No. 8746

Supreme Court of Illinois

Nathan P. Chambers

vs.

James Rowe

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Pleas Contained and held at the Court house in the Town of Pinckneyville within and for the County of Perry and State of Illinois in the third Judicial Circuit of the State of Illinois before the Honorable Alexander M Jenkins the Judge of the 3rd Judicial Circuit within and for said County of Perry and State aforesaid at the April Term of said Circuit to wit on the fourth Monday in the month of April A D 1861.

James Rowe
vs
Nathan P Chambers Joseph A Skipper
Benjamin Skipper J. J Chambers &
William B Johnson

Bill in Chancery
For Specific performance & Injunction

Be it remembered that heretofore to wit on the third day of April in the year of our Lord one thousand Eight hundred and Sixty One Bill in Chancery in the above Styled Cause was filed in the office of the Clerk of the Circuit Court of said County of Perry and State of Illinois on change of venue from the County of Clinton and State Aforesaid which said Bill is in the words and figures following to wit

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State of Illinois } Of the March Term of the Clinton County Circuit
Clinton County } Court A D 1858:

"To the Hon. Judge of said circuit Court in chancery sitting Humbly Complaining. Your Orator James Rowe. Sheweth unto your honor, that on the 23rd day of May 1857 he contracted for the title of the N W 1/4 of the N W 1/4 of sec 28. T1 N R 1 W of the 3rd prl. Meridian 40 acres from the Illinois Central railroad company. in consideration of the payment to said Company therefor the sum of $520.00 and 3 per cent interest, payable, and paid as in the said written contract set forth, and on the terms, time and conditions stipulated in said contract of purchase, of the date above mentioned and signed on behalf of said company, by John Nelson their Land commissioner, and P. Dagny secretary, and by Your Orator. All of which will more fully and at large appear reference being had to said contract which is herewith filed, Marked "A" and prayed to be taken (and here inserted) as a part of this bill of complaint.

Your orator States also that for the services of Messrs. Ingraham Folsom & co. land agents at Centralia Illinois in negotiating for the said purchase he agreed to

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pay to 3

them the sum of twenty Dollars in addition to the sd. sum of $520. + the interest of 3 per Cent as aforesaid & that interest for two years next ensuing the date of said contract to wit, the sum of $31 20 was paid in advance by your Orator to said Company:

Afterwards to wit, on or about the 28th day of May A D 1857 it being represented to your Orator that one Nathan C Chambers, had been & still was desirous of purchasing said land - Your Orator called upon said Chambers. (Whom your orator makes Defendant to this his bill of complaint) and sd Deft represented to your Orator, that he would be glad to purchase sd land, urging 1st that it would square his land - 2 That as he was owner of a saw Mill & the land lay near the mill, he could saw the timber to profit, + 3rd that when cleared he could use it to advantage for a blue grass pasture. And at the ~~request~~ urgent solicitation of sd Deft Your Orator agreed with sd Deft in consideration that the sd Deft would pay to sd Railroad Company the purchase money as stipulated in said contract between sd company + your Orator - above set out - at the times specified therein together with the interest as therein mentioned, and would in all things answer the obligations of said contract to said company - in the place of your Orator - + in consideration also that the sd Defendant would pay to your Orator, the sd sum of $31.20 interest - ~~pre~~ paid on said purchase to sd Co. by your orator, and the further sum of twenty Dollars which Your Orator had become bound for to sd Ingraham, Folsom + Co.

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and also as a bonus, the sum of ten Dollars - That your Orator would assign to said Deft. all his right title & interest in sd. contract between your Orator & sd. company - and would transfer & convey the sd. Contract to the sd. Deft by assignment & delivery thereof :-

And your Orator avers that the sd. Deft did in consideration of the transfer and agreement to him of the sd. contract agree with your Orator, to pay to your Orator, the sum of $31.20/100 paid as interest as aforesaid - also the sd. sum of $20.00 which your Orator was bound for to sd. Ingraham Folsom & co aforesaid & ten Dollars as a bonus amounting in the aggregate to the sum of $61.20 . and further that he would assume all further payments on sd. land and all stipulations and obligations in sd. contract between your Orator & sd. company which by sd. contract was to be performed by your Orator - to all intents and purposes to save your Orator harmless - from injury and loss - by the payment of sd. sums still remaining unpaid to the company of sd. purchase money.

And your orator shows further that at the time of closing sd. contract with sd. Chambers the sd. Deft. tendered the sum of $10.00 in gold or specie - but that your Orator being desirous to aid his son in the improvement of a farm declined the sum so tendered, and it was then agreed between your Orator & the sd. Deft. (sd. Deft. then being engaged in sawing lumber) that for the amount of sd. $61.20 the sd. Deft. would pay the same in lumber at the said Mill near sd. land. Your Orator offering at the same time to take of sd. Deft. to the quantity

5 of 14.000 feet. And Your Orator showeth further that confiding in the honesty and integrity of the sd. Deft. to comply with sd. agreement. authorized sd. Deft to enter upon & take possession of sd. Land & take the timber upon the same, to be sawed into lumber. That at the time of making sd. contract with Deft. no time was stipulated when the assignment of sd. RR contract was to be made but the same was to be done at a future time to suit the mutal convenence of said parties :-

And your orator showeth further that sd. Deft. did afterwards during the summer of 1857. take possession of sd. Land, and by himself & others in his employ by his authority have stripped the said Land of a large portion of the timber - and sawed the same into lumber; That sd. Deft. did also deliver lumber and the same was accepted by your Orator tho received by his son and received at the time, as a payment of the sum of $61.20 and for such quantity of Lumber so delivered to his son as exceeded in value the sd. $61.20 Your Orator admits he was liable to pay -

Your orator shows further that business of an urgent character required his personal attention in the South & on or about the 18th day of July 1857 he departed for Louisiana leaving instructions, and full authority to Andrew J Rowe, to transfer and assign to sd. Deft. sd. contract of Purchase - That in the month of August A D 1857 the sd. Andrew J Rowe called upon sd. Deft. and informed sd. Deft. that he was ready & willing to make sd. assignment, & that

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6 he called upon him for that express purpose - when the
s^d Deft. denied that he was to pay the amt. to your orator
agreed to be paid to s^d Ingraham & Co to wit the s^d $20.00
& refused to have the contract assigned on the terms of
that payment s^d A. J. Rowe then forbid any further waste
or removal of timber from s^d land by s^d Deft. until
s^d matter was settled.

Your Orator returned to said Co. of Clinton on
or about the 25th day of November 1857 & Paid to s^d
Ingraham Folsom & C the s^d twenty Dollars, and on
or about the 28th of November 1857. Your orator
called upon s^d Deft. to settle the matter in
difference in friendship. and also on the 5th of Decr.
1857 at Centralia. Your Orator proposed to settle & offered
to transfer the s^d ~~Contract~~ contract upon compliance of Deft.
with the terms of s^d Contract but s^d Deft. denied
the said $20.00 to s^d Ingraham Folsom & Co yet the
s^d Deft. wholly refused to accept any terms of settle-
ment; and Deft. afterwards sued your Orator in the name
of the partnership firm owning the said Saw Mill for not
the excess of lumber over the $61.20 only, which
had been delivered but also for the entire quantity
of ~~lumber~~ lumber including that quantity & recovered judg-
ment therefor which is still in force & which lumber
had been received & applied by your Orator in payment
of said amount as by the contract of s^d Deft. Your
Orator was warranted in so doing. A copy of said
Judgment recovered before William B Johnson
J. P. is herewith filed Marked "R" & ~~Defered~~ prayed to

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be taken as a part of this bill & the excess over $61.20 is here tendered &c – But now so it is the said Deft. falsely & fraudulently pretends that he was not to pay said sum of $61.20 and fraudulently denies that the quantity of lumber first delivered was to be applied in payment of said $61.20 And although your Orator here distinctly & positively charges that by virtue of said parol agreement of purchase the said Deft entered upon & took possession of said land and has by taking the valuable Lumber has committed irreparable Damage to the value of said land, and charges further that the lumber first delivered was to the amount of $61.20 payment to your Orator on said contract as made between Deft. & your Orator Yet the said Deft. with the fraudulent & unlawful intent to cheat your Orator now falsely pretends that because the said contract was not in writing, he the said Deft. is discharged from compliance on his part from all its terms & conditions.

And your Orator offers here as he has repeatedly offered to assign said contract to said Deft. and tenders $16.80 & interest thereon & costs of suit before said justice mentioned said exhibit "B" – And your orator in consideration of the premises & because the same is contrary to equity prays process against the said Deft. – And also prays to the end that Justice and equity be done in the premises that the peoples writ of injunction issue restraining & enjoining the collection, of the said judgment

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to the amount of $61.20 until after the hearing of this bill & forever against William B. Johnson justice of the Peace and the said plaintiffs Nathan P. Chambers Joseph A Skipper Benjamin Skipper & J J Chambers - And that the s.d Deft. Nathan P. Chambers be ruled to answer each allegation of the s.d Bill of Complaint of your orator, and the oath thereto is hereby expressly waived and upon proof of the allegations therein - Your orator prays a Specific performance of said Contract so made by the s.d Deft. with your orator - and that a Decree be entered against said Deft. requiring indorsments to your Orator against the payment of said land to s.d R R Co - And that your orator have such other & further relief as the equity and justice of this case may warrant & to your honor shall seem meet & will ever pray &c

James Rowe Complainant

H. K. S Omelvey Solicitor.

State of Illinois } James Rowe being first duly sworn deposes
Clinton County } and says that the facts set forth in said bill so far as he knows them of his own them of his own knowledge are true & so far as he has obtained information thereof from others he believes them to be true - James Rowe

Sworn to & subscribed before me this 5th day of January A.D. 1858. J. R. Roper Clk

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State of Illinois } ss. The Clerk of the Circuit Court
Clinton County } will issue a writ of injunction on the within petition against the within named Defendants directed to the Sheriff of Clinton County and State of Illinois, and that he take bond as by law in such case is required from the said Complainant in the penal sum of Two hundred Dollars -

Zophor Case Master in
January 5th 1857 = Chancery Clinton Co Ills

And upon the Back thereof are the following endorsements thereon to wit:

James Rowe Complainant

vs

Nathan P. Chambers
Joseph A Skipper
Benjamin Skipper &
J. J. Chambers &
Wm R Johnson

Filed Jany 5 1858.
J B Roper clk

Bill in Chy for specific performance & Injunction

Exhibit (A) Filed April 5th A D 1861
E B Rushing Clk

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And on the day and year last aforesaid Deft Nathan P. Chambers filed in said cause his answer to said Bill which said answer is in the words and figures following to wit:

Of the October Special Term of the Clinton Circuit Court A D 1858:

State of Illinois
Clinton County } James Rowe vs N. P. Chambers & Et al } Bill for Specific performance & injunction:

Nathan P. Chambers defendant herein saving and reserving the advantage of the many errors and imperfections in complainants bill of compt for answer thereunto & to so much thereof as he is advised is necessary for him to answer for answer thereunto saith that true it is as respondant is informed Complainant did on the 3d day of May 1857 contract with the Illinois Central R R Company for the title to the land described in compts bill for the sum ~~of~~ & upon the conditions set out in compts bill - That true it is as respondent is informed Compt - did obtain the services of Ingraham Folsom & Co and paid them as charged in Bill -

That true it is that Compt called upon respondent and offered to sell said lands to your respondent & that respondent would have been glad to obtain the title to said land but your respondent denyes that he ever agreed with

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complainant to take said rail road contract off of his complts hands and to pay complainant the sum of $61 20 as charged for said land but on the contrary respondant charges the fact to be that the complt agreed to & with respondent to assign said Rail road contract to respondent for and in consideration of the sum of $41.20 the sum of $31 20/100 being the amount of interest advanced to the Ills Ct R R Co and $10 as a bonus — said contract being oral & void under the Statute that respondent then & there offered to pay complt the $10. and to pay the balance upon the complts making the assignment of the said Railroad agreement that true it is complt refused to take it stating that he would take it all in lumber delivered at the Mill of A. P. Chambers & Co that he would rather have lumber than money and respondent expressly charges that complt told respondant to go to cutting the timber as soon as he respondent pleased — respondent admits that he did cut timber on said land but only a small quantity some ten or fifteen trees — and respondent expressly charges that complt did go South as charged in his bill without making over any assignment of said Rail road contract and without authorizing any one to make said assignment, Respondent ~~represents~~ expressly charges that said assignment could only be made by complt or an atty in fact the same having to be acknowledged

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12 as deeds are under the instructions of the Land department of the Ills Central R R Co) That some time after complts departure for the South as charged the son of Compt came and demanded on s.d contract the sum of $61 20/100 but stated that he had no power of atty to execute said assignment that unless respondant would pay the $61 20/100 respondant could not get the land - respondant charges that never having made any contract with compt to pay the said sum of $61 20/100 he then and there refused to pay the same or to wait longer for an assignment of said agreement of the Ills. C R R Co - and that then and there the said son of compt as the agent of compt. forbid respondant from cutting timber or otherwise using or occupying said land then and there as such agent of said compt. refused to make any assignment of said contract of the Ill C R R Co for the sum of $41 20/100 stating that respondant should should never have said land - and that then & there respondant and said Andrew J Rowe son of compt acting as such agent as aforesaid of compt then & there by mutual concent cancelled said contract, and the said A. J. Rowe as such agent as aforesaid threatened to sue respondent in trespass for cutting the timber on said land - respondant charges

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that the only agreement for the purchase of said land from Campbell was for the sum of $41 20/100 as above charged and for no other sum – And having fully answered the material allegation of said bill as he is advised – is necessary to be answered respondent charges all the material facts in said answer to be true and this he is ready to verify &c

A. P. Chambers per
Decompte & Stoker Solts.

And upon the back of said answer are the following endorsements to wit

A. P. Chambers
als
James Rowe

Answer to Bill

Filed Oct 21st 1858
A. B. Roper Clk
Filed April 3rd 1861
E B Rushing Clk

And upon the day and year last aforesaid to wit on the 3rd day of April A D 1861. Exceptions to Deposition of A. J. Rowe was filed in the Clerks office of said Circuit Court in the words and figures following to wit:

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James Rowe
vs } In Chancery.
A. P. Chambers

Exceptions to depositions by defendant – To the Depositions of A. J. Rowe Defendant Excepts to the answer to the second Interrogatory Because answer shows all the information witness had as to the contract – there mentioned was void by the instructions given witness as agent by complt himself To the Deposition of J. B. Vamb because of insufficiency of the Notice & in not having been taken before Circuit Clerk and because said Deposition is wholly irrelevant to the issue in not Stating that the land is the land described in bill or lies in Clinton County nor does it show the quantity of land

To the deposition of A. D. Ingraham because of insufficiency of Notice notice does not Specify before whom the deposition is to be taken there being no one named before whom the same will be taken

Sloker Lecompte & Bates
Solst For Deft.

And upon the back of said Exceptions are the following file marks to wit: Filed July 9th 1860 – J. B. Roper Clk
Filed April 3d & 1861
E. B. Rushing Clk

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And On the said 3rd day of April 1861 the following Receipt was filed in said Clerks Office to wit:

Recd Centralia Novr 26 1857 of James Rowe Twenty Dollars being Amt in full for Commission on N½ of N½ Sec 28 / N 1W Ingraham Folsom & Co

And upon the back of said Receipt are the following endorsements to wit:

Filed Jany 5-1858
J B Roper Clk

Filed April 3d 1861 E. B. Rushing Clk

And Among the files of said Papers as transmitted to the Said Clerk of the Circuit Court of Perry County by the Clerk of the Circuit Court of Clinton County Illinois are a number of Depositions which said Depositions so transmitted as aforesaid are in the words and figures following to wit

The Deposition of Joseph B Lamb of the County and of Washington and State of Illinois a Witness produced sworn and examined before Samuel C Page Clerk of the County Court of Washington County Ills on the 28th day of February A D 1859 at the Court house in Nashville Washington County afsd to be used read as evidence in the trial of a certain suit in Chancery now pending and undetermined in the Circuit Court of Clinton

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County State afs.d wherein James Rowe is complainant and N. P. Chambers is defendant on the part and behalf of the said Plaintiff the said Joseph B Lamb being duly sworn according to Law deposeth and saith in answer to the several Interrogatories administered on the part of the said said Plaintiff as follows

Question 1st Do you Know the Parties to this suit Plaintiff and Defendant in the title of these Interrogatories named or either of them and which of them and how long have you Known them respectively

Ans I Know the Plaintiff & Defendant – I have Known them about two years –

Ques 2d Do you Know of a contract having been made between the Plaintiff James Rowe and the Defendant Chambers during the months of June or July A D 1857 concerning a tract of Land which the said James Rowe had purchased of the Central Rail road Company and if so State what that contract was – State all you Know about it

Ans I Know of a contract having been made between s.d parties – as to s.d contract about as follows – Rowe was to assign all his interest to Chambers for the consideration that Chambers was to pay him all that he (Rowe) had paid out and give him a certain bonus which bonus I think was ten Dollars

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Ques 3rd. 17

Do you remember any thing being said about interest or commission in the contract spoken of

Ans. I do. My understanding was that Chambers was to pay Rowe all that he Rowe had paid out for Interest & also commission

Ques. 4. Please State if you know what price per acre the said James Rowe had contracted to pay for the said tract of Land and how much he had paid in advance upon the contract price.

Ans. My recollections are that he was to pay twelve Dollars per acre. he paid the usual three per cent as assessed by the Company.

Ques 5. Please State if you know whether the said Defendant Chambers agreed to pay to said Plaintiff the commissions charged by the agent for selling the Land above refered to. and if you know what that commission was please state it

Ans. I so understood it. that he was to pay it it was half a Dollar per acre

Ques 6 Do you know whether Rowe sought to sell the Land in question to Chambers. or did not Chambers desire to be the Purchaser for the sake of the accomodation

Ans I think that Chambers was very anxious to purchase the Land of Rowe

Ques 7 Do you know of any other matter or thing that may tend to the benefit and advantage of the Plaintiff in the cause. If yes declare the same as fully as if you had been thereunto particularly interrogated

Ans. I cannot say that I do

Joseph B Lamb

State of Illinois } I Samuel C Page Clerk of the
Washington County } County Court in and for said County do certify that the foregoing is a true and correct Deposition of Joseph B Lamb as to the foregoing interrogatories that said Lamb was by me duly sworn previous to depositing them and that he signed the same in my presence

Given under my hand and official seal

(L.S.) this 25th day of February A D 1859

Sam C Page Clk

Fees $2,00 paid by Plff

And upon the back of said Depositions are the following file marks &c

Dr Lambs Deposition

Filed April 3rd 1861 E R Rushing Clk

State of Illinois } The deposition of A. D. Ingraham
Marion County } taken before me on the Eighth day of March A D 1859 to be used as evidence in a suit pending in the Clinton County Circuit in which James Rowe is Plaintiff & Nathan

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P. Chambers Deft.

N. D Ingraham of Full age after being duly sworn deposes & says as follows to wit:

Question. Do you know the parties to this suit

Ans. I do I know Mr. Rowe and I know Mr. Chambers who I suppose to be the party, for nearly two years.

2 Interrogatory. Do you know whether James Rowe, during the year of 57 Bought a tract of Lands of the Illinois Central Rail Road Co. & If so State what price he paid per acre for the same & how much he bought and State, (If you know) how much the said Rowe paid on said land in advance Also describe said land.

Ans. He did. he paid thirtin Dollars per acre, for 40 acres he paid Thirty one and $\frac{20}{100}$ Dollars in advance. the land is the N W 1/4 of the N W 1/4 of Sec 28 Township one North Range one West of 3rd principal meridian;

Interrogatory 3d. State if you know how much the said Rowe paid If anything for Commission to the agent for selling said land

Ans. He paid twenty Dollars as comanissions to said Agent.

Interrogatory 4th State if you know whether Chambers the defendant had engaged in negotiation for the same tract of land prior to the purchase by said Rowe

Ans. He had.

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Interrogatory 5th

State if you know why Chambers did not succeed in getting the land - State all about it

Ans. This Land was reserved by us Ingraham Folson & Co in our name for Mr. Chambers for ten days ending May 21st 1857. Chambers failed to pay the money at the Expiration of the time we then sold to Mr. Rouse.

A. D. Ingraham

Subscribed & Sworn to before me this Eighth day of March A D 1859 T J Johnson J. P. (Seal)

State of Illinois } ss
Marion County }

I T J Johnson a Justice of the Peace in & for said County do hereby Certify that the within deposition was duly take before me on the Eighth day of March A D 1859. in presence of William Stoker the defendants ally. Witness my hand & Seal this 8th day of March A D 1859.

