten
West, and the West half of the South
West quarter of Section Thirty six, Town-
ship One North, Range Ten West, in con-
sideration of fifteen dollars for every
acre of coal therein, to be paid to said
Ebel as provided in said contract, as
by reference thereto will fully appear
960 — Also a contract or agreement dated
the 25th of October 1853, recorded in the
Recorder's Office for St Clair County,
Book H. No 2. page 142 from Andreas
Deroff, wherein said Deroff agrees for
certain considerations therein mentioned,
to afford said Lear and his assigns the
right of way and every facility for
digging all the coal contained in the
land owned by said Deroff, situated
960 in the North West quarter of the South
West quarter of Section Twenty six, Town-
ship One North, Range Ten West of the

Third principal Meridian — as by reference to said agreement will fully appear.

Also a contract or agreement, dated the 25th day of October 1853, made by Andrew Schroeder and recorded in the Recorder's Office for St Clair County Book H. No 2. page 142, wherein said Schroeder agrees to afford said Lear or his assigns the right of way and every facility necessary for digging all the coal contained in the land owned by said Schroeder, situated in the North east quarter of the North east quarter of Section Thirty five, Township One North, Range Ten West, and the East half of the North West quarter of the North east quarter of Section Thirty five, Township One North, Range Ten West of the Third principal meridian for certain considerations therein mentioned — all of which will appear, reference being had to said agreement —

Also a conveyance dated the fourteenth day of November 1853, made by Jacob Hofstetter, whereby said Hofstetter upon certain considerations and conditions therein mentioned, bargains and sells to said Lear, all the stone coal on

mineral coal contained on or in the East half of the Southeast quarter of Section Thirty six, Township One North, Range Ten West, containing Eighty acres, with the free right of way for all roads necessary for the proper working of said coal lands, all of which will fully appear from the record of said conveyance
1000 in Book H. No 2. page 143 in the Recorder's office for St Clair County, Illinois —

Also a contract and conveyance dated the tenth day of November 1853 made by Jacob Lunceford, wherein said Lunceford upon certain considerations and conditions therein mentioned, bargained and sold to said Lear, all the stone coal or mineral coal contained on or in the North part of claim 429 and survey 1800
1010 containing 170 acres, and the South part of claim 430, survey 839 containing 200 acres, in Township One North, Range Ten West of the Third principal Meridian, as it now lies, with the free right of way for all roads necessary for the working of said coal lands and a reasonable amount of ground for coal yards &c, all of which will fully appear by reference to said conveyance

65 l.1020 and contract as the same appears of
record in the Recorder's Office for St
Clair County in Book H. No 2. page
143. — Also a contract and convey-
ance, dated the thirteenth day of Nov-
ember 1853, made by Christian Hofstetter
for certain considerations and upon
certain conditions therein mentioned,
contracts, bargains and sells unto said
Lear, all the Stone coal or mineral coal
1030 contained on or in the North half of
the South west quarter of Section Thirty
five, Township One North, Range Ten
West of the Third principal meridian,
with the right of way for all roads
deemed necessary for the proper working
of said coal lands and ground for
coal yards &c — all of which will fully
appear by reference to said contract and
conveyance as the same appears of record.
1040 Also a contract and conveyance
dated the fifth day of November 1853
made by Frederick Ludmann, recorded
in the Recorder's Office for St Clair
County, Book H. No 2. page 145
wherein said Ludmann upon certain
considerations and conditions therein
mentioned, has contracted, bargained, and

[8/23-40]

sold unto said Lear all the stone coal
or mineral coal contained on or in the
1050 Southeast quarter of the South west qu-
arter of Section Thirty five, Township
One, Range Ten West of the Third prin-
cipal meridian, and the Southeast qu-
arter of the South west quarter of Section
Thirty five, Township One South, Range
Ten West, with the right of way for all
roads deemed necessary for the proper
working of said coal lands and a
reasonable amount of ground for plat-
1060 form and coal yards, all of which
will fully appear by reference to the
record of said conveyance and con-
tract. — Also a conveyance and
contract dated the seventh day of
November 1853, made by John Hook re-
corded in the Recorder's Office for Saint
Clair County in Book H. No 2. page 145,
wherein said Hook upon certain con-
siderations and conditions therein
1070 mentioned, contracts, bargains and
sells unto said Lear all the Stone
coal or mineral coal contained on
or in the southeast quarter of the South
east quarter of Section Thirty five Town-
ship One North, Range Ten West and the

Northeast quarter of the Northeast quarter of Section Two, Township One, Range Ten West of the Third principal meridian, containing eighty acres, with the right
1080 of way for all roads for the proper working of the said coal lands, and a reasonable amount of ground for platforms and coal yards &c, all of which will more fully appear by reference to said contract and conveyance as the same appears of record. —

Also a contract and conveyance dated the twenty sixth day of October 1853, made by John P. Leper, recorded
1090 in the Recorder's office of the County of Saint Clair, wherein said Leper for certain considerations and upon certain conditions therein mentioned, contracts, bargains and sells unto said Lear, all the stone coal or mineral coal contained in or on the northwest quarter of the Northeast quarter, and the Southwest quarter of the Northwest quarter of Section One, Township One
1100 South and Range Ten West, with the right of way for all necessary roads for the proper working of said coal lands and a reasonable amount of ground

for coal yards, platforms &c, all of which will fully appear by reference to said instrument as the same is of record in said office Book H. No 2. page 146. — Also a contract and conveyance, dated the thirteenth day of
1110 November 1853, made by Margaretta Hofstetter, recorded in the Recorder's Office in St Clair County, Book H. No. 2. page 147, wherein said Margaretta Hofstetter, for certain considerations and upon certain conditions therein mentioned, contracts, bargains and sells unto said Lear, all the stone coal or mineral coal, contained on or in the Southwest quarter of the Northwest
1120 quarter of Section Thirty five, Township one North, Range Ten West of Third principal meridian, with the right of way for the coal and all the roads deemed necessary for the proper working of said coal lands and a reasonable amount of ground or room for platforms and coal yards &c, all of which will fully appear from the record of said instrument.

Also a contract and conveyance
1130 dated the tenth day of November 1853, made by Frederick Sperber, recorded in

the Recorder's Office for St Clair County, Book H. No 2. page 147, wherein said Sperber contracts, bargains and sells unto said Lear for certain considerations therein mentioned, all the stone or mineral coal contained on or in the South east quarter of the Northeast quarter of Section Thirty five, Township One North, Range Ten West of third principal meridian, containing forty acres, with the right of way for all the roads deemed necessary for the proper working of said coal lands and a reasonable amount of ground for platform and coal yard &c, all of which will fully appear by reference to the record of said instrument. — Also a contract and conveyance, dated the thirteenth day of November 1853, made by William Krieger, recorded in the Recorder's Office for St Clair County, Book H. No 2. page 148, wherein said Krieger for certain considerations, therein mentioned contracts, bargains and sells unto said Lear, all the stone coal or mineral coal contained on or in the South half of the North West quarter of Section Thirty six, Township One North, Range

1140

1150

70. 1160 Ten West of the Third principal meridian,
and the Southeast quarter of the North east
quarter of Section Thirty five, Township
One North, Range Ten West, with the
right of way for all roads deemed
necessary for the working of said coal
lands and a reasonable amount of ground
for platform and coal yard &c all of
which will fully appear by reference to
said instrument as the same appears
1170 of Record. — Also a contract and con-
veyance dated the eleventh day of
November 1853, made by John Sharp
and recorded in the said Recorder's
Office Book H. page 148, wherein said
Sharp upon certain considerations and
conditions therein mentioned, contracts
bargains and sells unto said Lear all
the stone coal or mineral coal contained
on or in the North West quarter of the North
1180 West quarter of Section Thirty five, Town-
ship One North, Range Ten West of Third
principal meridian — The Southeast
quarter of the Southeast quarter of Section
Twenty six, Township One North, Range
Ten West of Third principal meridian, and
the Southwest quarter of the South west qu-
arter of Section Twenty six, Township One

N. R Ten W. of Third principal meridian
with the right of way for all roads
1190 deemed necessary for the proper working
of said coal lands, and a reasonable
amount of land for platform and coal
yard &c, all of which will fully ap-
pear from the record of said instrument.

Also a contract and conveyance
dated the fifth day of November 1853
made by George Schellenberger and re-
corded in said Recorder's Office, Book
H. No 2. page 149, wherein said Schell-
1200 enberger, contracts, bargains and sells
upon certain considerations and conditions
therein mentioned unto said Lear all
the stone coal or mineral coal con-
tained in the West half of the Southeast
quarter of Section Thirty five, Township
One North, Range Ten West of the Third
principal meridian, with the right
of way for all roads deemed necessary
for the proper working of said coal lands
1210 and a reasonable amount of ground
for platforms and coal yards &c, all of
which will fully appear by reference
to the record of said instrument. —

Also a contract and conveyance,
dated the thirteenth day of November

1853, made by Jacob Lacroix and recorded in the Recorder's Office for St Clair County, Book H. No. 2 page 150, wherein said Lacroix for certain
1220 considerations and on certain conditions therein mentioned, contracts, bargains and sells unto said Lear all the stone coal or mineral coal contained on or in the Southeast quarter of the Southeast quarter of Section Thirty four, Township One North, Range Ten West, and the Southwest quarter of the Southwest quarter of Section Thirty five, Township One North,
1230 Range Ten West of the Third principal meridian, with the free right of way for all roads deemed necessary for the proper working of said coal lands and a reasonable amount of ground or room for platform and coal yards &c, all of which will fully appear by reference to said record of said instrument. — Also a contract and conveyance, dated the thirteenth day
1240 of November 1853, made by George Schellenberger, and recorded in the Recorder's Office for St Clair County wherein said Schellenberger contracts

73. bargains and sells unto said Lear
all the stone coal or mineral coal
contained in or on, the North half of
the North east quarter and South west
quarter of the Northeast quarter of Section
Four, Township One South of Range Ten
1250. West, containing One hundred and twenty
three acres and forty hundredths of an
acre, with the right of way for all
roads deemed necessary for the proper
working of said coal lands and a
reasonable amount of ground for coal
yard and platform &c, all of which
will fully appear by reference to said
instrument as the same appears of re-
cord in said Office Book H. No 2.
1260 page 180. — Also a contract and
conveyance, dated the eleventh day of
October 1853, made between Jonathan
Moore and said Lear, whereby said
Moore for certain considerations there-
in mentioned agreed to afford said Lear
or assigns every facility in digging
all the coal contained in the Southeast
part of Survey 430, claim 339 the
North half of the survey, containing
1270 Seventy five acres, and also to allow
said Lear the use of a sufficient

piece of ground to erect buildings for the purpose of working the coal land, — buildings to be left on the premises, with agreement to sell if desired for twenty five dollars per acre and convey good title — all of which will fully and at large appear, by reference to said instrument as recorded in the
1280 Recorder's office for St Clair County, Book H. No 2. page 150. —

Now therefore, in consideration of the premises, and of one dollar to him the said Frederick Lear in hand paid by said parties of the second part, the receipt whereof is hereby acknowledged, the said party of the first part has bargained, sold, assigned and transferred unto the said parties of the
1290 second part, and by these presents doth bargain, sell, assign and transfer unto them the said parties of the second part, and their heirs and assigns, all his, the said Lear's interest in and to the said conveyances and contracts above described with all the rights and privileges thereunto

belonging, or in anywise appertaining,
and with full power to do every
1500 act or thing that he the said Lear
might or could do in the premises.

In witness whereof, the said
party of the first part has hereunto
set his hand and seal the day first
above written. ——

(Seal.)

Exhibit V.

V

Page 76. line 1310

Whereas, Pierre Chouteau Jr. James Harrison and Felix Valle, are the owners by purchase and assignment of all the stone coal and mineral coal in various lands, to wit: the same lands set forth and described in a certain Indenture, made the seventh day of December eighteen hundred and fifty three, between Frederick Lear of the one part, and said Chouteau, Harrison & Valle of the other part, whereby said Lear assigned all his interest in the said coal lands in St Clair County, in the State of Illinois, to said Chouteau,
1320 Harrison & Valle, on the following conditions to wit; that said Chouteau, Harrison & Valle, bind themselves, their heirs and assigns, to pay to Frederick Lear, his heirs and assigns, one fifth of one cent for every bushel of coal extracted from said lands, and Frederick Lear hereby agrees and binds himself, his heirs and assigns, faithfully to superintend or cause to be superintended
1330 by a competent person, the working of said coal lands, and the transportation of the coal to a convenient point on the Mississippi river, and furnishing the

[5723-H6]

said Chouteau, Harrison & Valle, or assigns, with faithful monthly accounts of all the expenses of the mines, the situation of the workings, and what disposition has been made of the coal raised or extracted. —

1340 The said Chouteau, Harrison & Valle do hereby agree to pay to said Frederick Lear the sum of Twenty dollars per month from the time the work is commenced till the mines are open and all means complete for delivering said coal at the river Mississippi. —

It is also understood by this contract, that Chouteau, Harrison & Valle or their assigns are to be at the whole expense
1350 of working said mines and transporting said coal from said mines to said point on the Mississippi river. —

It is further agreed that the work is to commence when a rail road shall have been completed from the Iron Mountain to St Louis, or from Carondelet to Saint Louis: nevertheless the work may be commenced at an earlier or later date by the mutual consent of all parties
1360 concerned. — And should said Chouteau, Harrison & Valle or their heirs or assigns

at any time refuse to conform and comply with this contract, then this contract and also the aforesaid Indenture entered into on the seventh day of December, eighteen hundred and fifty three, shall be null and void and of no force whatever.

In witness whereof, the parties
1370 to this agreement have hereunto set their hands and seals this
day of January, eighteen hundred and fifty four. —

And the said Complainants afterwards filed their replication to said answer of defendant, as follows to wit:

79

State of Illinois } In the Circuit Court
County of St Clair } of said County. —

Pierre Chouteau Jr
1380 James Harrison &
Felix Valle
vs
Frederick Lear. } In Chancery.

Replication

The complainants by their Solicitor come and for replication to Defendants answer filed herein, say that said Defendant's answer and the matters and things therein, as the same are set forth and alleged, so far
1390 as they deny, or confess and avoid the allegations in Complainants said bill, are not true, and that all the allegations of Complainants bill filed herein, in manner and form as the same are therein alleged and stated are true, and the said complainants are ready and willing to prove and maintain as this Honorable Court may require and direct.

Wm N. Grover
1400 Sol for Compl'ts.

[8723-48]

80

State of Illinois }
County of St Clair } Set

The people of the State of Illinois,
To Carlos W. Quimby of the City of St Louis
State of Missouri.

Greeting:

Dedimus Potestatem

Know ye, that we have appointed you, and by these presents give unto you full power and authority, and hereby require you, that at the
1410 certain time and place to be designated and appointed by you for that purpose, you cause the witnesses whose names are mentioned in the caption of the attached interrogatories, to come before you, and then and there diligently and faithfully take their depositions upon all the interrogatories attached to this commission, both on the part of Chouteau, Harrison & Valle Complainants, and Frederick Lear defendant
1420 and upon non others; and that previous to the examination of said witnesses, you do swear or affirm them "to testify the truth in relation to the matter in controversy as far as they may be interrogated". Whereupon you shall proceed to examine said witnesses upon all the interrogatories attached to this commission as aforesaid,

[8723-49]

and shall cause the said interrogatories as they are propounded, together with the
1430 answers of the said witnesses thereto to be reduced to writing in the order in which they shall be proposed and answered; and when you shall have so taken them, you shall cause the said witnesses to sign their respective names thereto in their proper places; after which you shall annex at the foot thereof a certificate subscribed by yourself, stating, that said depositions were sworn to and signed by the deponents
1440 respectively, and the time and place, when and where the same were taken; and the depositions, when thus taken and certified and all Exhibits produced by you, or which shall be proved or referred to by said witnesses, together with this commission and the said interrogatories shall be carefully enclosed and sealed up by you, and directed to the Clerk of the Circuit Court within and for the County
1450 of St Clair, with the names of the parties litigant endorsed thereon.

And this you shall in no wise omit.

William S. Thomas

Witness: Clerk of the Circuit Court within and

for the County of St Clair and State of Illinois, and the seal of said Court hereto affixed this Sixth day of November, One thousand eight hundred and fifty four

L. S.

1460 - Wm. S. Thomas, Clerk.

St Louis, February 1st 1855.

The within named Carlos N. Quimby being otherwise engaged, and the parties to the within named suit, desiring to take the depositions of the witnesses named in the annexed notice it is agreed that the same may be taken before John H. Henning as Commissioner, at
1470 the Office of Hill, Grover & Hill, on such interrogatories as may be propounded upon the spot by the Counsel for the parties respectively, and that the depositions so taken and certified by the said Henning may be read in evidence subject only to such legal objections as may be made to the relevancy and competency of the testimony. — Wm. A. Grover Sol for Chouteau, Harrison & Valle.

Complainants.

1480 Nath. Niles for Defendant.

83. State of Illinois } ss In the Circuit Court
County of St Clair } of said County.

Pierre Chouteau Jr
James Harrison } Complainants.
Felix Valle

vs In Chancery.

1488 Frederick Lear, Defendant.

Notice & Interrogatories

The above named defendant will take notice that on the 6th day of November A.D. 1854 the above named Complainants will sue out from the Office of the Clerk of said Circuit Court of the County of St Clair and State of Illinois a dedimus potestatem — or commission under the seal of said Court, directed to Carlos M. Lumby Esq of the City of St Louis and State of Missouri as Commissioner authorizing him to take
1500 the depositions of Charles P. Chouteau and David N. Hill residents of said City upon the interrogatories hereto attached on the part of the above named Complainants to be used as evidence on the trial of the above cause in said Court, at which time and place you

[2723-51]

can appear and file cross interrogatories if you think proper.

Wm. N. Grover
1510 Solicitor for Complainants.

Interrogatories to be put to Charles P. Chouteau and David N. Hill on the part of Complainants in above cause.

Interrogatory 1st What is your age and occupation? — Where do you reside, and how long have you there resided?

Interrogatory 2d.

Are you acquainted with any of the parties to this suit? — If aye — how
1520 many and which of them?
Where do they reside? And what is their business?

Interrogatory 3d.

Look at the papers now handed you, marked respectively Exhibit A. and Exhibit B. and attached hereto, and state if you know when and by whom, under what circumstances, at whose instance, and for what purpose they
1530 were written? answer fully.

Interrogatory 4th

Had the defendant any knowledge of these papers at the time they were written?

If aye, what knowledge had he and how was the same acquired? —

Interrogatory 5th.

Had you and defendant any conversation about said writings at or about the time when they were written?

1540 If so, what was said by defendant about the same in such conversation?

Interrogatory 6th.

Have you any knowledge of any engagement or contract between Complainants and defendant for the purchase by defendant of the privilege of procuring coal on certain coal lands in Illinois?

If so, state fully and particularly your means of knowledge and all

1550 you know about such matter —

What the defendant was to do —

What the complainants were to do —

What the defendant did do, and what the complainants did in relation thereto.

Wm. N. Grover

Solicitor for defendants.

Defendant will take notice that the Exhibits above refered to in the third interrogatory, are the same which were

1560 filed with Complainants bill marked

as above and copies of which are now on file in the cause, and that said Exhibits will be attached to the Commission proposed to be sued out under the above notice.

Wm. F. Green Solr. for Complts.

Received a copy of the foregoing notice and interrogatories from the Solicitor of said Complainants this 20th day
1580 of October A. D. 1854.

Nath.l Pilsbury Solr. for Deft Dear.

Cross interrogatories to be propounded by the above named Commissioner, Charles N. Quimby Esq to the witnesses named in the foregoing notice on the part of the defendant Frederick Dear - viz -

1 Have you no interest in the result of this suit.

2 Are you not a partner, silent or otherwise, in the firm of Chouteau, Harrison & Valle, and have you not some interest
1590 in the profits, property or capital of this partnership?

3 Do you expect any benefit to yourself from the success of the Complainants Chouteau, Harrison & Valle in this suit?

P. 87

Depositions of witnesses produced sworn and examined, at the Office of Hill, Grover & Hill, in the City of St Louis, County of St Louis and State of Missouri, before me, John H. Henning a Commissioner agreed upon by the parties hereto in a certain cause now
1600 pending in the Circuit Court of Saint Clair County in the State of Illinois been Choutean, Harrison & Valle complainants and Frederick Lear defendant, on the part of the Complainants.

John H. Henning
Comr.

Charles P. Chouteau.

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Charles P. Chouteau,
being of lawful age, produced, sworn and
examined, on the part of the complainants
1610 deposeth and saith, — I know the plaintiffs
and have known them for several years.
I have been in the employ of the Plaintiffs
since 1851. — I know the defendant, I
became acquainted with him in the
Summer of 1853. —

1st Q. Look at the papers now handed you,
marked respectively "Exhibit A." & "Exhibit
U.", and attached hereto, and state if you
know when, by whom, under what
1620 circumstances, at whose instance and for
what purpose they were written; —
answer fully. —

Answer. I have seen the papers, "Exhibit U." as well
as "Exhibit A.", — were both of them written
at the instance of both parties, — compla-
inants and defendant, as per previous
agreement. — "Exhibit U." was written in
the early part of December 1853. —

The data by which to write out this Exhibit
1630 (U.) were furnished by defendant. —
This Exhibit (U.) embraces Decs from various
parties. — "Exhibit A." was written in Jany
1854. — "Exhibits A. & U." were written by
Messrs Hill, Attorneys, of St Louis, Mo., —
"Exhibit A." by Britton A. Hill and "Exhibit
U." by D. W. Hill. — In the Spring of
1853, defendant was employed by Mr
Harrison (one of the complainants) to
explore coal mines, on or near the Missouri
1640 River above Jefferson City, and to bring down
a certain amount of coal for the purpose
of making experiments, — it being cannel
coal. — The coal was brought down and
delivered as per arrangement with said
Harrison, after which time, defendant
finding himself without any employment,
proposed to complainants to purchase coal
privileges in the State of Illinois for their
account, stating that he knew where
1650 large bodies of it were to be found, —
opposite Carondelet. — An agreement
was then made between complainants
and defendant for the purchase of those
privileges. — Defendant proposed
that the purchases should be made in
his own name, as a means of making
the best bargains, it being generally
known that complainants consumed
immense quantities of coal. —
1660 Complainants assented to this, provided
defendant would assign them these purchases,
(they furnishing him the means to make

those purchases) for which consideration defendant was to be employed as Superintendent in working of said mines. —
His compensation was to be Seventy dollars per month from the time of opening those mines until the main entry was cut open; — after that time the monthly
1670 compensation to cease, and defendant was to have received one fifth of one cent or two mills for every bushel of coal extracted from the mines and delivered to the complainants or sold for their account.

This agreement was only to take effect by the defendants being given one month's notice that complainant's were ready to commence operations. — The data by which "Exhibit A." were written were
1680 furnished by both parties. —
After being made acquainted by both parties with the agreement existing between them I was requested by complainants to call at the Office of Hill, Grover & Hill, Attorneys, with defendant to reduce the agreement to writing.

The data were given by defendant as well as myself for complainants to Mr D. W. Hill, and they compose statement
1690 marked "A." — — I was present at the Office of Messrs B. A. & D. W. Hill when the data were furnished from which "Exhibit A." was written. — Mr D. W. Hill took notes at that time of the points and matters to be embraced in "Exhibit A". —
When I visited Messrs Hill concerning

"Exhibit U". defendant was not present, but
had furnished the papers for that Exhibit.
The papers for "Exhibit U". were furnished me
by defendant. — Defendant furnished to
1700 complainants the original papers of which
copies are filed, including all the Exhibits
filed in this cause, except "A." "U" & "V".

Defendant came to complainants
Office and delivered to them the papers
described in "Exhibit U". so that the
whole of them might be embraced in one
deed, and defendant was to assign them
to complainants as per previous agreement.

I called at the office of Messrs Hill
1710 for the purpose of complying with defendant's
desire. — I directed Mr D. W. Hill how
to draw up the required instrument
marked "Exhibit U". —
after it was drawn off it was shown to
defendant, who approving of it stated
that he would sign it as soon as the
agreement for compensation was written
out. — When defendant and I came
to the Office of Messrs Hill, for the purpose
1720 of having Exhibit A. drawn up in the
early part of January 1854. I brought
"Exhibit U". with me which was immediate
ly after defendant's making other purchases
for complainants, along the line of the
Ohio & Mississippi Railroad, that defendant
and myself called upon Mr D. W. Hill for the
purpose of having the agreement drawn
between complainants and defendant, —
defendant furnishing the items as well as

92. 1730 myself, for Messrs Chouteau, Harrisson &
Valle, and the whole of them embraced in
the Exhibit marked "A." —
Complainants furnished defendant with
somewhere in the neighborhood of three
hundred dollars for the purpose of making
these purchases, — the exact amount has
escaped my memory. — I was cognizant
of all transactions between complainants
and defendant from the time of the begin-
1740 ning of the arrangement for making these
purchases, up to the drawing up of these
papers. — Defendant was requested
both by Mr Harrison and Mr Valle, two of
the complainants to execute the papers
marked "Exhibit A." and "Exhibit B." before
the bringing of this suit.
Complainants proposed to execute "Exhibit
A." as per agreement, that being the
understanding and agreement existing
1750 between complainants and defendant.
This was at the same time, that they
requested defendant to execute his agree-
ment. — Defendant has not to my
knowledge ever executed any such
agreement. — Complainants paid
defendants expenses while he was engaged
in the purchase of these coal privileges,
these expenses being included in the sum
advanced by complainants above mentio-
1760 ned. — This I understood from the defendant
before the papers above mentioned were drawn
up. — Whenever defendant wanted money
he called and got it. — —

[8723-57]

93. Cross examined by Mr Niles for defendant.

1st Qu Have you no interest in the result of this suit?
Answer. I have not.

2d Qu Are you not a partner, — silent or otherwise, in the firm of Chouteau, Harrison & Valle, and have you not some interest in the
1770 profits, prosperity or capital of this partnership? —
Answer. I have not and am not.

I have no recollection of having told Mr Lear that Harrison had said, prior to his leaving the city that he should require him to go up the river again on his return; to look for coal on the line of the Pacific rail road. —
Defendant returned in the Summer or Fall
1780 of 1852, — or it might have been in the beginning of 1853. — Mr Harrison might have been out of town at the time of his return, as he made frequent trips to the Iron Mountain. — Mr Harrison was generally absent on his trips to the Iron Mountain from eight days to two weeks.

3d Qu Do you remember the conversation you had with defendant on the 8th of October 1853?
Answer. I do not particularly, as he came to the
1790 Office very frequently, sometimes every day.

4th Qu Did you not tell defendant on or about this day that the return of Mr Harrisson was uncertain, and while talking of coal

did he not then tell you that he knew of some in Illinois and had expected to work mines there but had been disappointed and wished to get some steady employment?

Answer. I recollect having such a conversation, but I do not remember the date. I think I

1800 could fix the dates by a reference to the Books.

5th Qu Did you not enquire the situation of the coal and express surprise at hearing of its location? —

Answer. I think I did —.

6th Qu Did you not say that it would suit the firm of Chouteau, Harrison & Valle, as they had purchased ground in Carondelet

1809 for the erection of Iron works? —

Answer. I did not. — The firm has purchased none

1811 there. — Some members may have done it but I do not know it.

7th Qu Did you not enquire how the coal could be procured, and did defendant not tell you that a considerable part next the bluffs had been taken up by some eastern people, but that he had the right to dig on some two or three hundred acres?

Answer. I did enquire how the coal could be proc-

1821 ured. Defendant also informed me that an eastern company had made propositions to purchase the property, but

[8723-58] had failed in complying with the terms

95 of purchase, but defendant did not inform me that he had the right to dig on two or three hundred acres. —

8th Qu Did he not tell you that only a few of the farmers would sell their land, but
1830 that if he could purchase coal as in England that he could procure plenty of it, and did you not tell him that he could?

Answer. Yes, — I informed the defendant that he could purchase mining privileges here without purchasing the fee. —

9th Qu Did he not say he would like somebody to go into business with him as he had
1837 not the means? —

Answer. He did not.

1839

10th Qu Did you not say, "How shall we go into
1841 this business?"

Answer. I did not. —

11th Qu Did defendant not enquire how you would work the coal; saying that his wish was to work it very extensively, that a regular and cheap supply of coal might be constantly kept up and thereby manufactures encouraged?

Answer. I think that I made the remark that
1850 complainants would go into the business of coal digging extensively, as the greater the amount gotten out the less would be the expense. —

12th " Qu Did defendant desire to go into the
Page 96. business in company with complainants?
Answer. He did not, but stated he would like
to work for them. —

13th " Qu Did you not express a desire to purchase
mining rights in Illinois, and say that
1860 you would work them to the fullest
extent? —
Answer. I did. —

14th " Qu What connexion have you with the
firm of Chouteau, Harrisson & Valle?
Answer. I am their agent.

15th " Qu Are you a relative of either of the
complainants? — If so what?
Answer. Pierre Chouteau Jr, a member of that
firm, is my father. —

16th " Qu Did you not propose to defendant to
1871 employ him in the purchase of the lands
mentioned by him? —
Answer. I did.

17th " Qu Did you, or defendant first propose
this employment? —
Answer. Defendant proposed it.

18th " Qu Who proposed the terms of the employment?
Answer. The terms were proposed upon consultation
with Mr Valle. — I did not feel authorized
1880 to make terms with defendant without
consultation with one of the partners.

[8723-52]

97 Defendant first proposed the terms of employment, stating that his object was to get permanent employment.

19th " Qu Do you remember calling Mr Valle from the next room and asking defendant to state his terms? —

Answer. I do.

20th " Qu 1890 Did not defendant say that he could procure the land if you would work the mines to the fullest extent and pay all the expenses of opening and working them, building roads, transportation &c, and that he would take one fifth of one cent for every bushel taken and ninety dollars per month while opening up the mine?

Answer. He did

a. 17th " Qu 1990 Did you not finally agree to pay him one fifth of one cent per bushel on the coal extracted, and seventy dollars per month till all things were ready for furnishing coal? —

Answer. Yes. —

a. 18th " Qu Did Mr Valle not remark that this charge was very moderate? —

Answer. I think not. — Mr Valle proposed the terms last mentioned.

a. 19th " Qu 1910 Did defendant not remark this, "But mind, there must be no restriction

as to the quantity of coal I got out, and I must have the management".

Answer. I think he did.

a. 20th Qu Did you not reply, "Certainly, we intend that".

Answer. I may or may not have said so, but I do not remember. —

21st Qu Was it not agreed that the work should
1920 commence as soon as defendant was ready with the land? —

Answer. It was not.

8057

22d Qu Did you not take down all that was agreed to, in pencil? —

Answer. The amount that defendant was to receive per month as well as the compensation per bushel was taken down. — I don't remember whether
1930 anything else was taken down or not. I have the memorandum, which I can produce.

23d Qu Does the memorandum embody all that was agreed upon between the parties?

8010

Answer. I have not seen it for a long time and cannot tell. —

24th Qu Please produce the memorandum in pencil of the original agreement between
1940 complainants and defendant.

[8723-48]

99. Deponent here produces a copy of said Memorandum, which is as follows, to wit,

"Memorandum to procure Coal priviliges. Frederick Lear agrees to procure coal privileges for C. H. & V. by purchase or lease. — Lear to be employed as director and manager, and to receive as compensation for procuring such mining privileges, and managing the mines,
1950 Seventy dollars per month while opening the main entry, say 150 to 200 yards, after which Lear is to receive, say one fifth of one cent per bushel, for every bushel of coal delivered to C. H. & V., or sold for their account. — Lear to give his whole time and attention to the proper working of the mines on an extensive scale. — Work to commence say one month after being notified
1960 by C. H. & V." — This memorandum is taken from a Book of Complainants, which has other important matters in it, and which cannot be attached hereto. — The foregoing is not a copy of the original memorandum, but is a more full statement of the original memorandum made by me shortly after the conversation held between myself, defendant and Mr Dalle. —
1970 I have not yet found the original memorandum, taken at the time.

25th Qu. Please state the exact substance of the
P. 100 original memorandum. —
Answer They were discussing the amounts to
be paid per month while opening the
main entry, as well as the amount per
bushel. — These statements are on the
memorandum and are all that I can
remember. —

26th " Qu. Do you know whether the entry made
1981 in the Book, was made before "Exhibit
A." was drawn up?
Answer. Long before. Defendant stipulated
that he was to receive one fifth of
one cent per bushel for every bushel
taken from the mines, and this was
only to continue so long as he gave
his entire and undivided attention
to the proper working of the same,
1990 according to my knowledge of the
agreement between complainants
and defendant. —

27th " Qu. Was there anything else contained in
the original memorandum besides the
Seventy dollars per month, and the
one fifth of one cent per bushel on all
the coal extracted to be paid to the
defendant?
Answer. I am not positive — there may or
2000 may not have been. —

28th " Qu. Did you read over the memorandum
[9723-41] to defendant after writing it?

Answer. I dont remember that I did.

P. 101

29th Qu Are you able to state positively what defendants understanding of the contract was at the time? —

Answer. I can.

Adjourned, to obtain original memorandum, from ½ past 9, to ½ past 10 O'Clock, to give

2010 witness time to obtain original memorandum.

February 2d 1855. — "Henning".

30th Qu Since the adjournment have you been able to find the original Memorandum?

Answer. I have not. I do not remember when I last saw it. —

31st Qu Did you remember the fact on yesterday when asked concerning it that you had copied the memorandum into the book?

Answer. I did, — I knew it to be in the Book.

32d Qu Did you copy it into the Book on the 9th

2021 of October, — the day on which it bears date?

Answer. I do not remember, — in taking down memorandums I did not always regard dates. —

33d Qu In what year did you copy it into the Book?

Answer. In 1853. —

34th Qu Did you copy it into the Book within two days after the conversation, and after the original memorandum was made?

Answer. I could not say. — I am unable to say whether it was in three days or not.

P. 102

2032 It might have been taken down at the time.

35th " Qu Are you quite sure it was taken down within one week afterwards? —

Answer. I cannot say that I am certain.

36th " Qu Are you positive it was taken down within one month? —

Answer. Yes it was.

37th " Qu Are you positive that it was taken

2040 down before the making of "Exhibit N."?

Answer. I am sure it was. —

38th " Qu State as accurately as possible how long previous to the making of this Exhibit, this memorandum was made. —

Answer. It might have been a month or more.

39th " Qu Did Mr Lear ever see the original memorandum, or the entry in the Book?

Answer. I cannot positively say, nor can I say that they were read over to him. —

2050 The original memorandum was in substance the agreement between the defendant and Mr Valle.

40th " Qu Are you not quite sure that the entry in the Book contained some items that were not in the original memorandum? —

Answer. Yes, — the entry in the Book contained

[8723-62]

items that were not contained in the original memorandum, — the memorandum
2060 was taken for the purpose of furnishing data.

41st " 2n

Are you in the habit of preserving memoranda of important contracts?

Answer. Yes. —

42d " 2n Do you not think it probable that the memorandum is preserved in your papers?

Answer. I thought it was, but have not been able to find it. —

43d " 2n Do you recollect when the conver-
2070 sation with the defendant took place?

Answer. It was immediately after the return of defendant from the Missouri, that the first conversation was opened by defendant concerning coal mines in Illinois. — This was my first acquaintance with defendant. —

44th " 2n If that was the understanding by both parties, how did it happen that it was not then reduced to writing & signed?

Answer. It was necessary that defendant
2081 should fulfil his contract first, — obtain the lands and convey them to complainants.

45th " 2n Was it necessary for him to obtain the lands first, in order to an understanding of the terms upon which they were to be

procured and conveyed? —

Answer. It was, — his salary as well as his compensation upon coal taken out
2090 being predicated upon the coal privileges being obtained.

46th " 2n When did Lear first express a different understanding of the contract from that of the complainants and yourself? —

(Counsel for the complainants object to the witness making any statements of any thing said by Lear, unless they were made at the time the agreement was made, or during the interviews in
2100 relation to the drawing up of said "Exhibit A." & "B.", upon which he has been examined in chief, unless they were made in the presence of complainants.)

Answer. Some five or six days after "Exhibit A." had been drawn up by Mr Hill.

48th " 2n Was not this the first time you had seen Mr Lear after the contract was drawn up?

Answer. It was not. —

49th " 2n When did you see him first, after
2110 "Exhibit A." was drawn up? —

Answer. It was the day after he got "Exhibit A." from Mr Hill's Office. — I asked defendant what he had done with "Exhibit A." ?

50th " 2n What was his reply? —
P. 105 — (Objected to, as incompetent and irrelevant by Complainants Counsel.)
Answer. His reply was that he had it and would
2120 bring it over to the Office of Complainants.

51st " 2n Did he do so?
Answer. He did not until several days afterwards.

52d. 2n What did he then do?
(Objected to, &c.)
Answer. He called at the Office of Complainants and presented Exhibit marked "V", — stating that he would not sign any other but that, giving for reason that he had a family and wanted
2130 to provide for them in case of an accident to himself, or that some more lucrative occupation should present itself; but at the same time that he had no objection to assign the land purchased along the line of the Ohio & Mississippi Rail road, not considering them of much importance.
(Objected to, &c.)

53d " 2n Has he not since assigned these purchases
2140 to complainants absolutely? —
Answer. (Objected to, &c.)
He has. —

54th " 2n Was this the first intimation that defendant gave you that "Exhibit A" was not the agreement as originally made?

P. 106 (Objected to, &c.)

Answer. It was.

56th " Qu Did he ever expressly admit to you that that agreement contained the under-
2150 standing as originally made?

Answer. He never did until after presenting "Exhibit V."

Here the question was read over to the witness a second time, and thereupon the witness made the following explanation. —

"John H. Henning
Notary Public"

My explanation is, I did not understand
2160 the question on this first reading. I understood the question as referring to another Exhibit. My answer to the question as understood is, — He did.

56th " Qu When, where, on what occasion & in whose presence did he admit this?

Answer. In April 1854, in St Louis, Missouri, he volunteered as a member in my company to patrol the streets of Saint Louis during the difficulties which
2170 grew out of the election at that time he did admit this. — There were some 38 or 40 men in my company, but whether any of them present overheard the admission I cannot say. —

[8723-4]

57th Qu. What did he say?

P. 107 (Objected to, &c.)

Answer. While walking the street he stated to me that he was "hard up" (to use his own expression,) and was ready to assign

2180 those coal privileges to complainants upon a certain consideration, — That he regretted what had transpired as he feared that complainants had lost confidence in him. — Individually I stated to him that I had no authority to act, or interest, in the matter, and would have nothing to do with it. —

58th Qu. Was that all that he said?

(Objected to, &c.)

Answer. I do not remember. — I reproached him

2191 and said that he had not acted like a man. — He regretted then that he had not complied and signed the agreement as he feared that complainants had lost all confidence in him. —

59th Qu. Was this all that he said?

Answer. (Objected to, &c.)

I think it was.

60th Qu. Did defendant at any other time ever

2200 speak of or refer to "Exhibit A." as containing the true agreement?

(Objected to, &c.)

Answer. I never saw him to speak to him, from the time when he presented "Exhibit V." until he volunteered as a member of my

company in April 1854. —

61st Qu Did he admit, in Mr Hill's Office, or the next day when you met him, or when he presented "Exhibit V.", that
2210 "Exhibit A." was the true agreement between the parties? —

Answer. He did in Mr Hill's Office, for the purpose of having that agreement drawn off.

62d Qu Did you and he both not leave Mr Hill's Office, before that "Exhibit A." was drawn up? —

Answer. We did.

63d Qu Were you ever in Mr Hill's Office with him afterwards? —

Answer. I think not. —

64th Qu Are you quite sure that he did not
2222 admit the same thing except as above mentioned? —

Answer. I never saw Mr Lear, from the time he presented "Exhibit V." at the Office until April 1854. — i.e — to speak to him. —

65th Qu On the day after you were with him at Mr Hill's Office, did he give any
2230 reason why he did not sign the paper?

Answer. He did not, — he merely remarked that he would bring it over to the Office. —

[8723-45]

66th " Qu What were the exact words used by Mr
109 Lear in Mr Hill's office?
Answer. I could not say. — Mr Hill asked
him several questions in explanation of
the items composing that agreement.
Defendant and myself were explai-
2240 ning to Mr Hill what was the agree-
ment between complainants & defendant.
Mr D. N. Hill took notes of everything.
Defendant & myself gave Mr Hill the notes
verbally and he took them down.

67th " Qu Which of you did the greatest part of
the talking? —
Answer. I don't know which is the greatest
talker of the two, — I think we had
an equal share in it. —

68th " Qu Please state a single expression or more,
2251 used by Mr Lear.
Answer. I recollect that he went into a
calculation with Mr Hill as to what
amount of money he could make at two
mills per bushel upon a certain quantity,
which at defendants own figuring, would
net him from twenty to twenty five dollars
per day. — Every point was spoken of
in that agreement and admitted by him.

69th " Qu Can you state with accuracy any single
2261 words or expressions used by him?
Answer. He spoke of his agreement with compl-
ainants, — his compensation, — how he was
to be paid, and what complainants were

to do on their part. —

70th " Qu Can you state the exact words used by Lear as to the time when the work and his compensation should commence?

Answer. — Yes, — he said one month after
2270 being notified by complainants.

71st " Qu Can you state his very expressions on this subject? —

Answer. Not in the very words. —

72d " Qu Are you sure that he assented audibly, or by silence to your version of that agreement? —

Answer. I am. —

73d " Qu Did he say that he had the agreement in his pocket the next day when you
2280 met him? — (Objected to, &c.)

Answer. I cannot say that it was the next day, but it was the next time that I met him.

74th " Qu When he brought "Exhibit V." to your office did he not say that that embodied his understanding of the agreement?
(Objected to, &c.)

Answer. I was not present when he brought it to the office the first time.

75th " Qu What did he say to you or the complainants
2290 in regard to that Exhibit?
(Objected to, &c.)

Answer. He said he wished to have it drawn up
P. 111 in that way because it secured a competency for his family and at the same time gave him an opportunity to turn his attention to other matters more profitable than that.

76th. Qu Was "Exhibit U". drawn up and presented
2300 to defendant for signature, before "Exhibit A." was drawn up? —
Answer. It was.

77th. Qu What were you to give defendant for his services in securing these lands?
Answer. There was no bargain made as to that, - Complainants were to pay his expenses.

78th Qu What does your house, from anything you have heard them say, consider the mining privileges purchased by defend-
2310 ant, worth? — (Objected to, &c.)
Answer. Defendant was not to pay over fifteen dollars an acre for coal privileges.

79th. Qu Did not the complainants set a high value upon his purchases? —
Answer. Not a very high value.

80th. Qu Do you consider that Complainants are indebted to defendant for his services?
(Objected to, &c.)
Answer. I do not. —

81st. Qu Is defendant indebted to complainants?

112 — 2320 (Objected to, &c.)

Answer. I am unable to say.

82d. Qu Was the money furnished defendant by complainants charged upon their Books?

(Objected to, &c.)

Answer. They were charged in his name but specifying for what object.

83d. Qu Were the lands purchased by Lear on the Ohio & Mississippi Rail road, and conveyed to complainants, purchased in fee?

2330 (Objected to, &c.)

Answer. They were, but the lands were purchased in his name like the others. —

84th " Qu Did the defendant at the first conversation not say that he needed money to carry out his plans, and did he not request you to furnish him some?

85th " Qu Did he not say he would be compelled to give more than fifteen dollars per acre for the coal on some tracts?

Answer. Not that I remember.

86th " Qu Did you not give him authority to
2342 do as he thought best in regard to the purchases? —

Answer. Personally I gave him no authority.

87th " Qu Did he not have authority from your House, through you to pay more than fifteen dollars per acre if necessary? —

[8723-67]

Answer. I believe not.

P. 113.

88th " Qu Did you never say to him that the
2250 purchases were to be for his advantage as well as complainants, or words to that effect? —

(Objected to, &c.)