T J Johnson J. P. (Seal)

Deposition of A. D. Ingraham

Filed April 3rd 1861

E B Rushing Clk

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The deposition of Joseph R Lamb of the County of Washington and State of Illinois a Witness produced sworn and examined before Samuel. C. Page Clerk of the County Court in and for said County and State on the 25th day of July A D 1859 at the Court house in Nashville in said County to be read as evidence in the trial of a certain suit in Chancery now pending and undetermined in Clinton circuit Court wherein James Rowe is Complainant and A P. Chambers is Defendant on the part and behalf of the said Plaintiff – the said Joseph R Lamb being duly sworn according to law deposeth and saith in answer to the several interrogatories on the part of the said Plaintiff as follows –

Ques 1st Do you Know the parties to this suit Plaintiff and Defendant the the title of these interrogatories named or either of them and which of them and how long have you Known them respectively ?

Ans. I Know the Parties – I have Known Rowe two years

Ques 2 Do you Know of a contract having been made between the Plaintiff James Rowe and the Defendant Chambers during the months of June or July A D 1857 concerning a tract of Land which the said James Rowe had

purchased of the Central Rail road Company and if so State what that contract was. State all you know about it;

Ans. I know of a contract having been made between said Parties in June or July of 1857 about a certain piece of Land purchased of the Illinois Central Rail Road Company – The contract was that Rowe was to transfer his right in the Land to Chambers. That Chambers has to pay him said Rowe the three per cent that he paid also the amount paid to the Land agent and twenty dollars bonus for his bargain or ten dollars I am not satisfied as to which amount –

Ques 3 Please State if you know what price per acre the said James Rowe has contracted to pay for the said tracts of Land and how much he had paid in advance upon the contract paid –

Ans. To the best of my recollection he was to pay twelve Dollars per acre – he paid the usual ~~sum~~ three per cent in advance and also the amount of Commission which was twenty dollars –

Ques 4 Do you know when Rowe bought the Land in question if so State it and do you know whether Chambers was or was not negotiating for the same land at or about

the time that the land was bought by Rowe

Rowe bought the land a few days before he made the trade with Chambers he Chambers was trying to obtain the land about the same time when purchased by Rowe-

Ques 5 Do you know whether Rowe sought to sell the land in question to Chambers or did not Chambers desire to be the purchaser for the sake of the accommodation

Ans Chambers was anxious to purchase said land-

Ques 6 Do you know of any other matters or things that may lend to the benefit and advantage of the Plaintiff in the cause if yes declare the same as fully as if you had been thereunto particularly interrogated-

Ans. I do not remember any thing more in particular affecting the case

Joseph. R. Lamb

State of Illinois } I Samuel C. Page Clerk of the
Washington County } County Court in and for said County do certify that the foregoing deposition of Joseph R Lamb was sworn to and signed by the defendant before me and in my presence; and that the said Deposition was taken by me at the court house in Nashville in said County on the 25th day of July A.D 1859 between the hours of one o'clock P.M, and three

23 o'clock P. M. of said day

Given under my hand and the seal of said Court this 25th day of July A D 1859

Saml. C Page Clerk

Surpressed

And upon the back thereof are the following file notes to wit:

Filed April 3d 1861
E B Rushing Cl

The Deposition of A. J. Rowe of the County of Clinton and State of Illinois a Witness produced sworn and examined before James B Williams a Justice of the Peace in and for said County and State of the 27th day of July A D 1859. at the house of James B. Williams J. P. in said County to be read in evidence on the trial of a certain suit in Chancery now pending and undetermined in said Circuit Court wherein James Rowe is Plaintiff and A. P. Chambers is defendant on part and behalf of the said Plaintiff the said A. J. Rowe being duly sworn according to law deposeth and saith in answer to the same interrogatory & cross interrogatories on the part of of the said Plaintiff as follows,

Question first — Do you know the parties to this suit and how long have you know them

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Answer — I have known A. P. Chambers some two

years or over and James Rowe is my father -

Question No two - Please State. State all you know about a contract having been made between the Plaintiff James Rowe and the defend. A. P. Chambers during the month June or July A D 1857 Concerning a track of land which the said Rowe had purchased of the Illinois Central Rail road company State all you know about it -

Answer - All that I know about it is I have learned from my father and Mr Chambers the plaintiff aft me here when he went South in July A D 1857 to make for him a transfer of the Bond of the Illinois Central Rail Road Company of a piece of land purchased by the Plaintiff and sold to A. P. Chambers I was authorised by the Plaintiff to make to a transfer of the bond on the follow- conditions that plaintiff stated in the in- structions given me was the contract between him self and Chambers - Chambers was to pay him in lumber to the amount that he had paid the Illinois Central Company twenty dollars commission to the land agent - and a bonus of ten Dollars amounting in all to sixty one dollars and twenty cents as follows Interest as follows three per cent to the Rail Road company thirty one dollars twenty cents commission to the land agent twenty Dollars and a bonus

ten dollars I met A. P. Chambers in Centralia by appointment about the first of August 1857 to make the transfer and he denied that the twenty dollars commission to the land agent was in the contract in consequence of which defendant refused to to take the land I then told him I that I was not authorised to make the transfer on any other conditions and that defendant must stop cutting timber from said land until the misunderstanding could be adjusted—

Cross Examined by defendant—

Please State what was the reason that I said that I would not take the land—

Answer Defendant said that the contract between him and plaintiff army required him to pay the Interest on said land amounting thirty one dollars and twenty cents and a bonus of ten dollars and that he was not to pay the twenty dollars commission that plaintiff had payed to the land agent

Question by defendant— please State if I would have taken the land if the twenty dollars commission was taken off—

Answer That was all the objection named and he offered to take it with that amount taken off—

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Question 3 State what you know about the timber on

on said land before and after the contract between the Plaintiff and defendant.

Answer. - Before the contract I knew nothing subsequently I walked over the land in company with defendant saw that most of the trees that would saw logs had been cut and hall off and defendant to told me as well as I remember that he had halled timber enough to make twelve thousand feet of Lumber from said Land.

Cross Examined by defendant

Question Please State whether the defendant did not say that there had been a great deal of timber taken of the land before he Bought it of Plaintiff

Answer When we were walking over the land defendant pointed out to me trees that he said had been cut by others and before he had purchased the land from plaintiff

Question No four.

Please State whether you seed defendant hulling timber off said land after being forbiden

Answer - I saw defendant team in the act of halling a log off said land as defendant had designated the land to me I saw fresh Marks where timber had been drawn from the tops and stumps

Question By Defendant-

27 What did I State to the driver of the team and whether that log was unloded or threw off-

Answer Defendant said to me or the driver that said driver had been instructed to take no more timber off said Land and I do not remember whether the log was unloaded or hoiled to the mill-

Question No 5- Please State how long you have acted as the representative and attorney of the Plaintiff James Rowe. to make and sign contracts collect money and receipt for the Same- and signs bills with the Plaintiff proper name or his attorney.

Answer Since the year A D 1856 I have been in the habit of transacting all such business for the plaintiff without an written power of Attorney

Question No 6- — Do you know of any other matter or thing that may attend to the advantage or benefit of the Plaintiff if yes declare the as fully as you had been thereunto particular interrogated

Answer — I think of nothing else

Andrew J. Rowe

Justice fees 1.60 Witness fees 1.50

State of Illinois } ss I. James B. Williams a Justice of the peace in
Clinton County } and for said County and State do certify that the foregoing deposition was sworn to and signed by A. J Rowe at my office on the 27th day of July A D 1859 in Clinton County Given under my hand and seal

[8746-01]

28 this 27 day of July A D 1857

J. B. Williams J. P. Seal

Justice fees .25

Filed April 3rd 1861

E. B. Rushing Clk

The deposition of William H. Crawford of the County of Clinton and State of Illinois Witness produced Sworn and examined before James B Williams a Justice of the Peace in and for said County and State on the 27th day of July A D 1857 at the house of said James B Williams in said County of Clinton Suit in Chancery now pending and undetermined in the said Circuit court wherein James Rowe is plaintiff and N. P. Chambers is defendant on the part and behalf of said Plaintiff

The said William H Crawford being duly sworn according to law deposeth and saith in to the several interrogatories on the part of the said plaintiff as follows-

Question first Do you know the Parties to this suit plaintiff and defendant in the title of the interrogatories named and how long have you known them respectively

Answer I have known James Rowe about two years and have known N. P. Chambers about Eighteen years

Question second- Do you know about a contract having been made between the Plaintiff James Rowe

and the Defendant Chambers during the months of June or July A D 1857 concerning a contract of land that the James Rowe purchased of the Illinois Central Rail Road Company and if so State what that contract was State all you know about it and how you come to know about it:

Answer I know of there being a contract made during the months of June or July A D 1857 between the Plaintiff James Rowe and the defendant A. P. Chambers in reference to a tract of land which the said James Rowe purchased of the Illinois Central Rail Road Company I heard Chambers say that he had bought the land from James Rowe and that he was to pay all the money that Rowe had paid out and was to pay Rowe a bonus—

Question third— Please State if you know anything about the said tract of land before it was sold to Defendant Where situated the numbers ~~Chambers~~ Character of the land timber and &c

Answer — I know it it was Situated in the North West quarter of the North West quarter Section twenty Eight—Town one North range one West third principal meridian timbered land good average timber

Question fourth— Please State as near as you can what the condition of the land and timber now is and what in your opinion is the difference of

30 the land now and when Sold by Plaintiff to defendant. and do you Know by whom the timber has been removed

Answer I consider that there now two hundred Dollars deference now and when Chambers bought the land the prencipal part of the good timber has been taken off-

Question fifth- Do you Know whether defendant removed the prencipal part of the good timber off of that land or not-

Answer- I heard defendant say that he had got the best timber off said land and afterwords I heard him say that he had got the cream of the Joke-

Cross Examined by defendant-

Where was this Conversation had and what gave rise to it

Answer At my house J. B. Nichols came to my house with a wagon and said he had a claim in Rail Road land and I think Nichols ~~at~~ ask Chambers if he might go on said- and get a load of wood Chambers said he had no objection to said Jackson Rowe had dispossed him of said land it was in September or October A.D. 1857

Question 10 South- What did defendant say in the conversation just refered to what he would do with the contract and land made with plaintiff:

Answer Defendant said that he would have nothing

more to do with the contract as the timber was all that he wanted—

Question Seventh — Please State whether or not defendant acknowledged that he had logs late on said land, and was caught in the act of removing of them after he was forbid taken any more from said land until and adjustment was made of the existing difficulty of said contract—

Answer I heard defendant say that he had a few logs cut on said land when Jackson Rowe forbid him taken any more timber and he sent Henry Keller or John Keller to haul said logs and was caught ~~loading~~ hauling the first log

Question Eight — Do you know any other matters or thing or things that may tend to the advantage or benefit of the Plaintiff in the case if yes declare the same as fully as if you had been thereunto particular interrogated

Answer — It is all I know — W H Crawford

Justice fees 1.50 Witness fees 1.30

State of Illinois } ss I James B Williams a Justice of the peace
Clinton County } in and for said Clinton County and State do certify that the foregoing deposition was signed and sworn to before me at my office in Clinton County by William H Crawford on the 27th day of July A D 1859 Given under my hand and seal this 27th day of July A D 1859

J. B. Williams J. P. (Seal)

Justice fees, 25—

[8744-33]

32

State of Illinois
Clinton County } ss

James Roe
vs
Nathan P Chambers } In Chancery to compell Specific Performance

James Roe complainant and Andrew J Roe agent & attorney in fact for complainant. Gentlemen you will please take notice that I shall attend at the office of William. B. Johnson one of the justice of the peace in and for the county of Clinton & State of Illinois on the 23rd day of July AD 1860 between the hours of 9 o'clock A M & 3 o'clock P M for the purpose of taking the depositions of Benjamin Skipper Joseph A Skipper John J Chambers John W Killen & Henry S Killen to be read in Evidence on the part of the Defendant in the above entitled cause and continue from day to day untill all the depositions are taken at which time & place you may attend & cross Examine if you see proper so to do

N P Chambers
per Stoker Secount & Bates
Solst for Deft

June 27th 1860

No 1 Depositions taken in persuance of the notice herewith attached to be read in Evidence in a certain cause in chancery now pending and undetermined in the circuit Court of the county of Clinton & State of Illinois wherein James Rowe is complainant and Nathan P Chambers is

[8746-24]

difendant befor me the undersigned at my office. in the county of Clinton & State aforesaid on the 23d day of July AD 1860 commencing between the hours of 9 oclock A M & 2 oclock P.M.

Benjamin Skipper of lawful age being duly sworn to true answers make to such interogtories which should therunto be put to him

as to the 1st Introgatory he says.

I am acquainted with the parties above named

2nd how long have you been acquainted with the parties

ans I have been acquainted with Mr. Chambers since 1829 with Mr Rowe since 1857

3rd ques are you acquainted with Andrew J Rowe

ans I. am

4th ques how long have you been acquainted with the said Andrew J Rowe

ans Since 1857

5th ques State whether you have heard any conversation between the said Andrew J Rowe Nathan P Chambers in regard to a contract for some land and if so State what it was.

ans I have heard some conversation at the mill belonging to the said Chambers and others the agreement was that the said Chambers should pay said Rowe the usual price for the timbers which he had cut & hauled from Mr Rowes land and Mr Rowe to keep the Land and Chambers was not to

34 disturb the land or Timber any further

6 ques when was this conversation

ans. I think it was in July or August 1857

7th ques. what land was this that Mr. Rowe was to keep

ans N.W. quar. N.W qr of Section 28 T one N R one W of the 3rd. P.M. this was the land that they was talking about Refered to above

8th que was the Timber for which Mr Chambers was to pay refered to in the above conversation Taken off the land above described.

ans That was my understanding

9 what was the price agreed upon that Mr Chambers was to pay Mr Rowe for that timber

ans 37½ cts per hundred feet Square lumber deducting the chopping out.

Cross Examination by A J Rowe for complainant

qr do you know whether this conversation was before or after the misunderstanding between Mr Rowe and Mr Chambers in Reference to this land contract

ans it was after I infer from the conversation

qr what was the object of this ~~conversation~~ conversation

ans To settle up the whole difficulty was my understanding

qr do you know whether not during the conversation I did not propose to wait til I saw my father or heard from him before I acted in the matter

ans after the settlement and arrangement was all made then Mr Rowe flew off and said he would do nothing about it till he could see or hear from his father.

[8741-95]

qrs did Mr Chambers object to that arrangement,
ans I do not Recollect,
Nr 3. Direct Examination Renewed
qr 1st what was the condition of the land the time when it was said Mr Chambers had bought this land in June 1857
ans it was Timber land badly culled before Mr Rowe bought it. The best of the Timber was post oak Timber the balance of the Timber was small Timber
qrs How does the timber compare now with what it did in 1857
ans it is not so good now as it was then for it has been badly culled since that time for I have seen persons hauling wood from off of it since that time
Subscribed and sworn to Benjamin Skipper
before me this July 23rd
1860 W B Johnson J P.

John J Chambers of lawful age being first duly sworn to True answers make to such interrogatories which should thereunto be put to him.
As to the 1st Interrogatory
I am acquainted with the parties this suit James Rowe & Nathan P Chambers I have been acquainted with Mr Rowe since 1857
qr 2nd are you acquainted with Andrew J Rowe
ans Since June or July 1857
qr 3rd do you know or do you not know any thing about a contract for land between Mr James Rowe & Mr Nathan P Chambers if so state what it was

ans Some time in the month June 1857 I think Mr James Rowe made a verbal agreement to sell to Mr Nathan P Chambers his interest in a certain Tract of land being the N W qr of N W qr of Section 28 T one N R one W of the 3rd P M for the sum of forty one dollars & 20 or 25 cts

qrs State whether or not you have heard any conversation between Andrew J Rowe & Nathan P Chambers in regard to that land and if so State it

ans Nathan P Chambers was to pay Mr Rowe 37½ cts per hundred for the Squire lumber cut and hauled deducting the price for cutting the timber which was cut and not hauled Mr Rowe forbid Mr Chambers hauling it he also forbid him cutting any more—

qrs Did Mr Chambers express himself willing to comply with the purchase contract

ans he did—

qr State if you know how much lumber Mr Chambers has cut and hauled from that land

ans Twelve Thousand feet,

qr State if you know how Nathan P Chambers was to pay Mr Rowe for this Twelve Thousand feet of lumber

ans Mr Rowe was indebted to Nathan P Chambers & Co for lumber had at their Mill previous had on which indebtedness Mr Nathan P. Chambers was to cr Mr Rowe for the value of the said Twelve Thousand feet of lumber—

(8741-26)

qr State if you know the condition of that land

37 when Mr Chambers contracted it from Mr Rowe in 1857.

ans I consider it about fourth Class Timber for this country it has been culled four or five Times to my certain knowledge previous to that time

Crop examined for complainant

qr do you know positively whether or not there was a bonafied agreement between Nathan P Chambers & Andrew J Rowe agent for James Rowe that said Andrew J Rowe would take back the land and allow the price of the Timber taken off by Nathan P Chambers to rebut against the lumber bought of the Company by James Rowe -

ans to the best of my recollection there was such an agreement between the said Andrew J Rowe & Nathan P Chambers

Subscribed and sworn to before this July 23rd 1860 — J J. Chambers

W B Johnson J P.

Henry T Killen of lawful age having first been duly sworn to true answers make to such interogatories which should there to be put to him as to the 1st Interogatories he says

I am acquainted with the parties to this suit I first Knew Mr Rowe in 1857 I have known Nathan P Chambers since about 1845;

qrs are you acquainted with Andrew J Rowe

I have known him since 1857

qrs have you or have you not heard Mr Andrew J Rowe say any thing in regard to the ownership of land that Mr Chambers claimed to have bought of

ans Sometime in the month of June or July 1857 I was hauling saw logs from a piece of land which Mr Nathan P Chambers claimed to have been bough of Mr James Rowe when Mr Rowe came along and Told me not get too far over that way for fear you get on my land for that belongs to me now refering to the land that Nathan P Chambers claimed to have bought of said James Rowe Mr Rowe forbid me from hauling any more logs from that peice of land H. T. Killen

Sworn to and subscribed
before me this July 23rd
1860 H B Johnson J.P.

John H Killen of lawful age &c

qs are you acquainted with the parties to this suit

ans I am well acquainted with Nathan P Chambers and slightly acquainted with M Jas Rowe & Andrew J Rowe –

qs have you or have you not cut saw logs for Nathan P Chambers upon land that Mr Chambers have contracted with Mr Rowe if so state what amount.

[8744-57] ans some time in June 1857 I think I cut logs on that Tract refered to for which I recieved

between $27 and $30

Sworn to and subscribed before me this 23rd day of July 1860 W B Johnson J.P.

J W. Killen

State of Illinois } ss.
Clinton County }

I W B Johnson a justice of the Peace in and for said county do hereby certify that the foregoing depositions were taken before me at my office in Clinton County on the 23rd day of July A D 1860 and that it is a true declaration of the evidence given by the several Witnesses given under my hand and seal this 23rd day of July A D 1860

W. B. Johnson J P (Seal)

And afterwards to wit: at the April Term of the Perry Circuit Court 1861 the following Order of Court was made and entered of Record in said Cause to wit:

" James Towne
" vs
" Nathan P. Chambers } Change of venue from Clinton County
Saturday May 4th 1861
" And now on this day no one appearing
" in said. Ordered by the Court that said Cause
" stand continued until the next Term of
" said Court &c. "

And afterwards to wit at the September Term of said Perry County Circuit Court A D 1861 the following order of Court was made and Entered of record in said Cause to wit.

" James Towne
No 64: " vs
" Nathan. P. Chambers } Change of venue from Clinton Co.
Friday Sept. 27th 1861
" Ordered by the Court that said Cause
" be continued - no one appearing on either side &c. "

And afterwards to wit at the April Term of said Perry Circuit Court A D 1862 the following order of Court was Entered of record in said Cause to wit.

[8741-28]

" James Rowe
No 40 " vs Change of venue
" Nathan. P. Chambers
" This cause continued without order
" until the next Term of this Court &c; "

And afterwards to wit at the December Special Term A.D. 1862 - the following order of Court was made and entered of record in said cause

James Rowe
No 31- vs Change of Venue
Nathan. P. Chambers. Thursday December 4th A.D. 1862

And now on this day comes said Complainant by O. Melvery his solicitor and, calls up exceptions to the answer of 2nd interrogatory propounded to A. J. Rowe

It is therefore considered by the Court that Exceptions be sustained - and the answer thereto expressed - and it is further considered by the Court that the exceptions to depositions of A D Ingram and J B Lamb overruled by the Court - And it is further considered by the Court on motion of said Complainant by his solicitor that said cause be and the same is set down for a hearing at the next Term of this Court on Bill answer exhibits and testimony - and said cause cont'd &c;

And afterwards to wit at the April Term of said Perry County Circuit Court A.D. 1863. the following Order of Court was made and entered of record in said Cause to wit:

No 20

James Rowe
vs
Nathan. P. Chambers } Change of Venue
Tuesday April 27th 1863

And now at this day on motion It is Ordered by the Court that said Cause be Continued until the next Term of this Court

And it is further Ordered adjudged and Decreed by the Court here that said Complainant pay the Costs of this continuance &c.