Answer: I did not. —

89th " Qu Did you never say that he was interested with complainants in these coal rights?

(Objected to, &c.)

Answer I did not. —

90th " Qu Did you not inform him that complainants
2360 had bought the iron of the old Anderson road?

(Objected to, &c.)

Answer. Complainants purchased it, but I cannot say that I informed defendant of it. — I don't know whether complainants had then purchased it or not.

91st Qu Did you not tell him that you intended it for his use in laying down roads to the workings or to the river, or words to that effect, and explain the best
2370 method of joining the ends to prevent them from curling up? —

(Objected to, &c.)

Answer. I never told him that the iron on the old Anderson road should be applied to his purpose. — In conversation I may have explained to him the best method of joining flat rails. —

92d. Qu. Did you not tell him that you would
P. 114 have a floating wharf constructed for
2380 keeping a supply of coal for steamboats?
(Objected to, &c.)

Answer. I did not that I know of.

93d Qu. Did you not tell him that you wished
some coal lands on some one of the
Illinois Railroads, near completion that
you might procure a supply of coal for
your works more speedily than you could
from the mines he was to open and request
him to examine the lands on the Ohio &
2390 Mississippi Railroad beyond Caseyville?
(Objected to, &c.)

Answer. I did.

94th Qu. Did he not say in reply that he had
no objection, as it would give him a
chance of opening the mines he had got,
and in controversy; — without being
too much hurried? —
(Objected to, &c.)

Answer. He did not. —

95th Qu. Did he reply in words to that effect?
2400 (Objected to, &c.)

Answer. He did not.

96th Qu. Did you not tell him that you or your
House was in treaty with A. Christy and
Sanger & Co, for coal lands on the railroad.
(Objected to, &c.)

Answer. I did not. —

[8723-68]

97th " 2n Did not Mr Harrison say that the land
115 purchased on the Ohio & Mississippi Road
was insufficient, and did defendant
2401 not reply that it was quite enough?
(Objected to, &c.)

Answer. I heard neither Mr Harrison say so,
nor did I hear any answer to it.

98th " 2n Did you not say that you intended
to make a regular business of coal mining?
(Objected to, &c.)

Answer. I think I did.

99th " 2n Did defendant ever claim any interest
2420 in these last purchases?
(Objected to, &c)

Answer. He did not.

100th " 2n Were those lands included in your
contract with him for mining coal for
an interest of two mills per bushel?
(Objected to, &c.)

Answer. They were.

101st " 2n What compensation was he to receive
2429 while procuring those purchases?

Answer. All of his expenses were to be paid.

102d " 2n Was there anything more?

Answer. Nothing agreed upon that I know of.

103. 2u Did he not report that he found
P. 116 people indisposed to sell except in large tracts, in which it generally lay?
(Objected to, &c.)
Answer. He reported that some were indisposed to sell & others willing.

104th " 2u After his first purchase did he not
2440 return to Illinois and fail? -
(Objected to, &c.)
Answer. I do not remember. — These purchases were made sometime during the winter; — I think in December.

105th " 2u Do you remember a conversation had with Mr Lear on the 26th of December in which he informed you that he intended to visit his family & was anxious the work should be commenced?
2450 (Objected to, &c.)
Answer. I remember his saying that he wished to visit his family and asked for money to leave with them, but do not remember his expressing any desire to go to work immediately.

106th " 2u On or about the 26th of December do you remember that he expressed anxiety that the work should begin?
(Objected to, &c.)

2460 It is here agreed by the Counsel respectively for Complainants & defendant that all objections to questions for

[8723-49]

irrelevancy and incompetency may be considered as saved without being noted by a written objection at the end of each question. N. Niles, Solr.
St Louis Feb 2d 1855. Wm. N. Grover, for Complts.

Answer. I do not.

107th " 2n 2470 Did you ever at any time hear a desire expressed to yourself or Complainants, or either of them for the work in opening the mines purchased by him to begin?

Answer. I did not.

108th " 2n Did you ever say to him that it had been unavoidably delayed, longer than you expected, owing to your removal from the old store?

Answer. I did not.

109th " 2n 2480 Did you not say to him in the conversation on December 26th in which you gave him money to go to see his family, that during his absence from the city you would have the agreements drawn up and the work should commence immediately? —

Answer. I did not.

110th " 2n Did you say anything in regard to agreements at this time? — If so, what?

Answer. Not that I remember.

111th " 2n Did you at any other time? —

Answer. I did, after his return from visiting
P. 118 his family. He came to the office
2493 for that express purpose, — that is,
for the purpose of having "Exhibit A." drawn.

112th " Qu Did he express his purpose when he
came to the office?

Answer. He did, and the matter was talked
over between defendant & complainants,
and I was requested by complainants
2500 to call on Mr Hill and have it
drawn up.

113th " Qu When was this?

Answer. I think it was in the early part of Jany 1854.

114th " Qu Did Lear never, previous to this, express
dissatisfaction at the delay of commen-
cing the work? —

Answer. He did not.

115th " Qu Did you not on January 3^d 1854
produce "Exhibit U." to defendant and
2510 ask him to accompany you to the
Court House to sign it?

Answer. I know I did ask him, but do not
remember the date. — It was about that
time. —

116th " Qu Did he not express a wish to read it,
and after he had done so, express
his surprise at finding that he should
make away all his interest in the
coal lands to complainants, without

[8724-70]

119 2520 Reserving any interest to himself, or words to that effect?

Answer. He expressed a desire to read it & did read it in the Office and stated that he would sign it so soon as the agreement was drawn off, expressing no surprise whatever. —

116½ Qu Did you not tell him that he did not understand it, and that he had to sign that first, and afterwards
2530 you would make out another agreement? —

Answer. I did not.

117th " Qu Did he not say that he thought it would be better to make the agreement out first, or combine it all in one deed, or words to that effect?

Answer. He did not. —

118th " Qu Did you not then propose to go to your Attorney and have an agreement
2540 made out if he wanted one? —

Answer. When defendant came to the Office and stated that he would sign statement marked "U". so soon as the agreement was drawn off, I told him to return the next day and that the matter would be attended to. — I did not propose to go immediately, — it was then too late to go that day.

119th Qu How long after this conversation did
P. 120. you go with Lear to your Attorney?
Answer. I think was the next day.

120th Qu Did he not say in going to the Attorneys
2553 Office, that he never signed papers of this sort, without first referring them to some person upon whose judgement he could depend, or words to that effect? —
Answer. He did not.

121st Qu Did he call the next day at
2560 your Office when you were out?
Answer. He did call the next day and was there before we went to the Attorneys Office.

122d Qu Did he call for the purpose of seeing the Draft at your Office? —

Answer He called for the purpose of having one made. —

123d Qu Did he call after it was made?
Answer. He came there with it.

124th Qu Please state the exact words that
2571 he used in regard to "Exhibit A."
Answer. I was not in the Office when he came in.

125th Qu What did Harrison & Valle say that he had said? —

[8723-21]

Answer. Mr Valle remarked, "Look at this," —
P. 121 presenting me with "Exhibit V." —
I read it over and remarked to him
that my suspicions of the man were
fully verified. — I tried to find out
2580 Lear, — saw him several times at
a distance, but he always avoided
me until I met him one day in the
Office of Messrs King & De Kantzon.
Producing "Exhibit V.", I asked him
what he meant by that? —
His remark was, "That's my business."

126th " Qu State the exact words that Lear
used concerning "Exhibit A." the first
time you saw him after he got it
2590 from Mr Hill.
Answer. I never saw him to speak to him, until
the time last referred to, in King &
De Kantzon's Office.

127th " Qu. Was this the first conversation you
had with him after he got "Exhibit
A." from Hill's Office? —
Answer. It was the first.

128th " Qu When Lear presented his draft, —
"Exhibit V.", was not your principal
2600 objection on the ground that he might
at any time sell out his share to some
person whom you would not like to
be connected with? —
Answer. He never presented me with "Exhibit V."

129th Qu. Was not this objection made by one
Page 122 of the complainants in your hearing?
Answer. It was not, — I did not meet them together.

130th Qu. Was it not an objection of your House
to "Exhibit V.", that Lear had retained
2610 an interest thereby in the coal lands?
Answer. That was one of the grounds, as not
belonging to their original agreement.

131st Qu. What were the other objections?
Answer. Another objection was, binding com-
plainants, their heirs and assigns to
pay Frederick Lear's heirs & assigns
one fifth of one cent for every
bushel of coal extracted from said
lands and reserving to himself the
2620 right to employ others than himself
to superintend the mines. —
also if said complainants or their
heirs and assigns at any time refuse
to conform to said contract —
(Exhibit V.) then this contract and
also the aforesaid Indenture, "Exhibit
U.", entered into on the seventh day
of December 1853, shall be null and
void, and of no force whatever.
2630 All these points, not appertaining
at all to the original contract.

132d Qu. Were these objections specified by you
or complainants, to Mr Lear?
Answer. I was not present, but objections were
made by complainants. —

[5723-72]

133. 2u Did you ever have any conversation
123 with Lear in regard to "Exhibit V."
except that already mentioned?
Answer. None other than the conversation
2640 I had with him in King & De Kautzon's
Office, and in april last when he
broached the subject.

134th " 2u Did you ever hear any conversation
between complainants and defendant
or either of them in regard to "Exhibit V."?
Answer. I did not.

135th " 2u Did you ever hear Lear use words
to this effect, that he looked more
to the benefit of his family than
2650 anything else, and (in reference to your
objection:) that he could have no
wish to sell, and was willing that a
clause should be inserted to prevent
either party from selling? —
Answer. I did not. —

136th " 2u Did he not propose that he, his heirs
and assigns should be bound more
closely to the fulfilment of the
articles proposed to be entered into,
2660 and agree to any reasonable modification?
Answer. I answer in this way, — from the day
that I called at this Office to have
"Exhibit A." written out with Lear, I
never saw him and complainants
together, so as to hear any remarks
passing between them. —

137th Qu. Did he ever make any such proposal
P. 124 to you individually as that last mentioned?
Answer. He did not.

138th " Qu. Do you remember ever having requested
2671 defendant to call at your Office on the following day and have a new agreement drawn up?
Answer. I never did.

139th " Qu. Did defendant ever call at your Office by your own appointment in regard to a new agreement? —
Answer. He never did.

140th " Qu. Did you never put the old agreement
2680 into Lear's hands, or see any of Complainants do so, with the declaration that they would sign no other, or words of similar import? —
Answer. I did not. —

141st " Qu. Did you transact all the business in regard to these purchases of Mr Lear with (Notary in fault.)
Answer. I did not, all of them.

142d. Qu. What other persons carried on nego-
2690 tiations with defendant? —
Answer. Messrs Harrison & Valle.

143d " Qu. Did not Mr Harrison or Mr Valle ever contemplate building at Carondelet?
Answer. I never heard such a thing intimated.

[8123-73]

144th " 2n (125th page) Did you ever hear that one object of the purchase of these lands, was the supply of works in Carondelet?

Answer. I did not.

145th 2n 2700 Was it ever the object of your House to open and work the mines in the extensive manner proposed by Mr Lear?

Answer. In the first place Lear made no such stipulations, but the mines were to be worked on an extensive scale.

146th " 2n Was it the intention of your House so to work them, when they entered into the contract with Lear? —

Answer. It was.

147th " 2n 2710 Is such complainants, is this their present intention? —

Answer. I do not know, and cannot say.

148th " 2n Do you know that Harrison ever offered defendant two hundred dollars to relinquish his interest in the mines?

Answer. I do not.

149th " 2n Do you know that during Lear's negotiation with Complainants that Harrison in his conversations with Lear represented the mines as worthless for 2720 ten or twenty years to come, or made any other statement regarding them? — If so, what? —

Answer. I do not.

150th Qu. Did he ever represent them to Lear
P. 126 to be worth a million of dollars, or
any other sum, and what? —
Answer. I never heard him say in Lear's
presence, what they were worth.

151st Qu. Have you ever heard him express an
2730 opinion as to their value, and what?
Answer. That in their present condition,
he was not willing to give more for
them than fifteen dollars an acre.

152d Qu. Did you ever go to Illinois upon this
business, while Lear was engaged in
purchasing these lands? —
Answer. I did.

153d Qu. For what purpose?
Answer. For the purpose of examining the
2740 lands and finding what kind of
communication could be got from
the mines to the river, Lear having
represented that there was a plank
road extending from the river opposite
Carondelet to these coal lands, and
to satisfy myself that he was purcha-
sing coal fields. —

154th Qu. Did you ever go over by appointment
with Mr Lear? —
Answer. The visit above stated was by
2750 appointment. —

[8723-74]

155th " 2n Was not one purpose to inform the
P. 127 people from whom Lear was purchasing,
that he was purchasing in company with
complainants?

Answer. It was not.

155½ 2n Did not Mr Valle advise you to go
over and apprise the people that your
House was going to assist Lear in work-
2760 ing the mines?

Answer. He did not.

156th " 2n Are you entirely satisfied that the
understanding between the parties
was correctly communicated to you?

Answer. I am.

157th " 2n Have you ever been informed by either
of the parties as to what transpired
between the parties concerning the
agreement in your absence? —

Answer. I have not: at the time the
2770 agreement was entered into I was
present. —

158th " 2n Can you state with any certainty or
positiveness, that the original pencil
memorandum contained any items or
articles except those for the purchase
and assignment of mining privileges
and the payment to Lear of two mills
per bushel on the coal extracted, and
2780 of Seventy dollars per month while he
should be engaged in opening the mines?

Answer. I have stated before that the
P. 128 original memorandum contained
little more than mere figures.

It is agreed that the further cross-
examination of Charles P. Chouteau
may be continued by Mr Siles, Solr.
for defendant, writing the questions
and the witness writing his own
2790 answers.

Wm. N. Swan, Solr. for Compts.
N. Siles, Solr. for Defendant.

St Louis, February 3d. 1855. —

February 3d.

159th Qu Have you made any further search
for the pencil memorandum? —
Answer. Not since yesterday.

160th Qu Please state as accurately as your
recollection will serve, the contents
2800 of that memorandum. —
Answer. This question has already been answered.

161st Qu Can you say that it contained any-
thing in regard to the time of com-
mencing the work, and the commencing
of Lear's monthly compensation?
Answer. I think not, — that was mentioned
to me in presence of defendant.

162d Qu Can you repeat any single word or

[8123-75]

129

2810 expression of Lear, showing his assent to the contract as exhibited in "Exhibit A", and in your copy of the original memorandum in your Book?

Answer. I can. — Mr Hill having taken down the notes to draw off "Exhibit A", read them over to him, and he stated that they were all correct.

163d " 2n Did Mr Lear ever at any time express his desire to have the working of the mines commence, and his dissatisfaction

2820 at the delay, or either, or words of this import? —

Answer. I did not hear him ever express any dissatisfaction at the delay of either, or words to that import. —

164th " 2n Did you take Receipts of Lear for the money advanced to him? — If so, have you them in your possession, and state their language. —

Answer. No Receipts were taken, — defendant

2830 would call at the Office, — a certain amount was furnished him, and which he would account for afterwards.

165th " 2n Have you an account drawn off from your Books of this money? —

Answer. Complainants have.

166th " 2n Did Lear ever make any charge for his time, in accounting for this money?

Answer. The understanding was, that his expenses were to be paid by complainants while engaged in procuring
2840 the coal privileges.

167th " 2n Did he ever claim anything for his time? —

Answer. He never did to my knowledge.

168th " 2n Did your House know anything of the existence of the mines in controversy before Lear informed them?

Answer. I am unable to say.

169th " 2n Did you not consider his services in making this discovery and securing
2850 the rights involved in this suit as worth much more than those of an ordinary employee? —

Answer. It was his own seeking, — wishing to obtain for himself steady employment.

170th " 2n Would the complainants have ever purchased these rights, in your opinion, without his agency?

Answer. I am unable to say.

171st " 2n Can you reccollect nothing of a
2861 Receipt for $15. — given by Lear to your House, or did you ever hear nothing of such a Receipt?

Answer. None with regard to this controversy.

172d " 2n State whether in your best judgement

[5 12 2n 76]

and opinion, your House would have engaged in the enterprise, had not Lear proposed it to them? —

Answer. I am unable to say.

173d " 2n 2871 Would they have purchased the land on the O. & M. Railroad without his suggestion? —

Answer. The suggestion was made by Complainants.

174th " 2n Was not this purchase made with a view of giving Lear more time for opening the lower mines purchased by him, on an extensive scale, as contemplated by both parties? —

Answer. Not to my knowledge.

175th " 2n 2882 Have your House relinquished the intention of opening these last mines? If yea, when did Lear first receive notice, if ever, of such relinquishment of intention? —

Answer. To my knowledge, complainants have not relinquished their intention to open said mines, or given notice to defendant of such relinquishment

2890 of intention. —

176th " 2n Was all the money furnished to Mr Lear, charged in his regular account?

Answer. I believe it was.

177th Qu Did you ever hear Mr Valle
132 express an opinion of the value of
these rights? — If so what was it?
Answer. I ~~have not~~

178th " Qu How long was it, when the lands or
rights were all purchased, after the
2900 first conversation, in which you say
the agreement was made?
Answer. The agreement was made, previous
to the purchase of the coal privileges,
and defendant concluded his purch-
ases, about two months afterwards.

179th " Qu Did you say that defendant reques-
ted you to get your Attorneys, Hill,
Grover & Hill, to draw up the papers
for the agreement between the parties?
Answer. I did not say so.

180th " Qu Did he direct them to be incorporated
2912 in one Deed?
Answer. He did not.

181st " Qu Do you not feel a deep interest in
the success and prosperity of Chouteau,
Harrison & Valle? —
Answer. I do in theirs, as well as for all
parties doing business in St Louis.

I agree that Mr Grover may re-examine
2920 the witness Chouteau, by writing the
questions, and letting the witness write
his answers, and that Mr Henning may

[8723-77]

certify the whole as taken by himself.

N. Niles, Sol.

Re-examination, by Counsel for Complainants. —

1st. Qu. You have been asked in relation to the purchase and transfer of lands on the line of the Ohio and Mississippi Railroad; — State whether those lands were purchased by Lear, — when he conveyed them to complainants, and whether such conveyance to complainants was made before or after the commencement of this suit.

2950

Answer. Those lands were purchased I think during the latter part of December 1853 & conveyed them I think in the month of January 1854, and was made after the commencement of this suit.

2940

2. Qu. You were asked whether Lear was to have the same compensation for obtaining coal out of these lands purchased in fee: Please state whether it was or was not contemplated at the time the agreement was entered into for the purchase of the coal privileges referred to in "Exhibits A" & "B", that any lands should be purchased in fee?

P. 734-

Answer. He was to receive the same compensation
2950 whether purchased in fee or not.

8th Qu What was the extent of the purchases in fee?

Answer. About forty acres, along the line of the Ohio & Mississippi Rail road, in one tract.

4th Qu Was the purchase of that tract by Lear first reported to complainants, before or after the bringing of this suit?

Answer. It was reported before the bringing of this suit. —

5th Qu Was it reported before, or after, "Exhibit
2961 U." was drawn up?

Answer. I think it was reported after "Exhibit U." was drawn up. —

6th Qu Was there any reference made either by Lear or yourself to that purchase when you were at Mr Hill's Office for the purpose of having "Exhibit A." drawn up? —

Answer. I do not remember.

7th Qu For what purpose did you make the
2971 memorandum or pencil notes of which you have spoken in your cross-examination relating to the agreement between complainants and defendant?

Answer. For the purpose of remembering the agreement and having it drawn off as soon as defendant had secured the coal

[8725-72]

privileges which he promised to obtain.

8th Qu 2980 How long to the best of your recollection is it since you last read the first pencil notes of which you have spoken, — those on the loose paper? —

Answer. I do not remember to have seen it since I made a copy in the Book.

9th Qu 2990 How long to the best of your recollection has it been since you last saw the pencil notes in the Book, (a copy of which you have embodied in your testimony) previous to the commencement of your cross examination? —

Answer. I saw it in the early part of January and before.

10th Qu Is that the last you recollect of seeing it before your cross examination? —

Answer. I believe that it is the last time that I saw it until February 2. 1855 and after the commencement of the cross examination.

11th Qu 3000 State whether in your testimony in chief, in giving the details of the contract first entered into, between complainants and defendant you relied upon your recollection of the contract itself, or upon the memoranda made by you?

Answer. I relied upon my recollection of the contract. —

12th " Qu State whether when you and Mr Lear went to Mr Hill to have "Exhibit A." drawn up, in giving Mr Hill verbal directions
3010 from which he took notes to guide in the drawing up of the contract, you relied upon your recollection of the contract, or upon said memoranda. —

Answer. I relied upon recollection, not taking the memoranda with me at the time.

13th " Qu On cross examination you were asked this question, — "Did you not finally agree to pay him one fifth of one cent per bushel on the coal extracted and Seventy
3020 dollars per month till all things were ready for furnishing coal", — I wish you to state how you understood that question. —

Answer. I understood that question to be, — If that was not the agreement previous to defendants procuring the coal privileges, — in that case, it was.

14th " Qu Do you mean that the Seventy dollars per month was to be paid from the
3030 time of his first employment to purchase the coal privileges up to the working of the mines, or that this sum was to be paid from the commencement of the opening of the mines until they were opened; — in other words do you or do you not mean that the seventy dollars per month was to be paid before Lear

[8723-19]

137 commenced opening the mines?

Answer. I mean that the Seventy dollars per month

3040 was to be paid defendant from the time defendant commenced opening the mines.

15th Qu How long to the best of your reccollection was it after Lear had obtained "Exhibit A." from Mr Hill's Office and you had requested him to hand or bring it in to the Office of Complainants, before he did hand it in? —

Answer. He handed at Complainants Office, some five or six days after meeting him on

3050 the street. —

16th " Qu When you spoke to him in the street upon the subject did he make any remarks upon its contents, — if so, what?

Answer. He made no remarks upon its contents, but simply stated that he would take it over to complainants Office.

17th " Qu In that conversation was anything said about the execution of the contract, — if so, what? —

Answer. No remarks were made with regard

3060 to the execution of said contract.

18th " Qu Who first spoke in that conversation about Lear's having the contract and about his bringing it to the Office?

Answer. I found out that Lear had said

138 contract in his possession when I called at Mr Hill's Office for it, and asked him for it.

William A. Whiting being present representing the interests of defendant it is
3070 agreed that he may ask questions and write them down, and that the witness may write his own answers. —

Wm. N. Grover, for Complainants
Wm. A. Whiting for Defendant.

1st Qu Where was it that you met Mr Lear on the Street? —

Answer. On Second Street, near the Post Office.

2d. Qu Was it the next day after he had obtained "Exhibit A." from Mr Hill?

Answer. I think it was, — not more than
3081 two days afterwards. —

3d. Qu Did Lear leave "Exhibit V." at Complainants Office the day he first presented it? —

Answer. I found it at the Office on my return.

4th Qu Did you return it to him afterwards?

Answer. Do not remember, but think not.

5th Qu Did he leave at your Office "Exhibit V." and "Exhibit A." at the same time?

Answer. Found both together I think on my
3091 return to the Office. —

[8723-88]

6th Qu. About how long was it after Lear
Page 139. left "Exhibit V." at your Office before
you saw him at King & DeKautzen's
Office? —

Answer. It was several days. —

As agent for defendant I signed an
agreement waiving all informalities
in the Deposition as to time, place,
3100 adjournment, and commissioner.

William A. Whiting.

P. 140 I, John H. Henning, a Commissioner agreed upon by the parties as the person before whom the foregoing deposition should be taken, do hereby certify that said deposition was sworn to and signed by the deponent, Charles P. Chouteau in my presence on the second, third, (the fourth day being Sunday) fifth days of February 1855, between the
3110 hours of eight O'clock in the forenoon and seven O'clock in the afternoon of those days at the Office of Hill, Grover & Hill in the City and County of St Louis, Missouri. —

From question 159 to the end of this deposition, by agreement, the questions were written out by Counsel and the answers by deponent. —

I further certify that Exhibits
3120 "A". "U". & "V". annexed to the commission and returned herewith, are the same referred to by the deponent, Charles P. Chouteau in his deposition.

Given and certified this 5th day of February 1855 at St Louis, St Louis County, Missouri.

John H. Henning
Commissioner.

[8723-84]

David W. Hill.

3540

P. 141
L. 3130

David W. Hill of lawful age, being produced, sworn and examined on the part of the complainants deposeth and saith, —

1st. Qu. State your age, residence and occupation. 3530

Answer. I am twenty five years of age and upwards, I reside in the City of St Louis, Missouri, and my occupation is that of an Attorney at Law. —

2d. Qu. State whether you are acquainted with the parties to this suit. —

Answer. I am, — I know both parties.

3d. Qu. Examine the paper now handed you marked "Exhibit A.", and state if you know when, by whom, and for what purpose it was written and at whose instance? —

3142

(8723-88)

142 (The paper handed the witness is the "Exhibit A.", a paper attached to the commission. —

Answer. I have examined it, — it was written either in the last days of December 1853, or early in January 1854, —
3152 I think early in January. —
It was written by Mr Britton A. Hill, my partner at that time in business, from memoranda furnished him by me. — On the day when said paper was written, Charles P. Chouteau the former witness, together with defendant came to our Office & brought
3160 with them "Exhibit U.", attached to said Commission, and which paper ("Exhibit U.") I had previously drawn at the instance of Messrs Chouteau, Harrison & Valle, and had handed it to them. — Mr Charles P. Chouteau said that defendant was ready to execute "Exhibit U.", said defendant being present. — I then asked defendant if he had read over this
3170 paper and whether it was satisfactory to him. — He said he had heard it read, and that he was ready to execute it (or words to that effect,) but that he wanted an agreement executed by complainants before he did so.
Charles P. Chouteau and defendant then proceeded to state what that agreement was, and I took it down

from statements furnished by both
3180 parties. — I took full & complete
notes of their statements & carefully
questioned them as to their wishes and
intentions in making the agreement,
so as to make no mistakes in drawing
the contract. — They seemed to be in
a hurry to have the contract written
out and not having time to do so,
by reason of previous engagements
I handed those notes to my partner
3190 Britton A. Hill and explained to him
fully the conversation that I had
with said parties, and from those
notes he drew the paper "Exhibit A." —

I examined it the same evening
on which it was drawn and found
that it corresponded with & embodied
the arrangement made between
complainants and defendant. —

The next day afternoon or the day
3200 following, defendant came into the
office and asked me if I had the
agreement drawn up. — I told him
I had, and read it to him. —
I told him that I thought it embodied
the whole agreement and was all that
was necessary, and he said he
believed it did. — I then handed it
to him to take to the complainants.

3209 This was the last that I saw of
3200 it until Charles P. Chouteau came
to me and said that complainants
wanted suit brought against defendant.

[8723-84]

144 I see by looking at "Exhibit A.", that
some four or five lines on the first
page, commencing at the ninth
line from the top, and ending at
the fourteenth line, are erased.
This was not done when it was
drawn, or when I delivered it to
3220 defendant. — The clause is as
follows, — "And whereas said
Chouteau, Harrison & Valle desire to
procure the services of said Lear
in opening coal mines in said lands
and superintending the digging of
coal therefrom and its transportation
to the depot or mill of said Chouteau,
Harrison & Valle at St Louis". —
I understood that to be one of
3230 the principal considerations for
making this agreement with defendant.
Mr Chouteau stated to me
in the hearing of defendant that
defendant was an old miner, and
acquainted with the business, & that
he was to superintend the taking out
of the coal from those mines & was
to receive for those services, and
for obtaining coal lands the compe-
3240 nsation and per-centum per bushel,
stated in this agreement. —

4th " Qu If you have any knowledge of the
declarations or acts of the defendant
in relation to said "Exhibit A.",
other than you have already stated

145 please state the same fully.

Answer. I think I could go on and give the whole conversation between the parties, but it is substantially
3250 embodied in "Exhibit A.", and in my previous answer.

(Here Counsel for Complainants closed the examination in chief.)

Cross examined by William A. Whiting, Agent for Defendant.

5th " Qu Are you a member of the Firm, Hill, Grover & Hill?

Answer. I am.

6th " Qu Are they employed by Complainants
3260 in prosecuting this suit?

Answer. They are.

7th " Qu Did you take notes of all that was said by defendant?

Answer. Mr Chouteau (Charles P.) for Complainants, and defendant for himself conversed together about the arrangement to be entered into, & whenever any point was agreed upon I took notes of it. I took notes of everything
3270 that was agreed upon between them.

[8723-85]

8th " Qu Was it talked over and understood between
Page 146 the parties, that the complainants had the right to dismiss the defendant from their employment whenever they pleased?

Answer. No, — not so long as he carried out that agreement. —

9th " Qu Did Lean say anything about how much he could make per day in getting out coal under the agreement?

Answer. I don't reccollect about it. — I paid
3281 no attention to it, as I thought it no concern of mine in drawing that agreement. — It may have been talked of at the time, but I do not reccollect it. —

10th " Qu Did you draw "Exhibit A."?

Answer. I did not. — My brother drew it from my notes. —

11th " Qu Had you ever seen defendant before
3290 he came here to have "Exhibit A." drawn?

Answer. No, — never to know him.

12th " Qu Would you know defendant if you were to meet him in the street? —

Answer. Yes, I would.

15th " 2n Do you know that defendant is a
P. 147 little deaf? —

Answer. I did not know it, but I suspected
it from the tone in which Charles
P. Chouteau talked to him in the Office.
3300 On noticing Mr Chouteau's
manner, I talked to him in the same
way. — Defendant did not complain
of being unable to understand anything.

14th " 2n Are you sure that you read "Exhibit
A." to defendant in a louder tone of
voice than ordinary? —

Answer. I cannot say positively as to that.
When I read it I stood up in the Office
before the mantel piece, and was just
3310 going out as defendant came in.
I took the paper off the table and read
it to him. — He stood at my right
side, looking over my shoulder, while
I was reading it. — I read it intending
he should understand it, so that if I
had made any mistakes they could
be pointed out. —

15th " 2n Is it, or is it not your impression
that the fact then occurred to you
3320 that Chouteau had spoken to defendant
in a louder tone than ordinary?

Answer. I cannot say that at that time the
matter was in my mind. — All that I

recollect is, that defendant seemed to understand it. —

16th " Qu Does not the noise from vehicles very often render it difficult to hear ordinary conversation in this Office?

Answer 3331 It does sometimes in busy seasons. In the winter season the noise is not so troublesome. — If I hold conversation with persons in my Office while the noise is incessant I always speak in a loud tone of voice. — The case is different in the back room where I took the notes for the agreement, while I read the agreement to defendant in the front room.

17th " Qu 3341 After you read "Exhibit A." to the defendant did he say it was all right and correct? —

Answer. He said that he believed it embodied the whole contract between him and Complainants, but that he would take it over to them. — I think this was the whole conversation that passed at the time that I read it to him as far as 3350 I remember.

18th " Qu How long was it after Chouteau & Lear came to your Office together that defendant came and got the agreement?

Answer. I do not recollect exactly. — It was either the next day or the day after that. —

19th " Qu. What were the exact words that Lear said, and all that he said when you were taking the notes for the
3360 purpose of drawing the agreement? Please state it in the first person singular, as coming from Lear, and in his own words if possible. —

Answer. I could not possibly state what he said and make sense of it unless I stated the whole conversation between Chouteau, defendant and myself; — and even then I would not undertake to state the exact words. — What Lear
3370 said was only a part of the whole conversation carried on at the time.

20th " Qu. Did you understand that the agreement had been made previously, or that it was made here at the time?

Answer. When defendant and Chouteau came to the Office they stated that Lear was to execute a conveyance ("Exhibit W". and that they wanted the agreement between them reduced to writing.
3380 I did not know whether it had previously been made or not. — I don't now recollect whether anything was said as to whether an agreement had then been made or not.

[8723-89]

21st Qu. Did they talk over the matter as though
P. 150 there was anything to be settled or arrang-
ed between them here and as though it
was not fully understood before they
came here.

Answer. I cannot say as to that, except that
3390 they talked it over and gave the vari-
ous portions to me and I put them down

22d Qu. Did Lear verbally or fully state to
you that every point in "Exhibit A."
was a portion of the original agreement?

Answer. I don't recollect that anything was
said about any original agreement.
All I know, is that I took a note
of every point contained in "Exhibit A.",
and after writing it down, both parties
3400 acquiesced in the notes. —

23d Qu. Did not Choutean do the most of
the talking?

Answer. — I think he did. — Lear is not much
of a talker. —

24th Qu. Did you hear Lear say that he would
sign the paper that you should draw up?

Answer. I heard him say that he would make
the agreement that I took down in
notes and which is embodied in
3410 "Exhibit A." ——

25th " Qu Please give his exact words when he
P. 151. said he would sign "Exhibit A."

Answer. I cannot undertake to do it.

26th " Qu Did you not understand Lear merely
to assent that you should draw up an
agreement? —

Answer. I understood him to assent that I
should draw up the agreement
embodied in "Exhibit A.", and that
P. 3420 he would execute such an agreement.

27th " Qu Did you not in some cases under-
stand his assent from his silence?

Answer. When I read over the notes to Lear
and Chouteau, Lear said it was
right. — I am not sure that he
used those words as I read the
notes point by point, but I know
that when the whole notes were read
over, defendant acquiesced in them.

28th " Qu Was anything said at that time, about
P. 3431 Lear's signing "Exhibit U."?

Answer. Yes, — I asked him if "Exhibit U." was
right, and he said it was, and that
he would execute it, when "Exhibit A."
was made up, or fixed, — or words to
that effect.

[8723-88]

29th Qu. Is not the contract of such a nature
P. 152 that a misunderstanding between the parties would not be improbable.

Answer. The contract shows for itself, but
3441 from the circumstances under which it was drawn, I do not think it is.

30th " Qu. Had Lear the appearance of being a smart, quick, shrewd business man?

Answer. No, I think not. He seemed to be a man of some experience in his business.

31st " Qu. From what you know of him, would you not judge him to be an ordin-
3450 ary, plain, laboring man, and not likely to see and hear and judge as quickly, as an experienced business man who had spent his life in a city?

Answer. I should judge that he was an ordinary business man, and fully as competent to attend to the business he was accustomed to, as any man. He seemed to be fully acquainted with the mining operations in which
3460 he was about engaging, & seemed to know perfectly well what time, means or hands he would need for opening mines.

32d " Qu. Was his dress that of countryman?

Answer. Yes. —

P. 153.

33rd Qu How often have you seen defendant?

Answer. Twice, I think.

34th Qu Did Lear talk like a Lawyer, a Merchant or a Countryman?

Answer. Like the latter.

35th Qu When Lear was here the first
3472 time did he say he was in a hurry?

Answer. I don't know that he said he was in a hurry. I understood from one or both of them that they wanted the matter fixed as soon as possible.

36th Qu Is not Lear rather slow spoken, and slow in his general movements?

Answer. I did not notice his movements.
3481 He seemed to consider what he said.

37th Qu Did he speak as quickly & promptly as a smart business man? —

Answer. I think not.

38th Qu Do you not know that "Exhibit A." does not bind the complainants to give the defendant any employment

at any time, or any valuable consid-
eration of any kind or in other words
3490 that it leaves them free to forever
abstain from giving him any emp-
loyment? (Objected to by Complain't
Counsel as incompetent, &c.)

Answer.

I do not. My opinion is that the
intentions of the parties would be
carried out by that agreement,
"Exhibit A." — At the time it was
drawn, defendant expressly desired
that some time should be limited
3500 in it in which he should be re-
quired to commence operations &
they fixed upon a month, — that
is to say, this is what I understood
as Lear's wish at the time. I have
not a distinct recollection about
this, but this is my present impr-
ession. It may have been that
Cheuteau wished that time to be
limited, but my impression is, that
3510 it was Lear.

(Answer Objected to by Compla-
inant's Counsel as incompetent and
not responsive to the question)

29th Q. When you read "Exhibit A." to Lear,
di you believe that he fully under-
stood that said contract did not
secure to him any rights?

(Objected to, &c.)

Answer. I believe he understood it, but
155 don't know what he thought
3520 about it. — I do not believe he
understood that it secured him
no right. —

40th Qu. When Lear and Chouteau came
here together to give data for
"Exhibit A.", did defendant enter
into calculations with you or
Chouteau to show how much he
could make per day in digging
coal from these mines? —

Answer. I cannot positively say. — I have
3331 an indistinct recollection of making
some figures and dividing a cent
into mills, but I cannot say
positively, and it was only for the
accommodation of parties if I did
it. — It was not a matter that
concerned me in drawing up the
contract. —

41st Qu. Do you believe that Lear meant
3340 to leave it entirely to the honor,
honesty or interest of complain-
ants, whether he should ever have
any benefit from the coal privile-
ges he had purchased as expressed in
"Exhibit A."?

Answer. I cannot say. —

[3722-90]

42nd Qu. 156 Do you believe that the object of the defendant in requiring "Exhibit A." before he would sign "Exhibit B." was to secure to himself or family some valuable consideration?

Answer. I don't know what his object was.

43rd Qu. 3352 Do you believe that "Exhibit A." does secure to defendant or his family, anything of value? — (Objected to, &c.)

Answer. I think it does. — It was drawn as they wished it. —

44th Qu. 3360 Was it talked over and understood between the parties that the complainants had the right to dismiss defendant from their employment whenever they pleased? —

Answer. No further than is contained in that agreement, "Exhibit A.". — As long as he carried out that agreement, he was to have the benefits secured to him by it. —

45th Qu. 3370 Are you sure that Lear heard all that Chouteau said? —

Answer. No, I am not, but from his manner, his answers, &c., I suppose he did.

46th Qu. Is it not possible that you misunderstood defendant, or that he misunderstood you?

P. 157

Answer. Yes. —

47th Qu. Do not attorneys sometimes receive more from their clients when their suits are terminated favorably than when unfavorably? —
(Objected to, &c.)

Answer. Yes. —

48th Qu. Do they not generally?
(Objected to, &c.)

3380

Answer.

I cannot say. — They do sometimes, but not generally. — They have the same right to charge in one case as in the other. —

Cross examination here concluded.

The hour of 6 O'clock P.M. having arrived, by consent the further examination of said Witness is continued till to-morrow, July 9th at 8 O'clock P.M. —

3390

William A. Whiting
Agent for Defendant.

Wm A. Grover
Sol for Complainants.

(8703-91)

February 9th 1855, 3 O'Clock P.M.

Parties met pursuant to adjournment, and the complainants waving a re-examination, this deposition is closed.

(Signed) David N. Hill.

3400 All exceptions to the time of taking the foregoing deposition and to the person before whom taken, and to the formality of adjournments and certificates are hereby waived and it is agreed that such deposition may be read, subject only to such objections as may be taken to the same on account of irrelevancy and incompetency.

Wm. A. Grover
Sol for Complainants.

3410

William A. Whiting
Agent for Defendant.

I, John H. Henning, a Commissioner agreed upon by the parties as the person before whom the foregoing deposition should be taken, do hereby certify that said deposition was sworn to and signed by the deponent David N. Hill on the eighth day of
3420 February 1855 between the hours of eight O'clock in the forenoon and Seven O'clock in the afternoon of that day at the Office of Hill, Dover & Hill in the City and County of Saint Louis, Missouri — And I further certify that Exhibits "A". "U". & "V". annexed to the Commission and returned herewith are the same that are referred to by said deponent in
3430 his deposition given and certified this eighth day of February 1855 at St Louis, St Louis County, in the State of Missouri.

John H. Henning
Commissioner.

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Pierre Chouteau Jr
James Harrison &
Felix Valle
Complainants
vs
Frederick Lear
3440 Defendant.

In the Circuit Court
of the County of St Clair
and State of Illinois.
March Term A.D. 1858
In Chancery.

On the third Thursday, came the said Complainants by their Solicitor & also the said Defendant by his Solicitor, and thereupon this cause came on to be heard upon bill, answer, replication and proofs, and the Court having heard the arguments of Counsel, and being fully advised of and concerning the premises, doth consider that all the material allegations
3450 of complainants bill are fully sustained, and that they are equitably entitled to a specific performance of their contract with defendant as set out in said bill in manner and form as prayed for, and doth therefore order, adjudge and decree, that Complainants be directed and required within sixty days of this date, to execute and deliver to the Clerk of this Court for the use of defend-
3460 ant an agreement in all respects similar

in substance and effect to Exhibit A. now on file in this cause, attached to the depositions taken on the part of Complainants; and that said defendant be directed and required within thirty days thereafter to execute and acknowledge in due form, and deliver to said Clerk for the use of Complainants, a conveyance in all respects similar in substance and effect, to Exhibit U. now
3470 on file attached to said depositions, (Exhibits A. and U. respectively, being the same refered to in, and originally filed with, Complainants bill and made a part of the same,) or that in default thereof, that Wm. S. Thomas, Clerk of this Court, as special Master in Chancery, be directed and required, to execute, acknowledge and deliver, such conveyance for him.

It is further ordered adjudged
3480 and decreed, that the costs of this cause be paid one half by each party and that this cause be

P. 162.

Pierre Chouteau Jr James Harrison & Felix Valle Complainants vs Frederick Lear, Defendant.	In the Circuit Court of the County of Saint Clair, and State of Illinois. In Chancery.

3490 The undersigned, William S. Thomas, Clerk Clerk of said Court and appointed as Special Master in Chancery in the above entitled cause, respectfully reports to the Court,

That said Complainants duly executed and delivered to the undersigned the agreement which they were required by decree of this Court to execute and deliver to the undersigned for the use of said de-
3500 fendant within the time and in the manner prescribed by said decree, and that defendant hath wholly failed and neglected, to execute ~~and~~ acknowledge and deliver to the undersigned for the use of Complainants, the Conveyance which he was required by said decree to execute, acknowledge and deliver, Wherefore the undersigned has executed and acknowledged such Conveyance for said de-
3510 fendant as he was directed to do in case

P. 163.

said defendant should make default therein, and the undersigned herewith submits said Conveyance to the Court for its approval.

March 11th 1856.

William S. Thomas
Clerk of said Court &
Special Master in Chancery.

164 Pierre Chouteau Jr
3520 James Harrison &
Felix Valle, Complainants,
vs
Frederick Lear, Defendant.

In the Circuit Court of the County of St Clair & State of Illinois In Chancery.

On this first Tuesday of the Term, March 11th A.D. 1856, comes William S. Thomas, Clerk of this Court, and Special Master in Chancery in this cause and files his report herein which being examined is approved, and the conveyance made by said Thomas to said Complainants
3530 being also submitted to the Court is approved and confirmed, and it is ordered that said deed be delivered to the Complainants and that they be deemed and held to be vested and confirmed in all the rights which said defendant Lear had in the property and privileges in said deed described at the commencement of this suit to the same extent and with the like effect as if said conveyance had been executed by
3540 said Lear in proper person.

And it is further ordered that said Thomas be allowed the sum of for his costs herein as Special Master in Chancery, and that this cause be now stricken from the docket as finally disposed of.

I Wm. S. Thomas Clerk of the
Clair Circuit Court do hereby cer=
=tify that the forgoing comprises and
3550 contains a copy of the following papers
on the files of my office in the cause
determined in said court in Chancery
at the March Term thereof A.D. 1856
wherein Pierre Chouteau Jr. James Har=
=rison and Felix Valle are complain=
=ants and Frederick Lear is defend=
=ant, namely; The Bill of Complaint
Bond for costs, affidavit for, and certif
=icate of publication, Answer of de=
3560 =fendant, all the depositions and Exhibits
in said cause and the final decree and
order therein In Witness whereof
I have hereto set my name
and the seal of said court at
my office in Belleville, St
Clair County, Illinois on
the 25th day of June A.D.
1858

Wm S. Thomas Clerk

And the Plaintiffs in error comes and says
that the Circuit Court aforesaid erred
in making the said decree and in

not securing to the said plaintiff in Error
by the said decree any interest whatever in the contracts and mining rights
therein mentioned.

Noerna & Stokes
for Plff. in Error.