And afterwards to wit on the 29th day of Sept. 1863 the following Order of Court was made and entered of record in said Cause which is in the words and figures following to wit:

James Rowe Complainant
vs
Nathan. P. Chambers Etal } Bill for Specific performance and injunction
Tuesday 29th day of Sept. A.D. 1863

And now on this day came the Complainant by his Solicitor John H Mulkey And the said Defendant not appearing

[8741-72]

Either by himself or Solicitor, and the said Cause being ready for a hearing the Court proceeded to examine the Bill answer exhibits - Depositions and proofs - for and on behalf of the said defendant as well as on behalf of the said Complainant and from ~~the~~ such examination finds that said Bill Answer exhibits Depositions and proofs fully prove and establish - That Complainant on the 23rd day of May A D 1857 Contracted in writing with the Illinois Central Rail Road Company for the purchase of the following Land and premises to wit: The North West quarter of the North West quarter of Section Seventy Eight Township One North Range One West of the 3rd principal Meridian in the State of Illinois that the Consideration agreed to be paid was $520. that upon that Amount Complainant paid advance interest to said Company Amounting to $31.20 - That Complainant Also paid as commission to Messrs Ingraham Folsom & Co for negotiating said the sum of $20.00 that afterwards to wit on or about the 28th day of March 1857 Complainant agreed with defendant to sell transfer and assign to him all his right title and interest in and to said contract of purchase in Consideration of which agreement the said defendant agreed to assume all of complain-

ants liabilities to the said Illinois Central Rail Road Company refunded to complainant the $31.20 advance interest and the $20. Commission for negotiating Original purchase and also pay Complainant as a bonus on his contract with the Rail road Company the sum of ten Dollars. That in pursuance of said contract defendant Entered upon and took possession of said land and premises. That upon so taking possession of said land and premises defendant cut down and stripped the same of its most valuable timber and converted the same to his own use thereby materially injuring said land and depreciating the value thereof. That complainant within a reasonable time offered to transfer and assign said contract and that defendant refused to accept the same and has wholly made default in the payment of his contract with complainant, and that there is now due ~~upon~~ from defendant to complainant the sum of $61.20 together with interest thereon from the 28th day of May 1857. It is therefore Ordered adjudged and decreed that said Contract and agreement between Complainant and Defendant be specifically performed - that Defendant fully perform and carry out complainants contract with the said Illinois Central

Rail Road Company by paying them all monies now due or hereafter to become due upon said Contract and also pay unto Complainant the sum of $61.20 together with interest thereon from the 28th day of May 1857 up to the time of Payment & that upon the payment of said sum of $61.20 and interest as aforesaid and concurrently therewith it is Ordered and Decreed that Complainant assign transfer and Deliver the aforesaid Contract of purchase of the said N ½ of the N ½ of Sec 28 T1 N R1 W 3d P. Meridian unto the said defendant. And it is further Ordered and Decreed that Defendant pay the costs of this suit and that Complainant have Execution for the said sum of $61.20 with interest and Costs aforesaid &c.

And upon the trial of said Cause said Complainant introduced as a Witness in said Cause Andrew J Rowe whose evidence was taken down in open Court in writing and filed in said Cause in the words & figures following to wit:

James Rowe
vs
Nathan. P. Chambers

Bill in Chancery for specific performance.

Deposition of Andrew J Rowe taken in open court upon the hearing of this cause

What is your name age occupation

Int 1st ans. Andrew J Rowe age 33 occupation a farmer.

Int. 2 Are you acquainted with the parties to this suit

Ans Yes Sir

Int 3d State whether you were ever employed or authorised to assign a contract of purchase of land from the Ill central rail road to complainant if so when by whom for what ~~and~~ the contract was entered into

Ans. I was sometime in Aug or July 185-7 I dont know the number of the land it was the same land complainant may father purchased from Ill Central Rail road Company

Int 4. State whether you were allthorised in writing or by parole

Ans. My authority was verbal.

Int What did complainant authorise you to do all he authorised you to do.

Ans. To make the transfer of the Bond or agreement that he received from the Ill Cen R Road Com. by which he acquired possession of said Land to A. P. Chambers - on the condition

he should pay the 3 percent int in advance which he had paid in advance 20 dol Come to land agent and a bonus of ten Dollars

Int. What did he authorize you to do if any thing in the event Chambers refused to comply with said conditions

Ans. He gave me no instructions for such a contingency

State whether Complainant ever give you any authority to rescind or annull the said Contract=

Ans. He never did sir.

Int. State what you may know if anything about your Fathers offering after he came back to assign said Contract

Ans I know Nothing of my own knowledge except my father said he was going there for for that purpose

Andrew J Rowe

Subscribed & Sworn to before me in Open Court this 28th day of September A D 1863:

E B Rushing Clk

Endd upon the back of said written evidence are the following endorsements to wit: James Rowe vs Nathan P. Chambers Testimony of Andrew J Rowe Taken in open Court Filed Sept. 28. 1863 - E B Rushing Clk

48

State of Illinois } ss.
Perry County }

I. Evan B Rushing Clerk of the circuit Court within and for the County of Perry and State of Illinois. do hereby certify the foregoing Record contains a true and correct Copy of the Bill. Answer. Exceptions to Depositions. Receipt. and all the Depositions in the Case of James Rowe vs Nathan P. Chambers. Et al as the same appears on file and of record in my said office. and also the orders of Court. Entered in said cause.

In Testimony Whereof I have hereunto set my hand and affixed the Judicial Seal of said Court at office in Pinckneyville. this 9th day of February A D 1864.

E B Rushing Clerk

49

In the Supreme Court of the State of Illinois

First Grand Division

Nathan P. Chambers plff in error
vs
James Howe deft in error

Writ to Perry

November term A.D. 1864

Comes this day the plff by Nelson Sanders his attorneys & says that in the record proceeding and process aforesaid there is manifest error in this that the said Circuit Court of Perry County rendered said decree in favor of the defendant in error whereas by the law of the land said decree ought to have been rendered in favor of the plff in error

and for assigning errors specially on the record the plff says the sd Circuit erred first in rendering a decree for the specific performance of the Contract set forth in the Bill of the defendant in error

Secondly The said Circuit Court erred in not setting said Cause

[8746-33]

down for a hearing on Bill and answer

3 The said Court erred in setting said Cause down for a hearing on Bill answer depositions & exhibits

and fourthly the said Court erred hearing oral testimony at the bar of the Court upon the hearing of said Cause & for these & divers other errors apparent upon the face of the record aprid. The plff prays that the Decree of said Circuit Court may be reversed &c

Nelson & Sanders
for plff in error

for defendant in error
A K Boreman
for Defendant in error

The Writ of error will be made a Supersedeas on the plaintiff in error executing a bond in the penalty of two hundred and fifty Dollars with James McRae and Benjamin W. Skaggs

Securities examined according
to law. Carlyle March 11. 1864
Sidney Meece
Judge Sup. Court.

[8746-34]

11

Nathan P. Chambers
Plaintiff in error
vs
James Rowe
Defendant in error

Error to Perry.

Filed April 18. 1864
N. Johnston Clk
Paid by Allen - $11.50

IN THE SUPREME COURT OF THE STATE OF ILLINOIS.

FIRST GRAND DIVISION.

NATHAN P. CHAMBERS, *Pl't'ff in Error,*
vs.
JAMES ROWE, *Defendant in Error,*

NOVEMBER TERM, 1864.
Error to Perry.

ABSTRACT OF PLAINTIFF'S CASE.

1 The Defendant in error, who was complainant in the court below, filed his bill in Chancery against the plaintiff in error at the ~~April~~ March term of the Clinton circuit court, 1858, alleging that, on the 23d of May, 1857, he contracted with the Illinois Central Railroad Company for the purchase of the north-west fourth of the north-west fourth of section 28, township 1 south, range 1 west of the 3d principal Meridian, cantaining forty acres, in consideration of five hundred and twenty dollars and three per centum interest thereon, payable and paid as in said contract set forth, which said contract is made a part of bill: That complainant paid Ingraham, Fol-
2 som & Co. twenty dollars for services in making said contract, and also paid thirty-one dollars and twenty cents for two years' interest on said contract, in advance: that the defendant below wanted the land because it would square his farm; was the owner of a saw-mill near said land; wanted it for timber purposes, and also wanted it because it answered for a blue-grass pasture after it was cleared; and complainant, in consideration of defendant paying the said company for said land,
3 paying Ingraham, Folsom & Co. the said sum of twenty dollars and the said sum of thirty-one dollars and twenty cents interest and also a bonus of ten dollars, to transfer and assign said contract with Railroad Company to him said defendant; all of which defendant agroed to do, and further agreed to indemnify said complainant against any liability whatever to said Railroad Company: That it was further agreed between complainant and said defendant that the said sums of money, amounting to sixty-one dollars and twenty cents, should be paid to complainant in
4 lumber, complainant offering at the same time to take lumber of defendant to the amount of fourteen thousand feet:

5 That complainant gave defendant possession of said land and that there was no time specified when said transfer of contract with Illinois Central Railroad Company should be made, but it was to be assigned to suit their mutual convenience: That said defendant took possession of said land in the summer of 1357, and cut a large portion of the timber on the same and sawed it into lumber, and also delivered more than enough lumber to pay said sum of sixty-one dollars and twenty cents to his son, which defendant accepted, and admits he was liable to pay said defendant for whatever was received over that amount of sixty-one dollars and twenty cents:

That urgent business called complainant South, and he left his son, Andrew J. Rowe with sufficient power to assign said Railroad contract, who called on defendant below and offered to make said assignment; but said defendant refused to pay
6 said twenty dollars paid to Ingraham, Folsom & Co., upon which said Andrew forbid him, said defendant, to commit any more waste on said land until the matter was settled:

That complainant called on defendant for a settlement about 28th November, 1857, and also requested him to settle and offered to assign said Railroad contract, but defendant denied his right to pay said twenty dollars paid to Ingraham, Folsom & Co. and refused to settle on any terms, and actually sued complainant in the name of the firm owning said mill, for all of the lumber delivered to complainant, and recovered judgment for not only the surplus, but also for the said sum of sixty-one dollars and twenty cents, before William B. Johnson, J. P., although the said

lumber was received and applied towards satisfying the said sum of sixty one dollars and twenty cents, according to the tenor of said contract, a copy of which said judgment, marked (B), is referred to as a part of bill.