Ter

James Harrison and
Felix Valle
Defendants in
Error

Record

Koerner and Niles
Attys for Pltff. in Error

The Clerk of sup. Court
will please issue a Scire
facias to St Clair

Koerner & Niles
Attys

Defendants Brief.

Frederick Lear
vs
Pierre Chouteau jr et al } Error to St. Clair

Page 2 The Defts. by their bill show that they employed the pltff. in error as their agent to purchase for them the right of mining coal and right of way in lands in Illinois, agreeing to pay his expenses & $70 per month, while superintending the opening of the
3 mines. And when opened 2 mills per bushel for all coal used by Defts. or sold on their account. Defts. to give pltff. one months notice before commencing mining operations. At instance of
8 pltff. the contracts for mining to be taken in his name and he assign the same to defts. on request, that for the purchasing of such coal lands they furnished pltff $381. –

That in pursuance of said agreement pltff. obtained all the contracts for mining with the money and means of defts. and while he was so employed as their

agent. and received pay from them.

17 The pltff. admits the purchase of the rights of mining coal. but denies that he purchased them as agent or trustee for Defts.

23. 24 Admits the receipt of $370. States that a

22 nominal sum was paid in some cases

88-9 Defts in error proved by Chas P. Cherubusc. that Exhibit A. was written at the instance of both parties. That Lear proposed to make

90. 97. 100 the purchase in his own name. and the

109. 119 agreement as alleged.

(Agreement was made in Oct. 1853)

91 Lear furnished witness with papers for Exhibit "U" after it was drawn up and shown to him, he said he would sign it, as soon as the agreement for compensation was written out. Lear

106. 107 admitted the agreement as stated in Exhibit "A." Witness & Lear went to the office of Messrs

129 Hill. in January 1854 to have Exhibit A drawn up. (Lear brought with him Exhibit "U") he and witness both giving items. Hill took down the items and read them over to Lear, who said they were right. Witness understood from Lear that Defts. paid his expenses and let him have money when he wanted it.

[8723-97]

104 Lear's first objection to agreement was done 5. or 6. days after it was drawn up. The next day after it was drawn up, witness saw Lear, he said he had the agreement and would bring it to defts.

The agreement & furnishing the money to Lear was before he made any contract for mining. Cherchar proves this.

143 D. W. Hill, witness for Defts. states that Lear said he had heard Exhibit "U" read and would sign it, but wanted an agreement from defts.

151 Witness read the agreement to Lear, who said he believed it embodied the whole agreement and that he would execute it.

The pltff. in error took no testimony.

1 The pltff. in error did not set up the Statute of frauds in his answer, or insist upon it at the hearing in the Court below, and therefore cannot insist upon it in this Court.

Dyer vs Martin et al 4 Scam. 151
Tarleton vs Vietes 1 Gil. 473
Sutzer et al vs Vietes et al 3 Gil " 534.
Essmay vs Gratan et al 18 Ills. 486.
Kingie vs Penrose 2 Scam. 520.
Brown on Statute of Frauds. Sec. 573 –
This last case states the rule to be that where the bill shows the agreement to be by fraud. the deft. should demur.
See id. Sec. 579 –

2. The Deft. having furnished the money, and paid the expences of obtaining the rights to mineral and rights of way, there is a resulting trust in their favor.

Coates vs Woodworth 13 Ills. 654
Williams vs Barron et al 14 " 201–203–
Seaman et al vs Cook " " 503.
Bruce vs Rodney 18 " 67–74
2 Story. Eq. Jurs. § 1210 –
4 Kent Com. 306. –
72 Law Library top page 220.

[8723-97]

3 A resulting trust may be shown by parol
Nichols v Thornton 16 Ills. 113
Church vs Stirling 16 Conn. Rep. 401

4 If money is paid to an agent to purchase an estate and he takes it in his own name he may be treated as a trustee
1 Story's Eq. Juris. p. 505 & 463.
16 Conn. Rep. 400.
6 Paige Rep. 364.
3 Gil. 594.

G. Trumbull
for Defts in Error.

5

Lear
vs
Choctaw Nat

Brief of
G. Lambert
for Deft. in
Error —

Not having finished my argument at the expiration of my hour - the following remarks are submitted —

As to 8th point made in Mr. Decker's Brief - that the Court will not decree a part performance.

I reply that where the contract can be completely performed at the time, though there may be future acts dependent on it, the Court will be able to grant specific performance as a contract ~~with~~ for the immediate sale of timber to be cut down at a future time and the purchase money for it to be paid by installments. 75 Law Library page 173 sec. 553 -

As to the class of cases wherein the Court will enforce a specific performance &c — 75 ~~Law~~ Law Library page 173 & 174 -

The case referred to in 1. Clark (N.Y.) Rep. 84 - does not contain the point - on page 86. The Court say if B had intrusted C, as his agent & furnished him money to purchase the lot, and that C, after accepting the agency, whether for a reward or not &c. the Court would punish the faithless agent -

In this case the agent used his own money.

[8723-101]

It does not appear of what if any value there is attached to coal rights Lear was at no expense in obtaining the right; It would be inequitable that he acting as the agent and using the money of Defts - should avail himself of the trust and confidence placed in him and claim all the benefit, if any, to be derived from the easements. If valuable to them in carrying on their interest, it would be no recompense to them to reimburse back the money - Where by the acts of their agents they are deprived of obtaining said rights on as favorable terms as they otherwise might have done.

Should Defts. operate the mines. the Plff could then avail himself of his contract and will be entitled to be employed. if he is not will have his remedy upon the agreement.

For a more full understanding of the contract between Lear & Defts. see

Exhibit 'X' page 27 - of Record -
" " " 61 - " .
" " " 76 " .

On part of Defts — I would state, that the evidence of Chenhall & Hill fully prove the contract as set out in Exhibit "A" — There is no proof to sustain Plffs answer —

[8723-102]

5

Lear
3
Christian Harrison
& Valle

Brief of
of Lunbell
for Defts
in Error

Frederick Lear
plaintiff in error
vs:
Chouteau Harrison
& Valle,
defendants in error.

In the Supreme Court of Illinois
Error to St. Clair

This was a bill in Chancery filed by Chouteau Harrison & Valle (complainants below) against Lear for the specific performance of a parol contract to assign all his interest in certain coal lands in St. Clair County.

Bill

The substantial allegations of the Bill are the following:

1. that complainants, partners in business in St. Louis, about the 1st October 1853 employed Lear to purchase for them from the owners of coal lands in St. Clair, the stone coal & mineral coal contained in said lands & the right of way & every facility for digging & transporting the coal to market & furnished him of their own money the means to make such purchases, & to pay his expenses while engaged in such business, upon the agreement that Lear was to obtain the said contracts or

conveyances in his own name for said coal & privileges, & hold the same temporarily for their use, subject to the further agreement that Lear was to transfer absolutely all his interest to complainants by deed in such purchases. — & that in consideration of Lear's services then & afterwards to be rendered they were to employ him in superintending the opening & working of such coal lands upon the terms contained in a writing Exhibit A to the bill (prepared by complainants two months after the parol agreement & purchases were made) — the terms of which were mutually agreed upon by Lear & complainants before he ~~agreed~~ made any purchases.

2 — that Lear as the agent "under that arrangement" with the money of complaint but in his own name made certain purchases of coal & privileges, & obtained contracts copies of which are filed as Exhibits B, C. D & to F. — that $380. was the sum total furnished by complainants —

3 — that on the 7th Dec. 1853 complainants prepared Exhibit U for deft to sign (an unconditional absolute assignment of all his interest in said coal contracts & purchases) that on the 4th January 1854 they prepared

Exhibit A - to be signed by both parties (which is pretended to contain the terms of their parol contract upon which Lear was to assign said coal + privileges)

The bill alleges the readiness of complts to perform their part of the parol contract + that dft be compelled to perform his, i.e "to assign all his interest in said coal lands &c" + for general relief.

Answer

Lear in his answer denies specifically the terms of the contract as stated in the bill; admits that he purchased the coal interests in said Exhibits, but alleges that the purchases were "for the joint use of both parties" — denies that Exh. A + U. contain the terms of the contract + avers that Exh. V. contains the true terms.

Lear sets up a contract in the answer materially different from the one stated in the bill, in this, that Lear should only assign his interest in said coal lands upon these conditions (see Exh. V.)

— that Chouteau H + balls bind themselves to pay Lear + his assigns 1/5 of one cent for every bushel coal extracted

— that the work of opening the mines

[8723-104]

(in which he is to be employed as Supt dt.) is to commence when R R from St. Louis to Carondelet is completed -

- that if Chouteau H & Valle should at any time refuse to comply with their terms then the assignment of his interest should be void -

Defendants admits that he received $370. from complainants, which he expended as follows:-

$100. for 40 acre tract purchased at their request which he is willing to convey; & which has since been conveyed (Chouteau dep.o pag) - which is no part of their purchases & which dft. never claimed -

$100. advanced in Dec. 1854 as an advance on his services as supt dt to be rendered, after these purchases were made -

$170. which he expended for personal expenses while making these purchases & in some cases the earnest money paid to the owners of coal lands on these contracts -

defendant insists that he is the owner of these coal lands unless complainants secure to him the performance of the conditions of the contract set out in answer - & prays to be dismissed with costs &c.

Decree

In its decree, the Court finds that the material allegations of the bill are fully sustained & that "the complainants are equitably entitled to a specific performance of their contract with deft. as set out in said bill", & decreed that complainants should within 60 days execute & deliver to the Clerk an agreement similar in substance to Exhibit A – & that defendant within 30 days deliver & execute a conveyance to Clerk for use of complainants similar to Exhibit U – Costs to be paid ½ by each party.

On the 11th March 1856 the Chancellor made his final decree in which he transferred all Lear's interest in said coal lands to complainants, they having executed a writing similar to Exhibit A. –

The testimony in many material parts is conflicting & does not sustain the charges in the bill, which will be noticed hereafter.

1. A Court of Chancery has not jurisdiction of this case because it is a bill to enforce the specific performance of a parol contract for the sale of land or at least an interest in land, which has not been part performed within the meaning of the Statute of Frauds, nor is there a resulting trust.

2. Where the Chancellor has not jurisdiction the case will be dismissed whether this objection be made or not -

Of course the jurisdiction of Chancery (as at law) over the person, the form + frame of the bill is waived by pleading over.

But where the subject matter is such that the Chancellor cannot or should not give the relief asked, consent of parties cannot give him jurisdiction.

Chancery is a supplemental jurisdiction to administer relief in matters of private right where a wrong has been committed + the Courts of law do not afford a plain adequate + complete remedy.

The complainant by proper averments in his bill must bring himself within its jurisdiction - any failure in this respect is fatal in every stage of the cause + cannot

be waived, for consent cannot confer a jurisdiction not vested by law.

Story's Eq. Pleading Sec. 10.

Without jurisdiction there can be no decree; jurisdiction is the foundation of the decree without which it would fall.

3. The contract upon which the case is founded is within the 1st sec. of the Stat. of Frauds - "a contract for the sale of land or an interest in land" -

a - The subject matter of this contract was "coal in certain lands" "the right of digging & right of way" &c. was land - clearly within the Statute - timbers, houses, estovers easements are within the Statute (Roberts on Frauds p 128)

The word "land" includes not only the face of the earth, but anything upon it or over it -

(2 Blackst. Com. 18)

Bainbridge on Mines p. 75.

b - as to the nature of the transaction in respect to the parties between whom this contract was made -

It is admitted that a contract by

an agent to purchase land or an int. in land for the principal + with the money of the principal is without the Stat. -

but where by agreement between agt + principal, as in this case, the agt is to buy "in his own name, hold the title temporarily + afterwards assign all his interest to the principal, by deed," - such a contract is within the Stat. -

a contract "to assign all his interest", is a contract to sell - an assignment is a sale -

In this case the principal consents that the agent shall take the legal title to himself + shall afterwards assign (i.e. sell) all his interest - - what is the agt's interest ? - what shall he sell ? - the legal title - the right to possession at law, the right to the rents + profits, the right to make a complete disposition at law -

Is not that "an interest in land" or at least "concerning" land ? -

The effect of the advance of $180 by compl'ts on these purchases will be considered hereafter -

The interest which Lear obtained in the coal, i.e. the legal title with all its

incidents, he was by a parol agreement to transfer to complainants -

The case seems to be one against the mischief of which the Stat was intended ~~was~~ to guard - a parol contract to transfer one's "interest in or concerning land" to another -

A contract by which a person is to purchase land + afterwards divide with another has been determined to be within the Stat.

The purchase by a partner in pursuance of a parol agreement with his copartners, for the benefit of the firm is certainly the contr with an agt (for one partner is the general agent of the firm) - yet the cases are innumerable where purchases of land so made will not be enforced in Equity, though the purchases were made with ptshp funds, in favor of copartners on the ground that such parol contracts are within Stat. Frauds.

Smith v Burnham 3 Sumner 435.

In the case of Henley v Brown 1 Stew. (Ala) 144 a bill for spec. perf. was dismissed on the following facts; the pltff + deft had agreed to purchase a tract of land when sold by

the agts of the U. S. & equally to divide the same - deft was to bid off the land; the pltff claimed his half - the answer denied the agreement & set up a different agreement - In declining to enforce this contract the Court say: "the agreement is within the Stat. Frauds - if deft agreed to divide the land with complainant, this was substantially an agreement to sell & convey to him one half of the land, & was therefore a contract for the sale of land." -

The case of Stark's heirs vs. Cannady 3 Litt. 399 - was a purchase made by an agent for the principal, who had advanced the whole of the purchase money & was only enforced as a resulting trust -

In the case at bar the coal has not been paid for (see Exhibits B-to-T. coal contracts) -

Henderson vs. Hudson 1 Munf. 510. is a well considered case - the deft had agreed to let complainant into the purchase & to purchase for him - thereby becoming the agt of complt - the contract was determined to be within the Stat. Frauds - in that case the agt was to purchase in the name of his principal & himself jointly - a much stronger case than the one at bar, for here

the agreement was that Lear should purchase in his own name & afterwards assign to to complainants –

In Hacock vs. Coatworth 1 Clark 84 for the spec. performance of a similar contract, the Court say where a person entrusts another with the purchase money to purchase land for him, & the agent purchase in his own name Equity will compel the agt to respond, but if the original understanding was that the agent should take the title in his own name the Stat. Frauds will prevent an action &c –

In Stephenson vs Thompson 13 Ill. 190 it was held that a verbal agreement to purchase land for the benefit of another was within the Stat. Frauds –

The parol contract stated in the bill is that Lear shall convey all his interest in certain coal which he should purchase with their money to complainants – the coal is taken in the agents name by the principal's assent under a parol contract afterwards to assign to the principal – the principal thereby converts the agent into his vendor – after he has made the purchase the agent becomes by consent

of principal, a principal himself; he drops the character of agent + stands by the consent of the other as a party selling in his own right - he must first become the owner before he can sell -

The complainants have recognised Lear as the legal owner of the coal by bringing this bill to compel him to perform his parol contract of sale to them.

4 The defendant has not waived the Stat. Frauds as a defence. -

It is true that a deft must rely upon the Stat as a defence in some way to avail himself of it -

- where he admits the agreement he must rely upon it by plea -
- but where he denies the agreement the denial itself is a reliance upon the Stat., as the complainant thereby is put to the proof of a legal agreement, which he cannot do without producing a writing, or showing some acts of part performance to take the contract out of the Stat. Frauds -

Cozine vs Graham 2 Paige 180 -

In the case of Ontario Bank v: Root 3 Paige 481 for specific perf. the court uses this language "As the agreement was denied in the dft's answer it was not necessary for him to insist upon the Stat. as a bar." –

In Harris vs. Knickerbacker 5 Wend. 643, which was a bill for spec. perf. of a parol contract to convey a lot of land the answer admitted the contract in many essentials, + denied only the time for the payment of part of the purchase money, the compl'ts insisted that as dft had not set up the Stat. Frauds by plea, nor insisted on it in his answer he could not afterwards avail himself of this defence – to which the Court reply – : "The dft in answering may „either plead that the contract was not in „writing, or insist upon that fact in his „answer – If he meets the allegation of a „contract in the bill with a general denial „+ the complainant is put to his proof „to establish it, he must show a written „contract; + if he does not the evidence „to establish the issue will be adjudged „incompetent +c."

In Allen vs: Chambers 4 Iredell Eq. R 125 for specific performance of parol agreement for conveyance of land in which part of the

purchase money had been paid, the answer denied the contract stated in the bill & set up a different agreement, without further relying on the Stat. Frauds - plff insisted that the Stat. was waived - The Court say: "defendant if he had chosen might have pleaded the Stat. Frauds & ended the case at once - he has thought it due to himself to state his willingness & deal fairly & does this by denying the contract in two essential particulars - as the contract is in parol there is no mode of ascertaining it except by parol evidence which the Legislature intended to exclude by Stat -

If the agreement is admitted & no plea of the Stat. interposed there is no danger in enforcing the contract - but if defendant deny the agreement charged in the bill altogether, or deny it as charged & set up a distinct & inconsistent agreement, it is impossible to move one step further without doing so in the teeth of the act, which as a rule of evidence upon a point of fact disputed between the parties must be as binding in this Court as in a Court of law." -

In Browne's Treatise on Stat. Frauds Sec. 511. on the question how the deft.

may rely on the Stat, the learned author uses this language:

"In the next place a dft may insist upon the benefit of the Stat. by plea of general issue at law or in equity by answer simply denying the fact of the agreement which plaintiff charges to have been made – this puts plaintiff to the proof of the agreement at the trial & hearing, & he then must produce a writing &c.

(& see authorities there cited)

To the same effect the Court is referred to the late work of Sir. Edw. Fry on Spec. Perf.

In the cases of Switzer vs. Skiles 3 Gilm. 530, & Thornton vs Henry 2 Scam. 220, the contracts stated were not denied, nor was the Stat. pleaded, & the Court determined properly that such defence had been waived

In Dyer v Martin 4 Scam. 151, the contract was admitted & the Court says: "although the contract was not in writing yet as the dft has not set up the Stat Frauds in his answer, or relied upon it in any other way in his defence &c."

It is submitted that it cannot be justly said of this dft that he

[8723-110]

has not relied upon Stat in some way -

By denying the contract, the burthen of proof is on the plff, who must prove a valid agreement capable of being enforced -

The Stat. requires the "agreement" to be in writing + signed &c - if therefore part of the agreement should be admitted + any essential part denied the defendant still has the benefit of the Stat., for the whole contract must be in writing or admitted.

Having determined that the contract stated in the bill between Lear + complainants is a parol contract for the sale of "an interest in or concerning land" + therefore within the Stat. of Frauds; that the defendant has effectually relied upon the Statute by denying the contract stated - let us next consider whether this contract can escape the Stat. on the ground of part performance or as a resulting trust. - if neither then the case is without

the jurisdiction of Chancery, that is there is no power in Equity that can enforce its performance & the bill must be dismissed.

5 The doctrine of part-performance is applied exclusively to parol contracts concerning the sale of land; & its principle appears to be that if one of the contracting parties induces the other so to act that if the contract be abandoned he cannot be restored to his former position, the contract must be considered perfected in equity & a refusal to complete it at law is in the nature of a fraud-

Adams Eq. 85-86

What acts of part performance are sufficient to take a parol contract out of the Stat. has not definitely determined - the taking of possession by vendee under the contract, the expenditure of money in improving the land, coupled with payment of the purchase money, have been held sufficient -

But it is now well settled that mere payment of purchase money

is not alone sufficient -

Adams Eq. p. 86 - notes + cases cited

2 Story Eq. sec. 760 + cases cited -

There are no acts of part performance in this case within the meaning of the Stat - complainants never took possession, never expended any money except the advance of $380., which they can recover back at law -

Part payment of the purchase money without any other acts cannot take a contract out of the Stat.

6 There is no resulting trust in favor of the complainants, either

1. of the coal, or

2. of Lear's privilege to purchase the coal -

- to originate a trust two things are essential,

a - that the property conferred be complex with a trust, either declared by the parties, or resulting by operation of law

b - that it be accepted on those terms by the trustee -

Independent of the Stat. of Frauds trust could be created by parol - but since the Stat "a trust in lands must be proved by writing signed &c", except a resulting trust -

I have shown that the case at bar presents a trust in lands, & unless it be a resulting trust it must fail for want of some writing signed by the party to be charged with the trust.

Trusts are either
- express or
- implied

Express trusts arise by agreement of parties in parol or in writing -

Implied trusts arise by presumption of law where there is no agreement, but where the circumstances in law raise a trust. ~~against~~

If there is a trust in this case it arises upon an express agreement alleged in the bill & stated by the witness Chouteau - which was in parol & cannot be enforced -

A resulting trust does not arise from contract -

Stephenson v Thomson 13 Ill. 190

The express Contract rebuts the

presumption of a resulting trust.
the complainants have alleged an express agreement in their bill & they cannot rely on an implied one.

They agreed that Lear should take the legal title in his own name & now complain that he did not carry out the other part of the agreement to convey to them -

- they allege an express trust, arising on the express agreement, & seek to enforce it as a resulting trust -

To raise a resulting trust the party claiming the property must show that he paid the whole or a half or a third or some definite part of the purchase money - for the only foundation of a resulting trust is the payment of the purchase money at or before the time of the purchase -

"A resulting trust cannot arise upon contract - it must arise if at all at the time of the conveyance"

Alexander v. Tams 13 Ills. 225.

Of the $370. or $380. advanced by complainants to Lear, $100. was invested in Land on the O & M R.R. which Lear never

claimed + which has been conveyed to them (Charleen's depn. 52° + 53° answer cross-examn.) - $100. was pd him in Dec. after the purchase were made + cannot be regarded to establish a res. trust - + the balance of $170. or $180. was used by Lear to defray his personal expenses during the two months he made the purchases, which would leave an unimportant amount actually paid on the coal -

In truth the purchase money for the coal has not been paid, + is only to be paid after the coal is extracted -

The following is one of the coal contracts made between Lear + Ebel (Exh B) - all the other contracts are to the same effect -

"Fredk. Lear + Henry Ebel have entered into an agreement by which Lear agrees for himself + assigns to pay Ebel or his assigns $15. for every acre of coal that may be contained in Ebel's land (describing it) - Ebel agrees to afford Lear or his assigns the right of way + every facility for digging said coal which shall be paid for in weekly, monthly or such payments as may suit the parties concerned -"

signed by Lear + Ebel -

[8723-113]

In the contract with Hofstetter (Exh. E.) the provision for the payment of the purchase money is as follows:-
"the coal is to be paid for monthly as fast as it is extracted or taken from the mines"-

Every one of the contracts contemplates that the coal shall be paid for hereafter.