7 Complainant charges that defendant took possession of said land and has committed irreparable waste, and that the lumber first delivered to amount of sixty-one dollars and twenty cents way delivered in payment of moneys due under said contract: But defendant now insists upon said contract being within the Statute of of Frauds, and refuses to comply with the same. Complainant tenders sixteen dol-
8 lars and eighty cents and interest thereon and costs, before Justice, and prays an injunction against William B. Johnson, J. P., Nathan B. Chambers, Joseph A. Skipper, Benjamin Skipper and J. J. Chambers, enjoining the collection of said judgment, waives oaths, prays a specific performance of contract, and prays endorsement to complainant against payment of said land to said Railroad Company, and for other relief, &c., which bill was subscribed and sworn to by complainant.—There is no prayer to make any person defendant but Nathan B. Chambers, and there is nothing in bill to show that the Skipworths and J. J. Chambers had anything to do with this suit; nor was there any process prayed for decree rendered against them

10 The plaintiff in error filed his answer at the October special term of the said Circuit Court, to complainant's bill, and admits contract between complainant and
11 Illinois Central Railroad Company as stated in bill; also admits payment of twenty dollars to Ingraham, Folsom & Co., and that complainant called on him and offered to sell the land in bill mentioned, and also that defendant was willing to buy it, but denies that he was willing to take said contract off his hands and pay him sixty-one dollars and twenty cents: On the contrary, complainant agreed to assign said contract to defendant for forty-one dollars and twenty cents, viz: $31,20 for interest, aud $10 bonus; and; said contract between him and complainant being oral and void under Statute of Frauds, defendant offered to pay ten dollars bonus and thirty-one dollars and twenty cents interest on complainant assigning to him said Railroad agreement, but complainant would not receive it in money, as he wanted lumber: And defendant expressly charges complainant told him to go to cutting timber as soon as he pleased: Admits he cut some ten or fifteen trees, and that complainant did go South without assigning said Railroad contract and without authorizing any person to make said assignment: That said assignment could only be made by complainant or his attorney in fact, the same having to be acknowledged as deeds, under the instructions of the Illinois Central Railroad Company:

12 That complainant's son, after complainant went South, called on defendant for sixty-one dollars and twenty cents under contract, but had no power of attorney to assign said Railroad contract as required by law, and stated that if respondent, would not pay said sum of sixty-one dollars and twenty cents, he could not get the land; and respondent, never having made such contract with complainant, refused to pay said sum of $61,20, or wait any longer for the assignment of said Railroad contract; whereupon complainant's said son forbid respondent cutting any more timber on the land, and refused to make said assignment of said Railroad contract for forty-one dollars and twenty cents, and declared that respondent never should have said land, and then and there complainant and said Andrew J. Rowe, son, who was the lawful agent of complainant, by mutual consent, cancelled said contract, and that said Rowe as such agent threatened to sue respondent in trespsss for cut-
13 ting timber on said land; and respondent denies that any other agreement was made for the purchasing of said land than for the sum of forty-one dollars and twenty cents. To this answer there was no replication filed by complainant.

14 Depositions were taken on behalf of complainant and defendant below, and exceptions filed by defendant to depositions taken by complainant, on account of the witness A. J. Rowe stating all he knew about contract on knowledge drawn from complainant, and on account of notice to take deposition of witness J. B. Lamb, and on account of said witness not describing land with sufficient certainty.

Defendant also excepted to deposition of Ingraham becouse of insufficiency of notice; which exceptions were sustained as to answer to second question propounded to A. J. Rowe, and overruled as to depositions of Lamb and Ingraham,

15 The complainant's evidence is as follows: J. B. Lamb states that a contract was made between complainant and defendant as follows: Rowe was to assign all his interest to Chambers for the consideration that Chambers was to pay Rowe all he

16 had paid on said land and a bonus of ten dollars, and his understanding was that Chambers was to pay the interest he had paid and commission.

N. D. Ingraham states that complainant paid thirteen dollars and fifty cents per acre for forty acres described as, N. W. fourth of N. W. fourth of Sec. 28, T. 1 N., R. 1 West of the 3d principal Meridian. He paid twenty dollars for commission.

21 J. B. Lamb, in a second deposition, states a contract was made between complainant and defendant, in June or July, 1857, about piece of land purchased of Illinois Central Railroad Company. Rowe was to transfer his interest in contract to Chambers, Chambers to pay him three per cent. that he paid, also amount paid land agent, and also $20 bonus—or $10, am not sure which. Rowe was to pay twelve dollars per acre for land, and paid usual three per cent in advance and also commission. Rowe bought the land a few days before he traded with Chambers — Chambers was very anxious to get land and had been trying to buy of Company himself before Rowe bought it.

24 A. J. Rowe states: All I know is that, when complainant went South, he authorized witness to make a transfer of a bond for land he bought of Illinois Central Railroad Company, to Chambers, and his instructions were that defendant wants to pay sixty-one dollars and twenty cents, being amount due to Illinois Central Railroad Company in advance, viz: $31,20 interest, $20 commission and bonus $10.
25 I met Chambers in August, 1861; he denied that he was to pay twenty dollars commission, and I, not being authorized to assign on any other terms, ordered him to stop cutting timber on the land.

A. J. Rowe, being cross-examined by defendant, stated that defendant said that he was to pay interest and bonus, but not commission. That was the only objection to his taking the land. I walked over land, after making of contract, with defendant. He told me he had cut and hauled timber enough to make twelve thousand feet of lumber. Most of the timber that was fit for saw-logs was cut and hauled off. Defendant pointed out the trees that were cut by others at the same time. I saw defendant in the act of hauling a log off said land, as defendant had designated the land to me, and I saw fresh marks where timber had been cut and hauled away.
27 Defendant did say to me, or to the driver, that said driver had been instructed to take no more timber off, and I forget whether the log was unloaded or hauled off. I have acted as complainant's attorney ever since 1856, signing contracts, collecting money and receipting for same, also signing complainant's name to bills, without any written power of attorney.

28 William H. Crawford: I know of a contract made in June or July, 1857, between complainant and defendant, in reference to land bought by complainant of the Illinois Central Railroad Company. Heard Chambers say he had bought land of Rowe; was to pay Rowe all he paid out and a bonus. It was the N. W. fourth of the N. W. fourth of Sec. 28, T. 1 N., R. 1 W. of 3d principal Meridian. It was average timber land.

30 The land is worth two hundred dollars less now than when Chambers bought it. I heard him say that he had cut the best timber off the land—had got the cream of the joke.

Cross-examined by defendant: J. B. Nichols came to my house and said he had a claim on Railroad land. I asked Chambers if he might have a load of wood off said land. Chambers said he had no objection, as A. J. Rowe had dispossessed him of said land. This was in September or October, 1857. Defendant, in said
31 conversation, stated he would have nothing to do with contract, as he had cut all the timber off the land. I heard defendant say that he had a few logs on hand when A. J. Rowe forbid his taking any more timber, and he sent Henry Killen and John Killen to haul said logs, and that he was caught hauling the first log.

33 Depositions of defendant are, in substance, as follows: Benjamin Skipper, on behalf of defendant below, stated he heard some conversation in July or August, 1857, between A. J. Rowe and Chambers. Chambers was to pay Rowe usual price for timber ae had cut and hauled off land. Rowe was to keep the land and Chambers was not to disturb it any further. It was the N. W. fourth of the N. W. fourth of Sec. 28, T. 1 N., R. 1 W. of 3d principal Meridian, they were talking about. ~~Rowe~~ Chambers was to pay thirty-seven and a half cents per foot and to deduct out the chopping.

[8746-37]

Being cross-examined, states that this conversation was after Rowe and Cham-
fell out, and their object was to settle the difficulty. After they had settled, and
not before, Rowe flew off and said he would do nothing more until he would see his
35 father. The land was badly culled of timber before Mr. Rowe bought it. The best
timber on it was post oak; the balance was small timber. The land is not as good
now as it was then, as it has been badly culled since that time. John J. Chambers
states that James Rowe, some time in June, 1857, made a verbal agreement to sell
Nathan P. Chambers the land referred to for forty-one dollars and twenty cents.

I heard a conversation about same land between Rowe and Chambers. Chambers
was to pay thirty-seven and a half cents per foot to Rowe for the square timber,
cut and hauled. The chopping of timber cut and not hauled was to be deducted
from price. Rowe forbid Chambers cutting any more. There was 12,000 feet of
timber cut and hauled by Chambers from said land. Rowe was owing Chambers
for lumber and Chambers was to give Rowe credit for said 12,000 feet of timber.
The land was fourth-class, and had been culled four or five times, to my knowledge,
before Chambers contracted for it. There was a *bona fide* agreement between A. J.
37 Rowe and Chambers, to the effect above stated by me.

Henry Killen: I was hauling saw-logs for Nathan P. Chambers in June or
July, 1857, from a piece of land claimed to have been bought by Chambers of Rowe.
A. S. Rowe said to me: Don't get too far over that way, for fear you may get on
my land, for it belongs to me—referring to land bought by Chambers of Rowe. He
also forbid Chambers taking any more timber off said land.

38 John W. Killen stated that he hauled logs off the land in controversy, and got
between twenty-seven and twenty-eight dollars for them.

The venue in the case being changed to Perry County, at the September term,
1863, of Perry circuit court, the cause was heard and the following decree, in sub-
42 stance was rendered in the premises as neither defendant or his counsel appeared, and
43 the allegations in complainant's bill being proven by complainant, it was de-
44 creed by the court: That the contract between complainant and defendant be spe-
cifically performed by defendant; that defendant carry out and perform complain-
ant's contract with Illinois Central Railroad Company, and also pay complainant
sixty-one dollars and twenty cents with interest thereon from the 28th day of May,
45 1857, up to the time of payment; and, upon payment thereof, complainant is or-
dered to assign and deliver to defendant their contract of purchase for land in con-
roversy, and pay the costs of this suit.

46 Upon the hearing of the said cause, A. J. Rowe was orally sworn on behalf of
complainant, and stated as follows: The complainant authorized me to transfer
the agreement with the Railroad Company for purchase of land, to N. P. Chambers,
on condition defendant should pay three per cent interest paid the Company in ad-
vance, twenty dollars commission, and a bonus of ten dollars; but he never author-
ized me to annul or rescind the contract.

The plaintiff in error brings the cause into this Court by writ of error, and
seeks to reverse the said decree for the reasons following:

1st. Because the court below erred in rendering said decree.

2nd. The court below erred in not setting said cause down for a hearing on bill
and answer.

3d. The said court erred in setting cause down for hearing upon bill, answer,
exhibits and depositions, and in hearing oral testimony on the hearing; and, for
these and other errors apparent on the face of the record, he prays the decree of the
court below may be reversed.

NELSON & SANDERS,
For Plaintiff in Error.

11

Nathan P. Chambers
plaintiff in error
vs
James Rowe
Defendant in error

Error to Perry

Abstract

11

8746

Filed, Nov. 15. 1864.
N. Johnston Clk

In the Supreme Court of Illinois---1st Grand Division.

NATHAN P. CHAMBERS, Plt'ff. in Error,
vs.
JAMES ROWE, Defendant in Error.
} Error to Perry County.

Defendant's Brief.

The answer of Defendant was not under oath, and has no greater force than a pleading to make up the issue; it is not evidence for anything.

Wells, *et. al.* vs. Henderson, 4th Scam. p. 20. Fergerson vs. Sutphen, 3d Gil. 572. Unreplied to, it at most could be only taken as *prima facia* true, and if the evidence in the case establishes its untruth in any respect, to that extent it would be absurd as well as unjust to reject the *truth* proved and accept a false answer disproved.

The answer of Plaintiff in error, substantially admits the bill of Complainant, (Rowe) except one fact—the $20 commission paid to Ingram & Folsom, as part of the consideration of the contract between himself and Rowe.

But the Plaintiff in error seeks to avoid compliance with his contract.

1st. By denying his agreement to pay those commissions, ($20).

2d. The statute of Frauds.

3d. The non assignment by proper authority of railroad contract,

4th. A recision of the contract.

1st. That Plaintiff in error agreed in the contract of purchase to pay the $20 commissions, which Defendant in error had paid is conclusively proven. Ingram swears Rowe had paid it.—Mr. Crawford swears Chambers informed him he was to pay Rowe, all Rowe had *paid out*, and a bonus; and Lamb who was present at the making of the contract, swears that Plaintiff in error agreed to pay it.

Crawford also puts the damages done to the land by Chambers at $200, and says Chambers told him "*he had got the cream of the joke.*"

2d. The Plaintiff in error having taken possession, having appropriated all that was most valuable on the land to his own use—"*got the cream of the joke;*" really, so far as he is concerned, had delivered the lumber, which was received in payment, but his co-partner refused to sanction the appropriation of the partnership property to the payment of his *individual* debt, and recovered it back;—the parties cannot be placed in *statu quo* by allowing him to abandon his contract. His acts and possession takes the case out of the statute of fraud. Hawkins vs. Hunt, 14th Ill. 43.—Freeman's Dig. 1467, §5.

3d. The Defendant in error denies that the Illinois Central Railroad Company prescribed any mode by which their contract for deeds should be assigned, and if they did he denies its binding force. He insists that it is not necessary that the *authority* of an agent to assign the Railroad contract should be under seal or even in writing. The property which Rowe held in this contract was not real estate, it was a chattel. The contract for the title to the land was in writing and signed by the party to be charged therewith—the R. R. Co. But if it had been a bargain simply of the land authority by parol to an agent, is sufficient if the agent execute the proper memorandum or contract by a writing. Doty vs Wilder, 15th Ill. 411, 17th Ill. 441, 21st Ill. 558.

4th. By the evidence it is certain no final agreement *recinding* the contract was made. A. J. Rowe, the person with whom the supposed recision is represented to have been made, denies it.—Swears he had no such authority. That some conversation was had upon the subject there is no doubt, but Skipper, witness for Plaintiff in error corroborates the evidence of A. J. Rowe, on this point in this: That A. J. Rowe, flew off, and said he would do nothing in regard to it until he saw his father, (Defendant in error.) On the merits of the case questioned by the first error assigned, it is believed no substantial error exists.

5th. It is supposed the second error assigned is based upon the impression that an answer, unsworn to is of equal dignity with an answer sworn to, but that is not the case. 4th Scam. 20.

The 32d sec. Laws of 1845, page 96, has reference to the *sworn answer*, in the 20th sec. of the same Act, page 95; in Trout vs. Emmons 29th Ill. 437, it would seem that a sworn answer unreplied to, may be overcome by two witnesses.

6th. The cause was set for hearing at a term preceding that at which decree was rendered on bill, answer, depositions &c. This seems regular.

No decree was taken against Johnson, Skipworth or J. J. Chambers—as to them, the bill had been dismissed. The decree was against Plaintiff in error above.

H. K. S. O'MELVENY, Att'y. for Def't. in Error.

Argu. of Opte. in error

Chandler
vs
Rowe

in case No. 11 – 1st
Grand Division

Nov. Term 1844

Nathan Chambers plaintiff in error
vs
James Rowe defendant in error

In the Supreme Court
1st Grand Division Nov. term 1864

This affiant R S Nelson being first duly sworn according to Law deposes & says that he has been informed & verily believes from what he has heard that James McKee who resides at or near to Centralia Illinois & Benjamin W. Shipper a resident of Clinton County Illinois or either of them are worth at least $500 clear of all homestead or exemption laws, and that the plff in error is worth with a great deal more than that over homestead & exemption laws. This affiant further states that all the above persons as he has been informed & believes are worth the above amount clear of all incumbrances debts or judgments whatever

Subscribed & sworn to before me this 20th day of Nov. 1864
Thos. S. Smith Clk

R S Nelson

[874674]

Nathan P. Chambers -
Plaintiff in error -
vs
James Rowe -
Defendant in error

Affdt of R. S. Nelson Esq.
as to Solvency of Sureties

Error to Perry

Filed April 18. 1864
N. Johnston Clk

In the Supreme Court of Illinois---1st Grand Division.

NATHAN P. CHAMBERS, Plt'ff. in Error,
vs.
JAMES ROWE, Defendant in Error.
} Error to Perry County.

Defendant's Brief.

The answer of Defendant was not under oath, and has no greater force than a pleading to make up the issue; it is not evidence for anything.

Wells, *et. al.* vs. Henderson, 4th Scam. p. 20. Fergerson vs. Sutphen, 3d Gil. 572. Unreplied to, it at most could be only taken as *prima facia* true, and if the evidence in the case establishes its untruth in any respect, to that extent it would be absurd as well as unjust to ~~regard~~ reject the *truth* proved and accept a false answer disproved.

The answer of Plaintiff in error, substantially admits the bill of Complainant, (Rowe) except one fact—the $20 commission paid to Ingram & Folsom, as part of the consideration of the contract between himself and Rowe.

But the Plaintiff in error seeks to avoid compliance with his contract.

1st. By denying his agreement to pay those commissions, ($20).

2d. The statute of Frauds.

3d. The non assignment by proper authority of railroad contract,

4th. A recision of the contract.

1st. That Plaintiff in error agreed in the contract of purchase to pay the $20 commissions, which Defendant in error had paid is conclusively proven. Ingram swears Rowe had paid it.—Mr. Crawford swears Chambers informed him he was to pay Rowe, all Rowe had *paid out*, and a bonus; and Lamb who was present at the making of the contract, swears that Plaintiff in error agreed to pay it.

Crawford also puts the damages done to the land by Chambers at $200, and says Chambers told him "*he had got the cream of the joke.*"

2d. The Plaintiff in error having taken possession, having appropriated all that was most valuable on the land to his own use—"*got the cream of the joke;*" really, so far as he is concerned, had delivered the lumber, which was received in payment, but his co-partner refused to sanction the appropriation of the partnership property to the payment of his *individual* debt, and recovered it back;—the parties cannot be placed in *statu quo* by allowing him to abandon his contract. His acts and possession takes the case out of the statute of fraud. Hawkins vs. Hunt, 14th Ill. 43.—Freeman's Dig. 1467, §5.

3d. The Defendant in error denies that the Illinois Central Railroad Company prescribed any mode by which their contract for deeds should be assigned, and if they did he denies its binding force. He insists that it is not necessary that the *authority* of an agent to assign the Railroad contract should be under seal or even in writing. The property which Rowe held in this contract was not real estate, it was a chattel. The contract for the title to the land was in writing and signed by the party to be charged therewith—the R. R. Co. But if it had been a bargain simply of the land authority by parol to an agent, is sufficient if the agent execute the proper memorandum or contract by a writing. Doty vs Wilder, 15th Ill. 411, 17th Ill. 441, 21st Ill. 558.

4th. By the evidence it is certain no final agreement *recinding* the contract was made. A. J. Rowe, the person with whom the supposed recision is represented to have been made, denies it.—Swears he had no such authority. That some conversation was had upon the subject there is no doubt, but Skipper, witness for Plaintiff in error corroborates the evidence of A. J. Rowe, on this point in this: That A. J. Rowe, flew off, and said he would do nothing in regard to it until he saw his father, (Defendant in error.) On the merits of the case questioned by the first error assigned, it is believed no substantial error exists.

5th. It is supposed the second error assigned is based upon the impression that an answer, unsworn to is of equal dignity with an answer sworn to, but that is not the case. 4th Scam. 20.

The 32d sec. Laws of 1845, page 96, has reference to the *sworn answer*, in the 20th sec. of the same Act, page 95; in Trout vs. Emmons 29th Ill. 437, it would seem that a sworn answer unreplied to, may be overcome by two witnesses.

6th. The cause was set for hearing at a term preceding that at which decree was rendered on bill, answer, depositions &c. This seems regular.

No decree was taken against Johnson, Skipworth or J. J. Chambers—as to them, the bill had been dismissed. The decree was against Plaintiff in error above.

H. K. S. O'MELVENY, Att'y. for Def't. in Error.

No. 11.

Chancellor pltff in error

vs

Rowe - deft in error

From 1st Grand Chancery

IN THE SUPREME COURT OF THE STATE OF ILLINOIS.

FIRST GRAND DIVISION.

NATHAN P. CHAMBERS, *Pl't'ff in Error,*
vs.
JAMES ROWE, *Defendant in Error,*

NOVEMBER TERM, 1864.
Error to Perry.

ABSTRACT OF PLAINTIFF'S CASE.