There can therefore be no resulting trust to complainants in the coal

Botsford vs. Burr 2 Johns. Ch R 405

The whole amount of the purchase money @ 15 an acre (the price to be paid for the coal) for 1700 acres of coal (the amt purchased by Lear in all) will be when paid upwards of $ 15,000.- the complainants only interest as a resulting trust is the proportion that $ 170. (less Lear's personal expenses in purchasing) bears to $ 15,000. —

Nor is there a resulting trust to complainants in the interest which Lear bought in the coal + now holds-
Lear purchased the right to take coal upon paying to the owners at the rate of $ 15. per acre -

– the consideration by the agreement upon which he was to convey his interest is that they should afterwards employ him as Superintendant at a salary of 2 mills per bushel &c – which of course lies in the future + cannot be the foundation of a resulting trust.

The owners of the coal lands sold their coal on credit to Lear – + it is impossible that a trust can result to complainants –

The whole theory of a resulting trust arises where the material money consideration is paid by the party claiming the trust at or before the time of the purchase –

– where a contract is made between A + B., that A. will sell a house to B. for $1000. on credit + to bind the bargain B pays A $10. previously furnished by C. for that purpose + A makes a deed to B – there is no resulting trust to C., although B might have agreed with C. to make the purchase for his benefit – for the material main consideration is yet to be paid to A – the contract of sale is complete – but the purchase money has not been pd

[8723-114]

and the only foundation of the resulting trust is the payment actually made by the party claiming the trust.

In this case the small amounts which complainants furnished Lear did not constitute the consideration for the sale of the coal by the owners — the consideration remains to be paid when the coal is extracted.

2 Story Eq. sec. 1201.

Stephenson v Thompson 13 Ill. 186

Alexander v Tams 13 Ill. 221

Perry vs. McHenry 13 Ills. 227

White v. Carpenter 2 Paige 217.

Bruce v. Roney 18 Ill. 67.

7

The terms of the contract between Lear & complainants are indefinite & incomplete – the proof is contradictory & uncertain.

Before a Court of Equity will exercise its extraordinary jurisdiction to enforce the specific performance of a contract, it must be satisfied of the exact terms of the contract

Indefinite & loose declarations & admissions are not to be relied upon – the Stat. Frauds was enacted to prevent their being used.

Smith v. Burnham 3 Sum. 437
Boyd v. McLean 1 Johns. Ch. 590
Phillips v Thompson 1 " " 149.

It is admitted by the answer that Lear bought the coal & obtained these contracts, with an understanding between him & complainants that he would transfer to them upon some terms –

What these terms were, & that they were agreed upon before the purchases, the complainants must show by clear & definite evidence –

Justice Story in his Com. on Equity (2d vol p 69)

says "the contract should be established by competent proofs to be clear definite & unequivocal in all its terms - if the terms are uncertain or ambiguous or not made out by satisfactory proof a specific performance will not be decreed."

The same doctrine is laid down by all writers - indeed it is too plain to be questioned -

Any deviation from this rule would open the door to fraud & all the mischief which by the Stat. were intended to be avoided.

There are only two witnesses in the case, Hill the Attorney of complainant & Chouteau their general agent -

No acts of Lear under the terms of the contract as construed by complainants are proved -

Hill does not pretend to know of any contract made before the purchases -

In his answer to the 20th cross int - he says: "I did not know whether it (the agreement) had previously been made or not - I dont recollect whether anything was said as to whether an agreement had then been made or not" -

- on the contrary he proves that the terms

upon which Lear was to convey to complainants were made after the purchases - the time of which he speaks, + the only time he spoke to Lear, was in his office in January 1854, two months after Lear had made the purchases - testifying to their meeting + conversation at that time he says (answer to 2d cross int) - :-

"Chouteau + defendant conversed together about the arrangement to be entered into + whenever any point was agreed upon, I took notes of it - I took notes of everything that was agreed upon between them" -

Chouteau in his answer to 44th cross int. also admits that the terms upon which Lear should convey to them were not definitely determined before Lear's purchases. - he is asked why the terms of the contract were not reduced to writing at the time of the parol agreement in october - + he answers thus :-

"It was necessary that defendant should fulfill his contract first - obtain the lands + convey to complainants."

Again, 45th cross int - Was it necessary for him to obtain the lands in view to an understanding of the terms upon which

they were to be purchased & conveyed?"

Answer - "It was - his salary as well as his compensation upon coal taken out, being predicated upon the coal being obtained" -

This admission of Chouteau's, & the positive evidence of Hill, proves that the terms of the contract upon which Lear was to convey were made after the purchases -

And upon this subsequent agreement no resulting trust can arise

In Perry vs McHenry 13 Ill. 227 it is said "No arrangement subsequent to the purchase nor any parol agreement existing before nor any parol declaration at the time a purchase is made for the benefit of some other person will raise a trust, in the absence of any other fraud, than that which arises from the violation of a parol promise or agreement."

The circumstance that the parties were treating at Hill's office, long after the purchases were made, upon the terms upon which Lear was to convey -

- that Lear was not to be paid anything for making these purchases - (Chouteau's dep.n answers to cross int. 77-101-102)

— that Lear never claimed anything for his time in making these purchases (same 167)
— that the money furnished him was charged in his regular account — (same 176)
— that he was to purchase before the terms upon which he was to convey to complts were to be reduced to writing —
— All these facts tend to show that the money advanced to Lear was a loan — or at least that the terms upon which he was to transfer were never definitely agreed upon between the parties before the purchases —

But even if it appears doubtful whether the terms upon which Lear was to convey were agreed upon before or after the purchase — the Court will not interfere upon the well established principle that a resulting trust must arise if at all at or before the time of the purchase — & its terms must be established by clear & definite proof —

Stephenson vs. Thompson 13 Ill. 190.

The whole purpose of Hill's testimony is an attempt to construe the general & loose declarations of Lear & in some instances his silence (although Lear is proved

by Hill to be "a little draf") into an acquiescence of the terms of Exhibits A + B - Hill says "after these papers were read to him he said "I believe they are right" - but even this loose admission must be connected with Hill's answers to 42d + 43d cross int -

"I am not sure, says Hill, that Lear heard all that Chouteau said - I supposed he did - it is possible that I misunderstood defendant + that he misunderstood me" -

Lear's declarations to Hill + Chouteau in Hills office, + to Chouteau + Valle when the parol contract was talked of, are satisfactory evidence that he did not understand the last clause of Exhibit A - (in which the time + terms of his employment are made dependent entirely upon the pleasure of complainants) -

Upon that point we have the evidence of Chouteau who says:-

- "defendant proposed the terms of the parol contract, stating that his object was to get permanent employment" (18 cross int)

- "defendant remarked 'but mind there must be no restriction as to the quantity of coal I get out, + I must have the management" - (20th cross int)

68th crop int - Please state a single expression used by Lear?

Ans- "He went into a calculation with Hill as to what amount he could make at two mills per bushel, which at defts own figuring would net him from 20 to 25 dollars per day"-

98th crop-int - Did you not say that you intended to make a regular business of coal mining? -

Answer - I did.

169 crop- - he wished to get steady employment- that he was out of employment -

How could Lear ~~have~~ with any degree of assurance have expected "steady" "permanent employment", or with safety have rated his income at $25. per day, if he had understood the last clause of this pretended agreement, whereby complainants have him entirely in their power; whereby they may allow these valuable mines discovered by the skill + labor of Lear to remain unopened until he could realize no benefits from his own valuable discovery.

It is utterly impossible that any sane man, after he had acquired these valuable mines, understandingly

[8723-118]

assent to a ~~contr~~ transfer of them without any consideration of which he could avail himself -

A candid mind cannot fail to see that the benefits of this pretended contract are all on the side of Chouteau Harrison + Valle -

Lear has not even been paid for his services in purchasing these mines + is now asked to transfer them upon the consideration that he may be employed as Superintendent if complainants choose to work them -

Certainly the contract is unfair + unjust ; + that is a sufficient reason in Equity to refuse a specific performance. -

"There is nothing more established in this Court", said Lord Hardwicke (in Buxton v Lester 3 Atky 386) "than that every contract of this kind (speaking of contracts which the Court will enforce) ought to be certain, fair + just in all its parts - if any of those ingredients are wanting in the case, this Court will not decree a specific performance.

8 The transfer of Lear's interest to complainants in these coal purchases will not be decreed, because the performance of the whole contract cannot be judicially secured.

The Jurisdiction to decree the specific performance of a contract rests entirely in the sound discretion of the Chancellor; & although there may be a valid contract & no adequate remedy at law, yet its specific performance will not be decreed unless the Chancellor can secure the performance of the whole contract by both parties

Waring vs: Manchester Railway Co. 7 Hare 492

Where the contract is such that the Court cannot enforce its <u>entire</u> performance it is necessarily no subject of its Jurisdiction —

Fry on Spec. Perf. 237

By the bill it is admitted that the

complainants agreed on their part to employ Lear as Superintendent at the compensation of 2 mills per bushel for every bushel coal extracted – this condition the Chancellor blow converted into a personal covenant + decreed that Complainants should sign an agreement to employ +c.

Where parties contract to do a thing a covenant to do would not be a specific performance of it.

Gervais v: Edwards 2 Dr. + War. 80.

The agreement is not that if Lear would purchase the coal they (complainant) would agree to employ him +c; but they would employ him – the signing of an agreement is not the performance of the contract, but a mere covenant to perform –

The Court will not make a new contract for the parties – unless it can perform the whole identical contract, it will not interfere.

An entire contract cannot be apportioned, + the performance of it enforced in fragments

~~XX Alb.~~ 330.

Lear has no security that complainants will perform their agreement. —
if they refuse, he will be compelled to seek redress in a Court of law in damages on breach of contract

By the consent of complainants Lear is bound to the owners of these coal lands to pay them $15 - to $20. per acre (some 1700. acres) for ~~coal~~ coal to be hereafter extracted - complainants have induced him to enter into these obligations by which he & his heirs are bound for all time in a sum of more than $10000.

What indemnity has he that complainants will ~~save~~ hold him harmless if he assigns to them all his interest?

None ~~whatever~~ —

Upon the whole case it is insisted that to enforce the contract under these circumstances would not be Equity — but Iniquity.

E. W. Decker
of counsel for Plf
in error —

Supreme Court
of Illinois

Chouteau Harrison
& Valle
compltts (below)
vs.
Fred^k Lear
pltff in error

Argument of
E. W. Decker
of counsel
for Lear

Frederick Lear
plaintiff in error
vs:
Pierre Chouteau
James Harrison &
Felix Vallé
defendants in error.

Supreme Court of Illinois

Case made by the Bill -

Chouteau Harrison & Vallé (plffs below) file their bill in equity & charge in substance that they entered into a verbal agreement with Lear (defl. below) to the effect that he was to purchase for them from the owners of coal lands in the County of St. Clair, Ills. the stone coal or mineral coal contained in such ~~mineral~~ lands & the right of way over the same & every facility for digging & transporting the coal to market &c; & that Chouteau Harrison & Valle were to furnish the means to make such purchases & to pay the expenses of said Lear &c.

The bill further charges that it was also verbally agreed between plaintiffs & defendant, that he Lear was to obtain contracts or conveyances in his own name for said coal & privileges & hold the same temporarily for the use of plaintiffs.

The bill also charges that it was further verbally agreed that said Lear was to transfer all such purchases to plaintiffs - that they agreed as to what they had advanced or might advance to Lear for his services in that behalf to employ him to superintend the opening & working such coal mines &c. &c.

The bill further charges that defendant with plaintiffs money but in his own name procured several contracts with parties (naming them) copies of which contracts are made exhibits to the bill.

One of the contracts exhibit B, is to the effect that Henry Ebel of St Clair County Ills. & Frederick Lear have entered into an agreement by which said Lear is to pay said Ebel $15. for every acre of coal that may be contained in the land of said Ebel (describing the land) & said Ebel agrees to afford said Lear or his assigns the right of way & facility for digging said coal &c &c - all the other contracts are like this mutatis mutandis.

The bill further charges that the plaintiffs caused said agreement with defendant to be reduced to writing & offered to sign the same & requested defendant to sign the agreement

[8728-122]

which they had reduced to writing as aforesaid, & which he refused to sign - & he also refused to assign or transfer the said several agreements for coal &c, which are made exhibits &c.

The plaintiffs in effect allege full performance of said agreement on their part & allege that defendants neglected & refused to perform said agreement -

The bills prays that defendant be decreed to convey his right & interest in said coal lands & privileges to plaintiffs, & for general relief.

The Answer admits the making of a verbal agreement with plaintiffs but differing very materially from the one set up by plaintiffs, & deft denies that he made the agreement set up in the bill -

Defendant denies that plaintiffs kept their agreement - but alleges on the contrary that they failed to do so.

Defendant insists that he is not bound in equity to transfer said contracts to plaintiffs &c. -

to which answer plaintiffs file their replication -

Thus the issue is made by Bill, Answer & Replication.

The evidence does not show a written agreement between the parties but shows only a verbal agreement made after the contract with Elect & others had been made, & there is a conflict in the testimony as to the scope of the verbal agreement.

The Court below upon a hearing of the issues made by bill & answer & Replication & upon the testimony, decreed that the plaintiffs were entitled to a specific execution of the contract set out in the bill & further decreed that the plaintiffs should execute & deliver to defendant a writing ~~or~~ agreement to conform in all respects with the agreement they had prepared & which the defendant had refused to sign - & further decreed that defendant should make a conveyance or assignment of said contracts -

This is the substance of the pleadings & decree - and this condensed statement is made only for the purpose of showing more readily the grounds on which the following points are based. -

[8723-124]

I. The case made by the bill is not within the jurisdiction of a Court of Equity - + whenever it appears that a Court of Equity has not jurisdiction, whether the objection is taken by demurrer or at the hearing or not at all, the Court will dismiss, for this the Court may do, ex mero motu at any stage of the case -

or law?

This bill should have been dismissed for want of jurisdiction which is apparent on the face of the bill -

The Supreme Court will now render such decree or order as the Court below ought to have made in the case.

Story Eq. Pleading Sec. 10.
Darkin v Demming 6 Paige Ch R. 95
Berrell vs: Oliver 7 Gill + J. 191

It will be seen that the case made by the bill does not show that the defendant agreed to buy or obtain any interest right or estate in any

[8723-125]

designated lands, for no particular lands are designated in the alleged agreement nor is the name of any owner mentioned from whom land or any other interest is to be obtained - nor does the bill show that the defendant acquired any estate, right or title in or to any land. -

The several agreements made by the defendant with different parties only gave him the privilege of taking the coal that might be discovered on or be dug from the land -

If those parties should see fit to break their agreements & refuse to allow Lear or any one claiming under him to take away coal from the lands designated in said agreements, a court of Equity would not decree specific performance of them - Redress for such a breach could only be had in a court of law in damages.

These contracts were but things in action & in the strongest view that can be taken of the plaintiffs case it only amounts to this, that the defendant agreed verbally with the plaintiffs to procure certain choses in action & then assign the same to the plaintiffs -

The defendant having procured the things which were the subject

matter of said agreement, but having refused to assign them, the question is will a Court of Equity by its decree compel an assignment? No lawyer would contend for this.

The case made by the bill is in nowise different in principle from the case e.g. - if A. gives money to B & the latter agrees to buy a horse with the money & deliver him to A. - B. buys a horse in his name with the money, but refuses to deliver the horse to A

What would be the remedy of A in such case? Surely no one would think of resorting to a Court of Equity to compel delivery.

The answer would be that a court of law could afford a complete remedy.

A would recover back his money & interest - that is all.

So in the case at bar, the plaintiffs remedy for the failure of the defendant to keep his verbal agreement is in a Court of law - they can recover back the money they advanced to defendants, with interest, costs &c -

The matter set up in the bill, when fairly considered is not in principle unlike other breaches of agreements relating to things in action, or tangible personal property -

Though the plaintiffs may have provided the consideration or money

[2723-127]

that the defendant paid for the agreements in question, this fact does not change the nature of the transaction, nor give a court of Equity jurisdiction to give the plaintiffs redress for the defendants failure to assign the contracts in conformity with his alleged agreement -

The whole theory of the bill is that the plaintiffs have an equitable title to the contracts in question, though the legal title is in the defendant, & the plaintiffs' bill asks that the defendant may be divested of his legal title -

The bill does not proceed as in the case of a resulting trust - but wholly for the specific execution of a parol contract - the decree too is framed on this theory -

II. The decree in this case is not supported by the charges in complainants bill -

A decree in chancery must conform to the general scope of the bill + must embrace the subject matter which shows the jurisdiction of the Court in the case - And although the charges contained in a bill may be sustained in the proofs, yet a decree cannot be sustained unless it embraces the subject matter of the bill + which a court of Equity can take cognizance of.

As has been already stated the bill in this case avers that the agreement between plaintiffs + defendant was verbal - no consideration for it is averred or proved - No specific right or thing is stated in the bill, that the

defendant undertook to acquire -

The averment is in substance that the defendant undertook & agreed by parol to obtain contracts for stone coal & the privilege of digging the same & the costs & expenses of which the plaintiffs agreed to pay - The contracts were to be taken or made in the name of defendants, which he was to hold temporarily & afterwards transfer such contracts absolutely to plaintiffs - no time is stated or proved in which this was to be done -

The parol agreement in question was made in October 1853 - the contracts or agreements for the privilege of digging coal were obtained as the bill avers with the money & means of the plaintiffs & afterwards in the month of January 1854 the plaintiffs caused the substance of said parol agreement to be reduced to writing which they offered to sign & requested defendant to sign the same also - which he refused to do -

☞ - It will be observed that all of the alleged agreements for the privilege of digging coal had been obtained by defendant before the writing purporting to embody the alleged parol contract was prepared or tendered to defendant -

The plaintiffs also in the month of December 1853, but after said contracts for the privilege of digging coal had been procured

by defendant, prepared a deed or writing for defendant to sign the purport of which was to assign + transfer to plaintiffs all the right + interest of defendant in the said contracts to the plaintiffs. -

This writing the defendant refused to sign giving as a reason that plaintiffs had not kept their agreement with him &c.

The above condensed statement is made from the bill + is designed to show the material averments in the Bill + to develope as fully as practicable the theory on which the bill is predicated.

No one can doubt but the whole theory of the case made by the bill is that inasmuch as the defendant obtained the agreements or privileges referred to with the money + means of the plaintiffs, they are entitled to ~~[illegible]~~ the benefit ~~[illegible]~~ of the transaction stated in the bill by assignment of said contracts + a court of equity is asked to do it. -

This is apparent in the face of the bill; + the proofs too of plaintiffs are directed to this end - and the specific prayer of the bill is that the defendant may be directed + compelled to transfer + assign said contracts + privileges to plaintiffs &c. -

Now let us turn our attention to

the decree itself for no matter what the proofs are, in the view of the case now under consideration, of themselves the proofs are of no avail unless they sustain the material charges contained in the bill -

The Court below, it will be perceived, decreed in substance that the defendant should execute acknowledge & deliver to plaintiffs, a conveyance of all the defendants interest in said several contracts &c - In other words the Court below decreed specific execution of the parol agreement made in October 1853 -

In view of the whole case it is insisted by the plaintiffs in error, that this decree is erroneous, because -

First - that there is not sufficient stated in the bill to show a resulting trust for plaintiffs in respect to the contracts in question that a Court of Equity can take cognizance of

Second - that the decree by its terms divests defendant of his interest in said contracts - in this particular the decree is a complete non sequitur -

If the contracts in question are personal property, i.e. mere choses in action it is idle to talk of defendants holding the legal, and the plaintiffs the equitable title to them -

[8723-13]

It becomes important therefore that the appellate Court should first determine the character of the subject matter of this suit.

It is not real estate, nor any interest in real estate - it does not amount to an easement or right of way even for there is nothing definite or certain, and nothing is stated in the bill on the subject of an easement or way.

If an easement or right of way was contemplated by either party it was but an incident to the main thing sought to be acquired, viz:- the right to dig & carry away coal.

In short the agreement stated in the bill & the whole transaction is of such an indefinite nature, that a Court of Equity will not undertake to carry any part of the same into effect - No account is prayed for nor is the Bill for an account.

IIII. If it is assumed that the parol contract in question relates to land or some right or interest in land, then a Court of Equity will not decree specific performance of the verbal agreement, notwithstanding the defendant did not plead or set up the Statute of Frauds in his answer as a distinct ground of defence.

The defendant distinctly denies the agreement set up + relied on by the plaintiff - this is sufficient to enable the defendant to avail himself of the Stat. of Frauds as a defence at the hearing.

If the defendant had admitted the parol agreement stated by plaintiff, the rule would have been different.

As the case stands upon the record with the denial on the part of the defendant of the alleged agreement, which is the basis of the bill, it was incumbent upon the plaintiffs to prove said agreement + this could only be done by producing some writing signed by the defendant, ~~or only~~ by his agent lawfully authorized thereto - If the plaintiff should be allowed to prove this contract by parol evidence it would be allowing the very mischief which the Statute of Frauds was designed to prevent.

The authorities in support of this proposition & the logical reasoning which come to its support seem altogether conclusive & leave no ground for the plaintiffs to stand upon -

In any view of the case, the decree cannot be sustained.

John M. Krum
of counsel for appellant.

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Supreme Court
of Illinois

Lear
plaintiff in error

vs.

Chouteau, Harrison
+ Valle
defts in error

Brief + Argument

John M. Kern
of counsel for
pltff. in error

Thomas Lear plaintiff in error

vs

Pierre Choteau
James Harrison
& Philip Valle } Error to St Clair
defendants in
error

Supreme Court 1st Grand Division Mod term 1859

This against the Nelson

being duly sworn states upon oath that the above named defendants are non residents of this state to the best of his information knowledge & belief & so that process cannot be served.