1 The Defendant in error, who was complainant in the court below, filed his bill in Chancery against the plaintiff in error at the April term of the Clinton circuit court, 1858, alleging that, on the 23d of May, 1857, he contracted with the Illinois Central Railroad Company for the purchase of the north-west fourth of the north-west fourth of section 28, township 1 south, range 1 west of the 3d principal Meridian, cantaining forty acres, in consideration of five hundred and twenty dollars and three per centum interest thereon, payable and paid as in said contract set forth, which said contract is made a part of bill: That complainant paid Ingraham, Fol-
2 som & Co. twenty dollars for services in making said contract, and also paid thirty-one dollars and twenty cents for two years' interest on said contract, in advance: that the defendant below wanted the land because it would square his farm; was the owner of a saw-mill near said land; wanted it for timber purposes, and also wanted it because it answered for a blue-grass pasture after it was cleared; and complainant, in consideration of defendant paying the said company for said land,
3 paying Ingraham, Folsom & Co. the said sum of twenty dollars and the said sum of thirty one dollars and twenty cents interest and also a bonus of ten dollars, to transfer and assign said contract with Railroad Company to him said defendant; all of which defendant agroed to do, and further agreed to indemnify said complainant against any liability whatever to said Railroad Company: That it was further agreed between complainant and said defendant that the said sums of money, amounting to sixty-one dollars and twenty cents, should be paid to complainant in
4 lumber, complainant offering at the same time to take lumber of defendant to the amount of fourteen thousand feet:

5 That complainant gave defendant possession of said land and that there was no time specified when said transfer of contract with Illinois Central Railroad Company should be made, but it was to be assigned to suit their mutual convenience: That said defendant took possession of said land in the summer of 1357, and cut a large portion of the timber on the same and sawed it into lumber, and also delivered more than enough lumber to pay said sum of sixty-one dollars and twenty cents to his son, which defendant accepted, and admits he was liable to pay said defendant for whatever was received over that amount of sixty-one dollars and twenty cents:

That urgent business called complainant South, and he left his son, Andrew J. Rowe with sufficient power to assign said Railroad contract, who called on defendant below and offered to make said assignment; but said defendant refused to pay
6 said twenty dollars paid to Ingraham, Folsom & Co., upon which said Andrew forbid him, said defendant, to commit any more waste on said land until the matter was settled:

That complainant called on defendant for a settlement about 28th November, 1857, and also requested him to settle and offered to assign said Railroad contract, but defendant denied his right to pay said twenty dollars paid to Ingraham, Folsom & Co. and refused to settle on any terms, and actually sued complainant in the name of the firm owning said mill, for all of the lumber delivered to complamant, and recovered judgment for not only the surplus, but also for the said sum of sixty-one dollars and twenty cents, before William B. Johnson, J. P., although the said

Being cross-examined, states that this conversation was after Rowe and Chamfell out, and their object was to settle the difficulty. After they had settled, and not before, Rowe flew off and said he would do nothing more until he would see his
35 father. The land was badly culled of timber before Mr. Rowe bought it. The best timber on it was post oak; the balance was small timber. The land is not as good now as it was then, as it has been badly culled since that time. John J. Chambers states that James Rowe, some time in June, 1857, made a verbal agreement to sell Nathan P. Chambers the land referred to for forty-one dollars and twenty cents.

I heard a conversation about same land between Rowe and Chambers. Chambers was to pay thirty-seven and a half cents per foot to Rowe for the square timber, cut and hauled. The chopping of timber cut and not hauled was to be deducted from price. Rowe forbid Chambers cutting any more. There was 12,000 feet of timber cut and hauled by Chambers from said land. Rowe was owing Chambers for lumber and Chambers was to give Rowe credit for said 12,000 feet of timber. The land was fourth-class, and had been culled four or five times, to my knowledge,
37 before Chambers contracted for it. There was a *bona fide* agreement between A. J. Rowe and Chambers, to the effect above stated by me.

Henry Killen: I was hauling saw-logs for Nathan P. Chambers in June or July, 1857, from a piece of land claimed to have been bought by Chambers of Rowe. A. S. Rowe said to me: Don't get too far over that way, for fear you may get on my land, for it belongs to me—referring to land bought by Chambers of Rowe. He also forbid Chambers taking any more timber off said land.

38 John W. Killen stated that he hauled logs off the land in controversy, and got between twenty-seven and twenty-eight dollars for them.

The venue in the case being changed to Perry County, at the September term, 1863, of Perry circuit court, the cause was heard and the following decree, in sub-
42 stance was rendered in the premises as neither defendant or his counsel appeared, and
43 the allegations in complainant's bill being proven by complainant, it was de-
44 creed by the court: That the contract between complainant and defendant be specifically performed by defendant; that defendant carry out and perform complainant's contract with Illinois Central Railroad Company, and also pay complainant sixty-one dollars and twenty cents with interest thereon from the 28th day of May,
45 1857, up to the time of payment; and, upon payment thereof, complainant is ordered to assign and deliver to defendant their contract of purchase for land in controversy, and pay the costs of this suit.

46 Upon the hearing of the said cause, A. J. Rowe was orally sworn on behalf of complainant, and stated as follows: The complainant authorized me to transfer the agreement with the Railroad Company for purchase of land, to N. P. Chambers, on condition defendant should pay three per cent interest paid the Company in advance, twenty dollars commission, and a bonus of ten dollars; but he never authorized me to annul or rescind the contract.

The plaintiff in error brings the cause into this Court by writ of error, and seeks to reverse the said decree for the reasons following:

1st. Because the court below erred in rendering said decree.

2nd. The court below erred in not setting said cause down for a hearing on bill and answer.

3d. The said court erred in setting cause down for hearing upon bill, answer, exhibits and depositions, and in hearing oral testimony on the hearing; and, for these and other errors apparent on the face of the record, he prays the decree of the court below may be reversed.

NELSON & SANDERS,
For Plaintiff in Error.

Chambers
vs
Howe
Abstract
Continued

8818

Know all men by these presents, that we Nathan P. Chambers of the County of Clinton, James McKee of the County of Marion, and Benjamin W. Skipper of the County of Clinton, in the State of Illinois, are held and firmly bound unto James Rowe of the County of Clinton and State aforesaid, in the sum of two hundred and fifty dollars - lawful money of the United States - for the payment of which sum, well and truly to be made, we bind ourselves, and each of us, our heirs, executors and administrators, jointly, severally and firmly by these presents. Witness our hands and seals this 13 day of April A.D. 1864.

The condition of the above obligation is such, that whereas the aforesaid James Rowe did at the Circuit Court of the County of Perry, in the State of Illinois, at the September Term A.D. 1863, in a certain cause then and there pending, on Bill for Specific performance and injunction, obtain a decree against the above bound Nathan P. Chambers - upon which said decree, he the said Nathan P. Chambers is about suing out his writ of Error from the Supreme Court within and for the first Grand Division of said State - And whereas upon inspection of a Copy of the Circuit Court record of said cause, it is ordered by one of the Justices of

said Supreme Court, that the said writ of error be made a Supersedeas, upon the said Nathan P. Chambers, the plaintiff in error, entering into bond in the sum of two hundred and fifty dollars, conditioned according to law - with James McKee and Benjamin W. Skipper sureties - Therefore now know ye, that if he the said Nathan P. Chambers shall with effect, and without delay, well and truly prosecute his said writ of error - and shall pay all such debt, damages, interests and costs as shall be awarded against him by the said Supreme Court upon the affirmance of the said decree or the dismissal of the said writ of error, then this obligation to be void - otherwise, the same to remain in full force and effect in law -

N. P. Chambers (Seal)
James McKee (Seal)
Benjamin Skipper (Seal)

Signed, sealed and delivered in presence of
M. Stevens

11

Nathan P. Chambers
Plaintiff in error

vs

James Rowe
Defendant in error

Error to Perry.

Supersedeas bond.

Filed April 18. 1844.
N. Johnston Clk

State of Illinois,
SUPREME COURT,
First Grand Division. } ss

The People of the State of Illinois,

To the Sheriff of Clinton *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* Perry *county, before the Judge thereof between*

James Rowe *plaintiff and* Nathan P. Chambers et al *defendants it is said that manifest error hath intervened to the injury of said* Nathan P. Chambers *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* Mount 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* James Rowe

that he *be and appear before the justices of our said Supreme Court; at the next term of said Court, to be holden at* **Mount Vernon,** *in said State, on the first Tuesday after the second Monday in November next, to hear the records and proceedings aforesaid, and the errors assigned, if* he *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* James Rowe *notice together with this writ.*

WITNESS, *the Hon.* P. H. Walker *Chief Justice of the Supreme Court and the seal thereof, at* MOUNT VERNON, *this* eighteenth *day of* April *in the year of our Lord one thousand eight hundred and* Sixty four.

Noah Schuster
Clerk of the Supreme Court.

[8746-48]

State of Illinois
Clinton County } ss

I have duly served the within by reading the same to the within named James Rowe this 5 day of May A.D. 1864

Bolles & Springer Plaff's Atty
Clinton County Ills

Sheriff's Fees
Service 5.00
Mileage
Ret 10
5.10

SUPREME COURT.

First Grand Division.

Nathan P. Chambers

Plaintiff in Error,

vs.

James Rowe

Defendant in Error.

SCIRE FACIAS.

FILED.

Come into my hand
April 20th 1864
S. May. C.

The writ of Error, issued in this cause, is made a Supersedeas, Bond as such, is to be always by all Concerned. April 18. 1864

N. Sollitter
Cl

James Rowe compl^t below

vs

~~Scatter~~

Nathan P. Chamberlin
impleaded with
William B. Johnson & P.
~~Andrew~~ Josephus Stippen
Benjamin Stippen & J.
Chambers } defendants below

Nathan P. Chambers plff in error

vs } Error to Perry

James Rowe defendant in error

In the Supreme Court 1st Grand division at Mt Vernon Novr Term 1844

Supreme ~~Circuit~~ The Clerk of the Court will please issue a writ of Error in the above Cause & send for to Sheriff of Clinton Co Illinois (fees enclosed)

Milton Sandy
for plff in error

To Noah Jackson Clk of Supreme Court 1st Grand division State of Illinois at Mt Vernon

11

Nathan P. Chambers -
Plaintiff in error -
vs.
James Rose
Defendant in error.

Praecipe.

Error to Perry

Filed April 18. 1864.
A. Johnston Clk

State of Illinois,
SUPREME COURT,
First Grand Division. } ss

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of Perry 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* Perry *county, before the Judge thereof between*

James Rowe *plaintiff and*

Nathan P. Chambers Etal *defendants it is said manifest error hath intervened to the injury of the aforesaid* Nathan P. Chambers *as we are informed by* his *complaint, and we being willing that error, if any there be, should be corrected 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 our Supreme Court the record and proceedings of the plaint aforesaid; with all things touching the same; under your seal, so that we may have the same before our Justices aforesaid at* **Mount Vernon**, *in the County of Jefferson, on the* 1st 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.*

WITNESS, *the Hon.* P. H. Walker *Chief Justice of the Supreme Court and the seal thereof, at* MOUNT VERNON, *this* eighteenth *day of* April *in the year of our Lord one thousand eight hundred and* Sixty-four.

Noah Saunders
Clerk of the Supreme Court.

[8746-50]

SUPREME COURT.

First Grand Division.

Nathan P. Chambers

Plaintiff in Error,

VS.

James Rowe

Defendant in Error.

WRIT OF ERROR.

Issued - Made a Supersedeas and FILED. April 18. 1864.

N. Johnston Clk

8746

This writ of Error is made a Supersedeas, bond is to be adjusted accordingly - April 18th 1864.

N. Johnston Clk

1864.

11 ——————— 20.

Chambers
vs
Rowe

1864

8946

Opinion to - with
the printer —