R S Nelson

Sworn to and subscribed before me 11th March 1859

N. Johnston CM

Sewer

vs

Cleveland & others

Affdt of mailing
by R. S. Nelson Esq

Filed March 11. 1859
A. Johnston Clk

In the Supreme Court for the first Grand Division—of November Term, A. D. 1858—at Mt. Vernon.

Frederick Lear, vs. Pierre Chouteau, James Harrison, Felix Valle.	Bill in Chancery. Error from St. Clair.

THE record of the above entitled cause having been filed in my office at Mt. Vernon, together with an affidavit showing that the said defendants are non-residents of the State of Illinois, and residents of the city of St. Louis, State of Missouri;

NOTICE is hereby given to said defendants, namely to Pierre Chouteau, James Harrison and Felix Valle, that the said cause is now pending in the said Supreme Court, whence a Writ of Error has issued therein, returnable to the term of said Supreme Court to be holden on the second Monday of November, A. D. 1858, at Mt. Vernon in this State, wherein the said Lear is plaintiff in error, and you are defendants in error; and that unless you be and appear in said court on the return day of said writ, and join in error upon said record, your default will be entered in said cause.

Witness Noah Johnson, clerk of the Supreme Court, at Mt. Vernon, this 4th day of September, A. D. 1858.

NOAH JOHNSON, Clerk,

N. NILES, Attorney. 49w4

I Collins Van Cleve Publisher of the Belleville Advocate a newspaper published weekly in St Clair County State of Illinois do hereby certify that the annexed printed notice was published in said newspaper for four weeks successively, the first insertion being on the 8th day of September and the last on the 29th day of September A D. 1858

$7.50 Printer's Fee

C. Van Cleve
Publisher &c.

{8723-136}

5 ~~33~~

Fred'k Lear

Plff in cr.

vs.

Pierre Chouteau
Jas. Harrison
& Felix Valle

No. by Publication

Certificate

Koerner & Niles
Attys for Plff
in error

Filed Nov 11. 1858.
St. Johnston Clk

State of Illinois S.S.

Supreme Court of said State

First Grand Division

Hardrick Lean Pltff in Error
vs
Pierre Chouteau, James Harrison
and Felix Valle - Defts in Error

Error from St Clair.

Notice is hereby given to the said Defendants that a Writ of Error hath issued in the above entitled Cause, returnable at the next term of said Court to be holden at Mount Vernon in said Division, on the first Sunday after the second Monday of November next - at which time and place you are required to appear and join in the error assigned in said Cause - and in default thereof - default will be entered against you -

[8723-137]

Clerks Office Supreme Court
Mount Vernon Illinois
Nov. 29. 1858.

Judge Niles

Dear Sir.

The Case of Frederick Sear vs Pierr Choutean Jr. James Harrison & Felix Valle is Continued - with Order for New publication. Will you please have that publication made - and send me the proper evidence thereof.

I am Sir. very respectfully
Noah Johnston Clk

[8723-138]

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Copy of letter sent
to Judge Giles - Nov
29. 1858 -

St Louis Oct 25, 1859

Noah Johnston Esqr
Clerk Supreme Court
Mount Vernon Ill

Dear Sir

Will you please send me a copy of the assignment of errors in the case of ~~Chan~~ Lear against Chouteau Harison & Valle, pending in your Court on writ of error to the St Clair Circuit Court, — and also inform me for what day in the next term the case is set for hearing. I enclose one dollar for charges, and will take it as a special favor if you will attend to this without delay

Very Respectfully
Yours &c
Wm N. Grover

Wm A Gourley
St Louis

28. Oct. 1859

Frederick Lear Pltff. in Error vs. Pierre Chouteau Jr. James Harrison & Felix Valle Defts. in Error	In the Supreme Court Mt. Vernon Error to St Clair Noah Johnson Clk &c

Sir;

You will please to issue a Scire Facias to St Clair County in favor of said pltff. in error, and against the said defendants in error, commanding said defendants in error, and each of them to appear in said Supreme Court at the next term thereof and show cause if any they have, why the Decree rendered in favor of said defendants by the St Clair Circuit Court should not be reversed, said decree being the same ~~and~~ mentioned in the Writ of Error issued in said cause

Yours &c

N. Niles
Atty for Pltff in Error

[8723-140]

23

In the Supreme Court

"

Frederick Lear
Plff. in Error

vs.

Pierre Chouteau Jr.
James Harrison &
Felix Vallé

"

Precipe for
Summons &c

"

Koerner & Nelson
Attys for Plff
in Error

"

Filed July 15. 1858.
N. Johnston Clk

SUPREME COURT ADVERTISE'S.

IN THE SUPREME COURT OF ILLINOIS.

First Grand Division.

Fredrick Lear, plaintiff in Error,

vs.

Pierre Chouteau, jr., James Harrison, and Felix Valle, defendants in Error,

ERROR TO SAINT CLAIR.

NOTICE is hereby given to the said defendants in Error, that the above entitled cause is now pending in said Supreme Court—that the same has been continued to, and is set for hearing and trial, at the next term thereof, to be commenced and holden at Mount Vernon, on Tuesday the fifteenth day of November next; at which time and place, they, the said defendants, are required to appear and join in the errors assigned, and that on failure to do so, their default will be entered.

Witness, Noah Johnston, clerk of the said Supreme Court, at Mount Vernon, this 23d day of May, A. D. 1859,

NOAH JOHNSTON, Cl'k.

We hereby certify that the attached notice has been published for five consecutive weeks, in the Mt. Vernon Weekly Star, commencing on the 27th of May 1859 and ending June 24th 1859

Curtis & Lane
Publishers

Mt Vernon July 27-1859
Printers fee $8.00

(8723-121)

No 5

Sean
vs
Choctaw et al

Petition and
Certificate

Filed July 29. 1859
N. Johnston Clk

Retainer $3.00
Dudley Clk

Belleville Feby 17. 1860

Dear Sir

I have to thank you for your note in relation to the costs in the Chouteau vs Lear case My fee for the Record for Supreme Court as per my memorandum is $25.00

Yours Truly
Wm S Thomas

[8723-143]

Frederick Sears

vs

Chouteau et al

Circuit Clerks fees

for Recd

$25.00

STATE OF ILLINOIS, } ss. 1st Grand Division
SUPREME COURT.

THE PEOPLE OF THE STATE OF ILLINOIS,

To the Sheriff of Saint Clair **County,**

Because in the record and proceedings, and also in the rendition of the judgment, of a plea which was in the Circuit Court of Saint Clair County, before the judge thereof, between Pierre Chouteau Jr. James Harrison and Felix Valle Plaffs and Frederick Lear

defendant, it is said that manifest error hath intervened to the injury of said Frederick Lear as we are informed by his complaint, the record and proceedings of which said judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at Mt. Vernon, 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 Pierre Chouteau Jr, James Harrison and Felix Valle

that they be and appear before the Justices of our said Supreme Court, on the first day of the next term of said Court, to be holden at Mount Vernon, in said State, on the ~~Second~~ first Tuesday after Monday in November next, to hear the records and proceedings aforesaid, and the errors assigned, if they shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Chouteau, Harrison and Valley - Defs in error notice, together with this writ.

Witness, the Hon. ~~SAMUEL H. TREAT~~ John D. Caton, Chief Justice of our said Court, and the seal thereof, at Mount Vernon, this fifteenth day of July in the year of our Lord, one thousand eight hundred and fifty-eight

Noah Johnston
Clerk of Supreme Court.

[8723-143]

23

Frederick Lear
Plaff in error

vs } Sci fac

Pierre Chouteau Jr
James Harrison &
Felix Valle
Defts in error.

The within named
Defendants not found
in my County Oct 27th
1858
G. C. Hart Sheff. Mo. C.

Sheff fees
Return 10
Postage & 5
.15

58

STATE OF ILLINOIS
SUPREME COURT, } SS. 1st Grand Division. WRIT OF ERROR.
THE PEOPLE OF THE STATE OF ILLINOIS;

To the Clerk of the Circuit Court for the county of Saint Clair GREETING,

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of Saint Clair — county, before the Judge thereof, between Pierre Chouteau Jr, James Harrison and Felix Valle — — — plaintiffs, and Frederick Lear

defendants it is said manifest error hath intervened, to the injury of the aforesaid Frederick Lear — — — — — 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 judgment thereof be given, you distinctly and openly without delay, send to our Justices of the Supreme Count, 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 Mount Vernon, in the county of jefferson, on the first Tuesday after the 2d Monday of November 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:

John D. Caton

Witness, the Hon. ~~WALTER B. SCATES~~ Chief Justice of our said court, and the seal thereof, at Mount Vernon this fifteenth day of July in the year of Our Lord One Thousand Eight Hundred and Fifty-Eight.

Noah Johnston
Clerk Supreme Court.

[8723-148]

23

Frederick Lear
Pltff in Rem

vs } Libt of Rem

Pierre Choutean Jr.
James Harrison &
Felix Valle
Defts in Rem

Issued & filed July 15. 1858.
A. Johnston Clk

In the Supreme Court. 1st Grand Division
Mt Vernon —

Nov. Term A.D. 1858

Frederick Lear
Plff in Error
vs.
Pierre Chouteau Jr.
James Harrison and
Felix Valle Defts. in Error

State of Illinois
County of St Clair Set;

N. Niles being duly sworn says that the above named Defendants in error, Pierre Chouteau Jr. James Harrison and Felix Valle, are residents of the State of Missouri, and City of St Louis as deponent is informed and verily believes and further saith not —

Sworn to and subscribed before me this 29th day of June A.D. 1858 as

N. Niles

Witness my hand and the seal of the St Clair Circuit Court hereto attached on the day aforesaid at my office in Belleville St Clair County Illinois

Wm S Thomas
Clerk of the St Clair Circuit Court of Illinois

[8723-145]

23

Supreme Court
1st Division

Frederick Lear

vs.

Chouteau, Harrison
& Valle

Aff. of Non-
Residence of
Defts. in Error

Filed July 5. 1858.
N. Johnston Clk

FREDERICK LEAR, Plaintiff in error, *vs.* CHOUTEAU, HARRISON & VALLE, Defendants in error.	IN SUPREME COURT OF ILLINOIS. November ~~September~~ Term, 1859.

POINTS AND AUTHORITIES, BY E. W. DECKER,

Of Counsel for Plaintiffs in error.

1. A Court of Chancery has not jurisdiction of this cause.

The bill is for the specific performance of a parol "contract for the sale of an interest in or concerning land," within the first section of Statute of Frauds.

2. Whenever it appears that the Court has not the jurisdiction to give relief, the bill will be dismissed.

Consent of parties cannot confer a jurisdiction not vested by law.

The defendant may avail himself at any stage of the cause of this failure of jurisdiction.

Story, Eq. Pleading, sec. 10.

3. The contract is within the Statute of Frauds. (*a.*) As to the subject matter—" coal in land "—there can be no doubt.

2 Black. Com. 28.
Bainbridge on Mines, p. 75.

By the contract, Lear was to purchase " coal in land," in his own name, and afterwards assign (i. e. sell) to defendants in error, " all his interest "—the interest which he was to sell to them, was the *legal* title—the right to possession, to the rents and profits, and to the complete disposition at law.

It is insisted that this legal title with all its incidents, is " an interest in or concerning land," within the meaning of the Statute.

A purchase by an agent for the principal is within the Statute, unless the entire purchase money is advanced by the principal, and actually forms the consideration upon which the owner sells to the agent—in such case a resulting trust would arise to the principal.

Smith *v.* Burnham, 3 Sum. 433.
Henley *v.* Brown, 1 Stew. 144.
Starks heirs *v.* Cannady, 3 Litt. 399.
Henderson *v.* Hudson, 1 Munf. 510.
Heacock *v.* Coatsworth, 1 Clark 84.
Stephenson *v.* Thompson, 13 Ill. 190.

4. Although the Statute of Frauds has not been pleaded or set up in the answer, the plaintiff has not waived it, because he has denied the contract stated in the bill.

It is admitted that a defendant must rely on the Statute "*in some way*,"—where the defendant admits the contract he must rely on the Statute by plea—where the defendant denies the contract in the bill and sets up a different contract, the denial itself is a reliance on the

Statute, because the proof is on the plaintiff to show a valid contract, which he cannot do without producing some writing signed by the party, &c.

Cozine *v.* Graham, 2 Paige 180.
Ontario Bank *v.* Root, 3 Paige 481.
Harris *v.* Knickerbacker, 5 Wend. 643.
Allen *v.* Chambers, 4 Ired. Eq. R. 125.
Browne on Stat. Frauds, sec. 511.

5. The contract has not been part-performed to take it out of the Statute of Frauds.

No acts have been done by defendants in error under the contract except the advance of $370 which they can recover at law.

Adams Eq., page 86, note and cases cited.

2 Story Eq., sec. 760 and cases cited.

6. There is no resulting trust to defendants in error of the coal, nor of Lear's interest in the coal, because

(*a.*) Neither the coal nor the contracts were acquired by the money or means of Choutean, Harrison & Valle—the coal is not paid for—the contracts were obtained solely upon the individual credit of Lear. To raise a resulting trust, the whole consideration, or a definite part there-

of, upon which the owner parted with the property, must proceed from the person claiming the benefit of the purchase, at or before the time of the purchase.

No contract can create the resulting trust.

Stevenson *v.* Thompson, 13 Ill. 190.
Alexander *v.* Tams, 13 Ill. 225.
Botsford *v.* Burr, 2 Johns, Ch. 405.
Perry *v.* McHenry, 13 Ill. 227.
White *v.* Carpenter, 2 Paige 217.
Bruce *v.* Roney, 18 Ill. 67.

(*b.*) The plaintiffs have stated and proved by parol, a contract creating an express trust, which under the fourth section Statute of Frauds must be proved by writing.

An express trust, although by parol, excludes the resulting trust.

By this express parol contract, Lear has an interest in the coal contracts to the extent of having his compensation secured, of which a Court of Equity will not divest him without adequate security.

7. The *terms* of the contract between the parties are indefinite and incomplete.

The testimony is contradictory and uncertain.

Smith *v.* Burnham, 3 Sum., 437.
Boyd *v.* McLean, 1 Johns., Ch. 590.
Phillips *v.* Thompson, 1 Johns., ch. 149.
2 Story Eq., p. 69.

8. The transfer of Lear's interest in the coal will not be decreed because the performance of the whole contract between the parties cannot be judicially secured.

Defendants in error agreed to employ and pay Lear at some time—a covenant to employ is not a performance of that contract.

Waring *v.* Manchester Railway Co., 7 Hare, 492.
Gervais *v.* Edwards, 2 Dr. and War., 80.

Page of Record.

~~STATE OF ILLINOIS — IN THE SUPREME COURT — FIRST GRAND DIVISION — NOVEMBER TERM, 1859.~~

FERDINAND LEAR, Plaintiff in Error.

vs.

PIERRE CHOUTEAU, JR., JAMES HARRISON & FELIX VALLE, Defendants in Error.

This was a bill in chancery filed by the def~~ts~~endants in error to compel a conveyance to them of certain coal and coal lands, and certain privileges connected therewith, purchased by the pl~~ntiff~~aintiff in error, def~~ts~~endant below, as alledged by the said compl~~ts~~ainants, as trustee for them and for their use. After showing the fact of partnership of def~~ts~~endants in error, the bill alledges that about the 1st day of Oct., A. D., 1853, the compl~~ts~~ainants employed Frederick Lear, pl~~ntiff~~aintiff in error, to purchase for them from the owners of coal lands in the county of St. Clair, State of Illinois, the stone coal or mineral coal contained in said lands, and the right of way over the same, and every facility for digging said coal and transporting the same to market; and furnished him the money to make such purchases and pay his expenses while engaged in the business, upon the understanding and agreement that said Lear was to obtain contracts or conveyances in his own name for said coal and privileges and hold the same temporarily for the use of the compl~~ts~~ainants, and afterwards transfer to them absolutely all the interest by him acquired in such purchases by deed; and in consideration of his services in and about such purchases as agent for said Chouteau, Harrison & Valle, and such other services as he might thereafter render in and about the mining and disposing of said coal, in addition to what they had already advanced or might advance, they were to employ him in superintending the opening and working of such coal lands upon the terms set forth in a certain writing, unexecuted, being exhibit A., that is to say, they agreed to pay him ~~$70~~ seventy dollars per month for his services in laboring and opening the coal mine in said lands, and when the main entry should be cut open and the mine be ready to be worked, then such monthly pay was to cease, and for his services in superintending the digging of the coal and the transportation thereof from the mine to St. Louis, he was to receive from said ~~C., H. & V.~~ complainants, two mills for each and every bushel of coal furnished to them or sold for their account. Said Lear to devote his whole time and attention to superintending and getting out the coal and working the mine, and to keeping it in order for being worked to the best advantage; compl~~ainants~~ainants to furnish the workmen and all materials for the proper working thereof; said Lear to keep faithful & just accounts, and certify the amount due to each man weekly, and to attend to the payment of their wages and the taking of receipts therefor, if said ~~C., H. & V.~~ complainants shall so elect, and the said one-fifth of one cent per bushel of coal taken from said mine as aforesaid shall be in full satisfaction for all the services of said Lear as superintendent, as aforesaid, after the mine is opened.

The concluding clause of said exhibit A., is as follows: "This agreement is not to

[8723-148]

Valle to that effect, unless the parties hereto shall mutually consent to a shorter time for the beginning of operations." The terms of this writing were mutually agreed upon by said Lear and said compln'~~nts~~ amants before he proceeded to make any such purchases. The bill shows that Lear, as agent for compln'~~nts~~ amants under said agreement, and with their money and means, but in his own name, entered into certain contracts, seventeen in number, set forth in the bill, with as many different owners of coal lands in St. Clair county, by which said Lear purchased the right and facilities for digging coal and opening mines in said lands, compln'~~nts~~ amants furnished said Lear the sum of ~~$380~~ three hundred and eighty dollars which he used in said business in the months of Oct. and Nov., 1853.

The compln'~~nts~~ amants on the ~~5th~~ 6th of Dec., 1853, caused a conveyance to be prepared for Lear to execute, conveying to them absolutely all his title and interest in said contracts, and the coal mines and privileges in said contracts named; said conveyance is filed as exhibit U. They also caused the said writing—exhibit A—to be prepared on or about the ~~4th~~ fourth of Jan'~~y,~~ ary 1854, for execution by both sides, allege that these two writings—exhibits U and A—contain in substance and effect the agreement of the parties, and were so understood by them.

"It was well understood at the time of Lear's employment by compln'~~nts~~ amants, that he was to convey to them on request whatever title or interest he might acquire in said coal lands."

Compln'~~nts~~ amants were willing and offered to execute said agreement marked A, if said Lear would execute that marked U, but Lear refused to execute said conveyance of all his interest in the said contracts unless the compln'~~nts~~ amants would execute an agreement in writing furnished them by said Lear and filed with and made a part of the bill, as exhibit V, said Lear pretending that said last named writing embodies the terms and conditions of the agreement between the parties, when on the contrary, the writing marked A contains in full the true agreement, and that marked V contains stipulations materially different therefrom. The terms of this latter agreement proposed by Lear—marked V—are as follows: After reciting that Chouteau, Harrison & Valle, compln'~~nts~~ amants, are the owners by purchase and assignment of all the stone coal and mineral coal in various lands described in a certain conveyance—exhibit U—dated Dec. 7, 1853, and executed by said Lear to said compln'~~nts~~ amants, of all his interest in said lands, (said conveyance being that proposed by compln'~~nts~~ amants,) the said agreement (V) binds the compln'~~nts~~ amants to pay Lear, his heirs and assigns, one-fifth of one cent for every bushel of coal extracted from said lands, and said Lear binds himself, his heirs and assigns, faithfully to superintend or cause to be superintended by a competent person the working of said coal lands and the transportation of the coal to a convenient point on the Mississippi river, and furnishing said Chouteau, Harrison & Valle, or assigns, with faithful monthly accounts of all the expenses of the mines, the situation of the workings, and what disposition has been made of the coal raised or extracted. The said Chouteau, Harrison & Valle agree to pay to Lear ~~$70~~ twenty dollars per month from the time the work is commenced till the mines are open, and to furnish all means complete for delivering said coal at the river Mississippi; compln'~~nts~~ amants

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or their assigns to be at all the expense of working said mines and transporting said coal from said mines to the river.

"It is further agreed that the work is to commence when a railroad shall have been completed from the Iron Mountain to St. Louis, or from Carondelet to St. Louis; nevertheless, the work may be commenced at an earlier or later day by the mutual consent of all parties concerned. And should said Chouteau, Harrison & Valle, or their heirs or assigns, at any time refuse to conform and comply with this contract, then this contract and the aforesaid indenture entered into on the ~~7th~~ seventh day of Dec~~.~~ember, 1853, shall be null and void, and of no force whatever."

8 The compl~~n'nts~~ amants allege that this last agreement is a mere pretense set up in fraud by Lear, and aver their willingness to execute the writing A, upon Lear's executing the writing U. All the agreements between the parties rest in parol, no written memorandums thereof having been signed.

Compl~~n'nts~~ amants pray that Lear be ordered to convey all his interest in said coal lands and privileges;—for process and for general relief.

17 18 19 Defn~~d'nt~~ endant Lear, in his answer, admits the making of seventeen contracts for mining rights as set out in the bill, but alleges that the purchases were made by him for the joint use and benefit of both parties, and that he was to have an interest in said coal mines to the extent of two mills per bushel for all the coal purchased by him and mined or taken out of the ground; and that he was to receive ~~$70~~ seventy dollars per month for superintending the

24 25 26 opening of the mines. He says that ~~$100~~ one hundred dollars of the money advanced to him was on account of this monthly pay, and ~~$100~~ one hundred dollars thereof was for land, ~~40~~ forty acres, which he bought in fee simple for compl~~n'nts~~ amants and never set up any claim to an interest in. He says he first informed the compl~~n'nts~~ amants of the existence of the coal lands, and proposed to them the making of said purchases, naming and agreeing upon his terms with them as aforesaid, and that he was not paid for his time, labor and skill as a miner, in obtaining said coal and mining rights, by the money advanced by compl~~n'nts~~ amants to him, but relied for his compensation for these services upon a certain interest to be secured to him, in accordance with his understanding and agreement with compl~~n'nts~~ amants when he commenced his explorations and purchases. He charges that the compln'nts are endeavoring to obtain the exclusive use and benefit of his labors and purchases, in fraud of the rights of def~~nd'nt~~ endants.

~~88 to 139~~ Chas. P. Chouteau, witness for compln'nts, testifies that the agreement between the parties was made in the spring of 1853, immediately after the return of Lear from the Missouri river where he had been employed by compl~~n'nts~~ amants in looking for cannel coal;—that it was made on the proposal of Lear who then informed compl~~n'nts~~ amants of the existence of coal opposite Carondelet, in St. Clair county, and proposed to purchase the right of mining the coal in his own name, and to convey to compl~~n'nts~~ amants for the compensation to be

90 paid to him of one-fifth of one cent for every bushel of coal extracted from the mines and delivered to compl~~n'nts~~ amants or sold for their account. Lear was to receive ~~$70~~ seventy dollars per month from the time of opening the mines till the main entry should be cut open—"agreement only to take effect by the def~~nd't's~~ endants being given one month's notice that compl~~n'nts~~ amants were ready to commence operations."

[8723-150]

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Witness made a pencil memorandum of the agreement made between the parties, but was not able to produce it. Instead of this original memorandum made, the witness says, at the time of the conversation held between himself, defnd'nt and Mr. Valle, on or about the 8th of Oct., 1853, the witness produces a book containing, "not a copy, but a MORE FULL STATEMENT of the original memorandum made by me," shortly after the conversation last mentioned. The witness does not remember and cannot state exactly when and how long after said conversation was had, this statement was drawn up. Of the original memorandum witness states that it contained the amount to be paid per month while opening the main entry as well as the amount per bushel. These statements are on the memorandum and are all that he can remember; does not remember

130 that he read it over to Lear after making it; Lear's expenses in making the purchases were to be paid by compln'nts; he rec'd nothing for his time, and made no charge for his time. Witness does not consider the house of compln'nts as indebted at all to Lear.

141-2-3-4 David W. Hill. one of the Att'ys for compln'nts, testified that he drew up exhibit U, and took down the notes from which exhibit A was drawn by B. A. Hill, from the directions and statements of Charles P. Chouteau and the defn'dnt when together in his office. He read over exhibit A to Lear, and said to him he believed it embodied the

143 whole agreement and was all that was necessary; Lear said he believed it did; defn'dnt

154 was slightly deaf. This witness states that at the time when the agreement—exhibit A—was drawn, "defnd'nt expressly desired that some time should be limited in it in which he should be required to commence operations, and they fixed upon a month; that is to say, this is what I understood as Lear's wish at the time."

The Court decreed "that compln'nts be directed and required within sixty days after the date of the decree to execute and deliver to the clerk of the Court below for the use of defnd'nt an agreement in all respects similar in substance and effect to exhibit A, now on file, and that said defnd'nt be directed and required within thirty days thereafter to execute and acknowledge in due form, and deliver to said Clerk for the use of compln'nt a conveyance in all respects similar in substance and effect to exhibit U, now on file attached to said depositions," xxxx or that in default thereof that Wm. S. Thomas, cl'k of this Court, as special Master in Chancery, be directed and required to execute, acknowledge and deliver such conveyance for him."

And further that the costs of suit should be psid, one-half by each party.

Wm. S. Thomas, cl'k, &c., reports to the Court that compln'nts executed the agreement which they were required by said decree to execute, and delivered the same to him for the use of defnd'nt within the time and in the manner prescribed by said decree, and that defnd'nt wholly failed and neglected to execute, acknowledge and deliver to the undersigned for the use of compln'nts the conveyance required of him; wherefore the said Cl'k had executed and acknowledged such conveyance for said defnd'nt, as he was directed to do in case of his default, and submitted said conveyance to the court for its approval. And the Court approved the said report of said Thomas and the said conveyance, and ordered that said deed should be delivered to compln'nts and that they should be deemed and held to be vested and confirmed in all the rights which said defnd'nt Lear had in the property and privileges in said deed described at the commencement of this suit to the same extent and with the like effect as if said conveyance had been executed by said Lear in proper person.

(8723-152)

The plaintiff assigns for error the making of said decree and final order in the cause.

5 = 4

F. Leaz

vs

Chouteau et. al.

Abstract

Filed Nov. 11. 1859.

Noah Johnston Clk

FREDERICK LEAR, Plaintiff in error, *vs.* CHOUTEAU, HARRISON & VALLE, Defendants in error.	IN SUPREME COURT OF ILLINOIS. November ~~September~~ Term, 1859.

POINTS AND AUTHORITIES, BY E. W. DECKER,

Of Counsel for Plaintiffs in error.

1. A Court of Chancery has not jurisdiction of this cause.

The bill is for the specific performance of a parol "contract for the sale of an interest in or concerning land," within the first section of Statute of Frauds.

2. Whenever it appears that the Court has not the jurisdiction to give relief, the bill will be dismissed.

Consent of parties cannot confer a jurisdiction not vested by law.

The defendant may avail himself at any stage of the cause of this failure of jurisdiction.

Story, Eq. Pleading, sec. 10.

3. The contract is within the Statute of Frauds. (*a.*) As to the subject matter—" coal in land "—there can be no doubt.

2 Black. Com. 28.
Bainbridge on Mines, p. 75.

By the contract, Lear was to purchase " coal in land," in his own name, and afterwards assign (i. e. sell) to defendants in error, " all his interest "—the interest which he was to sell to them, was the *legal* title—the right to possession, to the rents and profits, and to the complete disposition at law.

It is insisted that this legal title with all its incidents, is " an interest in or concerning land," within the meaning of the Statute.

A purchase by an agent for the principal is within the Statute, unless the entire purchase money is advanced by the principal, and actually forms the consideration upon which the owner sells to the agent—in such case a resulting trust would arise to the principal.

Smith *v.* Burnham, 3 Sum. 433.
Henley *v.* Brown, 1 Stew. 144.
Starks heirs *v.* Cannady, 3 Litt. 399.
Henderson *v.* Hudson, 1 Munf. 510.
Heacock *v.* Coatsworth, 1 Clark 84.
Stephenson *v.* Thompson, 13 Ill. 190.

4. Although the Statute of Frauds has not been pleaded or set up in the answer, the plaintiff has not waived it, because he has denied the contract stated in the bill.

It is admitted that a defendant must rely on the Statute "*in some way*,"—where the defendant admits the contract he must rely on the Statute by plea—where the defendant denies the contract in the bill and sets up a different contract, the denial itself is a reliance on the

Statute, because the proof is on the plaintiff to show a valid contract, which he cannot do without producing some writing signed by the party, &c.

Cozine *v.* Graham, 2 Paige 180.
Ontario Bank *v.* Root, 3 Paige 481.
Harris *v.* Knickerbacker, 5 Wend. 643.
Allen *v.* Chambers, 4 Ired. Eq. R. 125.
Browne on Stat. Frauds, sec. 511.

5. The contract has not been part-performed to take it out of the Statute of Frauds.

No acts have been done by defendants in error under the contract except the advance of $370 which they can recover at law.

Adams Eq., page 86, note and cases cited.

2 Story Eq., sec. 760 and cases cited.

6. There is no resulting trust to defendants in error of the coal, nor of Lear's interest in the coal, because

(*a.*) Neither the coal nor the contracts were acquired by the money or means of Chouteau, Harrison & Valle—the coal is not paid for—the contracts were obtained solely upon the individual credit of Lear. To raise a resulting trust, the whole consideration, or a definite part there-

of, upon which the owner parted with the property, must proceed from the person claiming the benefit of the purchase, at or before the time of the purchase.

No contract can create the resulting trust.

Stevenson *v.* Thompson, 13 Ill. 190.
Alexander *v.* Tams, 13 Ill. 225.
Botsford *v.* Burr, 2 Johns, Ch. 405.
Perry *v.* McHenry, 13 Ill. 227.
White *v.* Carpenter, 2 Paige 217.
Bruce *v.* Roney, 18 Ill. 67.

(*b.*) The plaintiffs have stated and proved by parol, a contract creating an express trust in land, which under the fourth section Statute of Frauds must be proved by writing.

An express trust, although by parol, excludes the resulting trust.

By this express parol contract, Lear has an interest in the coal contracts to the extent of having his compensation secured, of which a Court of Equity will not divest him without adequate security.

7. The *terms* of the contract between the parties are indefinite and incomplete.

The testimony is contradictory and uncertain.

Smith *v.* Burnham, 3 Sum., 437.
Boyd *v.* McLean, 1 Johns., Ch. 590.
Phillips *v.* Thompson, 1 Johns., ch. 149.
2 Story Eq., p. 69.

8. The transfer of Lear's interest in the coal will not be decreed because the performance of the whole contract between the parties cannot be judicially secured.

Defendants in error agreed to employ and pay Lear at some time—a covenant to employ is not a performance of that contract.

Waring *v.* Manchester Railway Co., 7 Hare, 492.
Gervais *v.* Edwards, 2 Dr. and War., 80.

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STATE OF ILLINOIS — IN THE SUPREME COURT — FIRST GRAND DIVISION — NOVEMBER TERM, 1859.

FERDINAND LEAR, Plaintiff in Error.

vs.

PIERRE CHOUTEAU, JR., JAMES HARRISON & FELIX VALLE, Defendants in Error.

This was a bill in chancery filed by the defdt's in error to compel a conveyance to them of certain coal and coal lands, and certain privileges connected therewith, purchased by the plnt'ff in error, defd't below, as alledged by the said compln'nts, as trustee for them
2 and for their use. After showing the fact of partnership of defndt's in error, the bill alledges that about the 1st day of Oct., A. D., 1853, the compln'nts employed Frederick Lear, plnt'ff in error, to purchase for them from the owners of coal lands in the county of St. Clair, State of Illinois, the stone coal or mineral coal contained in said lands, and the right of way over the same, and every facility for digging said coal and transporting the same to market, and furnished him the money to make such purchases and pay his expenses while engaged in the business, upon the understanding and agreement that said Lear was to obtain contracts or conveyances in his own name for said coal and privileges
3 and hold the same temporarily for the use of the compln'nts, and afterwards transfer to them absolutely all the interest by him acquired in such purchases by, deed; and in consideration of his services in and about such purchases as agent for said Chouteau, Harrison & Valle, and such other services as he might thereafter render in and about the mining and disposing of said coal, in addition to what they had already advanced or might advance; they were to employ him in superintending the opening and working of such coal lands upon the terms set forth in a certain writing, unexecuted, being exhibit A., that is
27 to say, they agreed to pay him $70 per month for his services in laboring and opening the coal mine in said lands, and when the main entry should be cut open and the mine be ready to be worked, then such monthly pay was to cease, and for his services in superintending the digging of the coal and the transportation thereof from the mine to St. Louis, he was to receive from said C., H. & V., two mills for each and every bushel of coal furnished to them or sold for their account. Said Lear to devote his whole time and attention to superintending and getting out the coal and working the mine, and to keeping it in order for being worked to the best advantage; compln'nts to furnish the workmen and all materials for the proper working thereof; said Lear to keep faithful & just accounts, and certify the amount due to each man weekly, and to attend to the payment of their wages and the taking of receipts therefor, if said C., H. & V. shall so elect, and the said one-fifth of one cent per bushel of coal taken from said mine as aforesaid shall be in full satisfaction for all the services of said Lear as superintendent, as aforesaid, after the mine is opened.

The concluding clause of said exhibit A., is as follows: "This agreement is not to

[8723-15H]

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take effect until after one month's notice given to said Lear by Chouteau, Harrison & Valle to that effect, unless the parties hereto shall mutually consent to a shorter time for the beginning of operations." The terms of this writing were mutually agreed upon by said Lear and said compln'nts before he proceeded to make any such purchases. The

4 bill shows that Lear, as agent for compln'nts under said agreement, and with their money and means, but in his own name, entered into certain contracts, seventeen in number, set forth in the bill, with as many different owners of coal lands in St. Clair county, by which said Lear purchased the right and facilities for digging coal and opening mines in said lands, compln'nts furnished said Lear the sum of $380 which he used in said business in the months of Oct. and Nov., 1853.

The compln'nts on the 5th Dec., 1853, caused a conveyance to be prepared for Lear to execute, conveying to them absolutely all his title and interest in said contracts, and the coal mines and privileges in said contracts named; said conveyance is filed as exhibit U. They also caused the said writing—exhibit A—to be prepared on or about the 4th of Jan'y, 1854, for execution by both sides, allege that these two writings—exhibits U and A—contain in substance and effect the agreement of the parties, and were so understood by them.

"It was well understood at the time of Lear's employment by compln'nts, that he was to convey to them on request whatever title or interest he might acquire in said coal lands."

Compln'nts were willing and offered to execute said agreement marked A, if said Lear would execute that marked U, but Lear refused to execute said conveyance of all his interest in the said contracts unless the compln'nts would execute an agreement in writing furnished them by said Lear and filed with and made a part of the bill, as exhibit V, said Lear pretending that said last named writing embodies the terms and conditions of the agreement between the parties, when on the contrary, the writing marked A contains in full the true agreement, and that marked V contains stipulations materially different therefrom. The terms of this latter agreement proposed by Lear—marked

76 V—are as follows: After reciting that Chouteau, Harrison & Valle, compln'nts, are the owners by purchase and assignmens of all the stone coal and mineral coal in various lands described in a certain conveyance—exhibit U—dated Dec. 7, 1853, and executed by said Lear to said compln'nts, of all his interest in said lands, (said conveyance being that proposed by compln'nts,) the said agreement (V) binds the compln'nts to pay Lear, his heirs and assigns, one-fifth one cent for every bushel of coal extracted from said lands, and said Lear binds himself, his heirs and assigns, faithfully to superintend or cause to be superintended by a competent person the working of said coal lands and the transportation of the coal to a convenient point on the Mississippi river, and furnishing said Chouteau, Harrison & Valle, or assigns, with faithful monthly accounts of all the expenses of the mines, the situation of the workings and what disposition has been made of the coal raised or extracted. The said Chouteau, Harrison & Valle agree to pay to

[8723-85] Lear $70 per month from the time the work is commenced till the mines are open, and to furnish all means complete for delivering said coal at the river Mississippi; compln'nts

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or their assigns to be at all the expense of working said mines and transporting said coal from said mines to the river.

"It is further agreed that the work is to commence when a railroad shall have been completed from the Iron Mountain to St. Louis, or from Carondelet to St. Louis; nevertheless, the work may be commenced at an earlier or later day by the mutual consent of all parties concerned. And should said Chouteau, Harrison & Valle, or their heirs or assigns, at any time refuse to conform and comply with this contract, then this contract and the aforesaid indenture entered into on the 7th day of Dec., 1853, shall be null and void, and of no force whatever."

8 The compln'nts allege that this last agreement is a mere pretense set up in fraud by Lear, and aver their willingness to execute the writing A, upon Lear's executing the writing U. All the agreements between the parties rest in parol, no written memorandums thereof having been signed.

Compln'nts pray that Lear be ordered to convey all his interest in said coal lands and privileges;—for process and for general relief.

17 18 19 Defnd'nt Lear, in his answer, admits the making of seventeen contracts for mining rights as set out in the bill, but alleges that the purchases were made by him for the joint use and benefit of both parties, and that he was to have an interest in said coal mines to the extent of two mills per bushel for all the coal purchased by him and mined or taken out of the ground; and that he was to receive $70 per month for superintending the 24 25 26 opening or the mines. He says that $100 of the money advanced to him was on account of this monthly pay, and $100 thereof was for land, 40 acres, which he bought in fee simple for compln'nts and never set up any claim to an interest in. He says he first informed the compln'nts of the existence of the coal lands, and proposed to them the making of said purchases, naming and agreeing upon his terms with them as aforesaid, and that he was not paid for his time, labor and skill as a miner, in obtaining said coal and mining rights, by the money advanced by compln'nts to him, but relied for his compensation for these services upon a certain interest to be secured to him, in accordance with his understanding and agreement with compln'nts when he commenced his explorations and purchases. He charges that the compln'nts are endeavoring to obtain the exclusive use and benefit of his labors and purchases, in fraud of the rights of defnd'nt.

88 to 139 Chas. P. Chouteau, witness for compln'nts, testifies that the agreement between the parties was made in the spring of 1853, immediately after the return of Lear from the Missouri river where he had been employed by compln'nts in looking for cannel coal;—that it was made on the proposal of Lear who then informed compln'nts of the existence of coal opposite Carondelet, in St Clair county, and proposed to purchase the right of mining the coal in his own name, and to convey to compln'nts for the compensation to be 90 paid to him of one-fifth of one cent for every bushel of coal extracted from the mines and delivered to compln'nts or sold for their account. Lear was to receive $70 per month from the time of opening the mines till the main entry should be cut open—"agreement only to take effect by the defnd't's being given one month's notice that compln'nts were ready to commence operations."

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Witness made a pencil memorandum of the agreement made between the parties, but was not able to produce it. Instead of this original memorandum made, the witness says, at the time of the conversation held between himself, defnd'nt and Mr. Valle, on or about the 8th of Oct., 1853, the witness produces a book containing, "not a copy, but a MORE FULL STATEMENT of the original memorandum made by me," shortly after the conversation last mentioned. The witness does not remember and cannot state exactly when and how long after said conversation was had, this statement was drawn up. Of the original memorandum witness states that it contained the amount to be paid per month while opening the main entry as well as the amount per bushel. These statements are on the memorandum and are all that he can remember; does not remember

130 that he read it over to Lear after making it; Lear's expenses in making the purchases were to be paid by compln'nts; he rec'd nothing for his time, and made no charge for his time. Witness does not consider the house of compln'nts as indebted at all to Lear.

141-2-3-4 David W. Hill. one of the Att'ys for compln'nts, testified that he drew up exhibit U, and took down the notes from which exhibit A was drawn by B. A. Hill, from the directions and statements of Charles P. Chouteau and the defn'dnt when together in his office. He read over exhibit A to Lear, and said to him he believed it embodied the

143 whole agreement and was all that was necessary; Lear said he believed it did; defn'dnt

154 was slightly deaf. This witness states that at the time when the agreement—exhibit A—was drawn, "defnd'nt expressly desired that some time should be limited in it in which he should be required to commence operations, and they fixed upon a month; that is to say, this is what I understood as Lear's wish at the time."

The Court decreed "that compln'nts be directed and required within sixty days after the date of the decree to execute and deliver to the clerk of the Court below for the use of defnd'nt an agreement in all respects similar in substance and effect to exhibit A, now on file, and that said defnd'nt be directed and required within thirty days thereafter to execute and acknowledge in due form, and deliver to said Clerk for the use of compln'nt a conveyance in all respects similar in substance and effect to exhibit U, now on file attached to said depositions," x x x x or that in default thereof that Wm. S. Thomas, cl'k of this Court, as special Master in Chancery, be directed and required to execute, acknowledge and deliver such conveyance for him."

And further that the costs of suit should be psid, one-half by each party.

Wm. S. Thomas, cl'k, &c., reports to the Court that compln'nts executed the agreement which they were required by said decree to execute, and delivered the same to him for the use of defnd'nt within the time and in the manner prescribed by said decree, and that defnd'nt wholly failed and neglected to execute, acknowledge and deliver to the undersigned for the use of compln'nts the conveyance required of him; wherefore the said Cl'k had executed and acknowledged such conveyance for said defnd'nt, as he was directed to do in case of his default, and submitted said conveyance to the court for its approval. And the Court approved the said report of said Thomas and the said conveyance, and ordered that said deed should be delivered to compln'nts and that they should be deemed and held to be vested and confirmed in all the rights which said defnd'nt Lear had in the property and privileges in said deed described at the commencement of this suit to the same extent and with the like effect as if said conveyance had been executed by said Lear in proper person.

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The plaintiff assigns for error the making of said decree and final order in the cause.

5

F. Lear

vs

Chouteau et al

8723

Abstract

Filed Nov. 11 - 1859 -

A. Johnston Clk

MOUNT VERNON WEEKLY STAR.

"NON CÆSARIS GLORIA SED ROMÆ SALUS."

TERMS—$1 50 PER ANNUM, IN ADVANCE.

S. B. CURTIS & J. S. LANE, PROPRIETORS.

NUMBER 44.

VOLUME 1. MOUNT VERNON, JEFFERSON COUNTY, ILLINOIS, JUNE 3, 1859.

MISCELLANEOUS

they would wash more, and probably have

'Up stairs; it has just struck me that that Pilgrim's Progress will be an excel-

POETRY

THE UNDER DOG IN THE FIGHT.

THE MOUNTAIN MEADOWS MASSACRE—A TALE OF HORROR.

birds of prey,' and returned home with their booty of cattle, and wagons, and a great quantity of goods, etc."

one door east of D. Baltzer's Store, before purchasing elsewhere, and see if he can suit you.

Mt. Vernon, June 2, 1859—44

SUPREME COURT ADVERTISE'S.

IN THE SUPREME COURT OF ILLINOIS.

First Grand Division.

Fredrick Lear, plaintiff in Error,

vs.

Pierre Chouteau. jr., James Harrison, and Felix Valle, defendants in Error,

ERROR TO SAINT CLAIR.

NOTICE is hereby given to the said defendants in Error, that the above entitled cause is now pending in said Supreme Court—that the same has been continued to, and is set for hearing and trial, at the next term thereof, to be commenced and holden at Mount Vernon, on Tuesday the fifteenth day of November next; at which time and place, they, the said defendants, are required to appear and join in the errors assigned, and that on failure to do so, their default will be entered.

Witness, Noah Johnston, clerk of the said Supreme Court, at Mount Vernon, this 23d day of May, A. D. 1859,

NOAH JOHNSTON, Cl'k.

IN THE SUPREME COURT OF ILLINOIS

First Grand Division.

John Emerson, plaintiff in Error.

vs.

John Barth, defendant in Error.